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H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT AND H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON BENEFITS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT AND H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT

WEDNESDAY, JULY 24, 2002

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 334, Cannon House Office Building, Hon. Michael K. Simpson (chairman of the subcommittee) presiding.

Present: Representatives Simpson, Miller, Reyes, Evans, and Davis.

OPENING STATEMENT OF CHAIRMAN SIMPSON

Mr. SIMPSON. Good morning. The hearing will now come to order.

Today we begin a 2-day legislative hearing on H.R. 5111, the Servicemembers' Civil Relief Act, and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

With our continued military actions both at home and abroad against terrorism, it is extremely important for our Nation's active duty and activated Reserve components to have civil protections. The Servicemembers' Civil Relief Act, introduced by Chairman Christopher Smith, Ranking Democratic Member Lane Evans, Ranking Member of the Subcommittee on Benefits Silvestre Reyes, and myself, is a restatement and major updating of the Soldiers' and Sailors' Civil Relief Act of 1940, and is truly a bipartisan effort.

Reservists play a significant role in our Armed Forces today. Many find themselves called to active duty and earning salaries considerably lower than they are accustomed to earning in civilian employment. The families of many of these servicemembers face severe financial hardships while their loved ones are on active duty. Further, when called to active duty, many reservists are deployed to new bases, often away from home.

The second bill on the agenda for the next 2 days is the Soldiers' and Sailors' Civil Relief Equity Act, introduced by Ranking Member Lane Evans. This legislation would protect certain members of the National Guard under title 32 status who are called up for active duty for 30 days or more. They, too, deserve our protections.

With that, I would like to turn to my Ranking Member, Mr. Reyes, for an opening statement.

OPENING STATEMENT OF HON. SILVESTRE REYES

Mr. REYES. Thank you, Chairman Simpson. I would also like to thank you for holding the hearing on H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act that has been introduced by our good friend and colleague, Congressman Lane Evans, who is our ranking Democratic member on the full committee, also H.R. 5111, that has been introduced by Chairman Chris Smith to modernize the Soldiers' and Sailors' Civil Relief Act.

I am pleased that most of the witnesses who we will be hearing from and that will be testifying before our committee today are in strong support of both bills. Our Nation's servicemembers deserve an updated law which will allow them to attend to and provide for, strengthen, and expedite the national defense and otherwise exercise their military obligations without undue concern as to the impact of their military service on their civil obligations.

I will now direct my remarks to the Department of Defense opposition to allowing members of the National Guard to receive the protections of the Soldiers' and Sailors' Civil Relief Act.

Mr. Chairman, as you and I have discussed many times, I am frankly disappointed that as the Nation relies more and more on members of the National Guard to assist in homeland defense issues, DOD does not support extending to them the federal protections afforded to members of the Guard called up for national purpose under title 32.

After the tragic events of September 11th, in my own State of Texas, over 600 members of the National Guard were called to perform service to the Nation under title 32. The lives of these title 32 reservists were disrupted in the same ways as reservists who were called up to provide similar service under title 10. It is unfair for title 32 reservists to perform similar services but be ineligible for similar types of protections.

I support both of these measures that we are considering today. I hope that following the recess we will be able to mark up these bills, taking into consideration some of the excellent technical suggestions that will be made to us by the witnesses.

I look forward to the testimony of all our witnesses today. These are important issue for our country. These are issues that are important for those that are participating in our Nation's homeland defense in uncertain times for our country.

I want to thank you again, Mr. Chairman, for calling this hearing.

Mr. SIMPSON. Thank you, Mr. Reyes. And I appreciate the work that your staff has put into this, working in a bipartisan manner with the majority staff. I think we've done an excellent job. Mr. Miller.

OPENING STATEMENT OF HON. JEFF MILLER

Mr. MILLER. Thank you, Mr. Chairman. I think it's timely that we would address these particular issues. I would like to associate my remarks with Mr. Reyes' in regards to our reservists. We are now calling upon them all the time for longer lengths of time. And I think the thing is that these are the folks that many times are not able to get their affairs in order when they are called up. Some of them out there now are up for a 2-year call. And I think that

as we treat them more and more as members of the active forces, they are going to be under much more strain than they are accustomed to. So I think it's important that we do extend these privileges to them as well.

Mr. SIMPSON. Thank you. Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. I think our recent trip to Afghanistan really brought those issues home for me as well. And in speaking to many people who were in that kind of extraordinary situation, having come to Afghanistan quite quickly, leaving family, single moms, particularly one that I met with, and so I know that this is an important issue. Thank you.

Mr. SIMPSON. Thank you. Will the first panel please come forward.

Mr. Craig Duehring is the Acting Assistant Secretary of Defense for Reserve Affairs.

I want to just take a moment and acknowledge that the Department of Defense was kind enough to prepare as a technical service certain draft language for the committee. Mr. Duehring, we greatly appreciate that service from the Department. You may begin your testimony when you are ready.

STATEMENT OF CRAIG W. DUEHRING, ACTING ASSISTANT SECRETARY OF DEFENSE, RESERVE AFFAIRS, DEPARTMENT OF DEFENSE

Mr. DUEHRING. Thank you, Mr. Chairman. With your permission, I will begin with some brief opening remarks.

Mr. Chairman and the members of the subcommittee, thank you for giving me the opportunity to come before you this morning to discuss H.R. 5111, the Servicemembers' Civil Relief Act, and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

The Department of Defense supports H.R. 5111's reenactment of the Soldiers' and Sailors' Civil Relief Act as the Serviceman's Civil Relief Act. The need to modernize the language of the act, incorporate over 60 years of case law, and add generally accepted practices is evident. The Department of Defense believes H.R. 5111 accomplishes this goal and would like to thank the committee and its staff for their work on this important bill.

The Soldiers' and Sailors' Civil Relief Act of 1940 has been an essential ingredient in the total quality of life package for our military men and women and their families since its passage. In passing this act and its Civil War and World War I era predecessors, Congress recognized that active duty military service may cause severe, often insurmountable problems in handling personal affairs back home such as frequent and voluntary moves, extended deployment overseas, long separations from families, sometimes with little advance notice.

Congress also recognized the need to have military men and women focused on their operational mission, free from worry about the welfare of their families or their personal affairs.

Congress addressed these problems adequately and equitably through the act's skillfully crafted balance among the needs of our Nation for a strong national defense, the needs of Servicemembers and their families for security in their personal affairs, and the

needs of those who have dealt with and depend upon Servicemembers for fulfillment of their obligations.

H.R. 5111 maintain this important balance while addressing three areas where our experience with the act indicates that change is needed: Clarifying and simplifying the language; incorporating generally accepted procedures; and updating the act to reflect 60 years of change in America. With the ongoing war and reserve mobilization, now is a good time to update and clarify the act so it came remain vital and continue to serve the needs of military members and those with whom they do business.

The questions most frequently asked by Servicemembers, their families, and those who deal with them reveal that parts of the act are difficult to read and understand and, therefore, difficult to follow. It is apparent fm these questions that the entire act needs to be rewritten in plain English and in modern legislative drafting form. H.R. 5111 redrafts each section, updating the language and removing much ambiguity.

Additionally, the act fails to provide necessary procedural guidance in many areas. For example, although the act specifically provides protections for servicemembers in the form of a request for a stay of proceedings, it does not explain how to go about obtaining the needed relief. H.R. 5111 provides this missing procedural guidance.

Finally, the world of 1940 could not have foreseen all the changes in American life that more than 60 years of technological advance and business practices would bring. The extensive use of leases for automobiles and business equipment could not possibly have been imagined over 60 years ago. H.R. 5111 reflects over 60 years of progress in America.

The Department of Defense has only a few concerns with H.R. 5111. First, the requirement of Section 105 that all persons in military service and entering military service be notified in writing of the benefits of this act is unnecessary and would impose a significant administrative burden that would accomplish little.

As under the current law, Congress should allow the military services to choose the most appropriate means for notifying servicemembers of their civil liability protections. Our experience indicates that handing everyone a list of the many provisions of this lengthy law would not be effective.

Currently, the most widely used provisions are typically explained in briefings by legal assistance attorneys and in command newspapers and other command information forums. Also, servicemembers having civil legal problems are routinely referred to a legal assistance office where even the infrequently used provisions of the act are explained if applicable to a servicemember's situation.

Additionally, the Department would like the Committee to consider indexing the maximum rental amount covered by Section 301 to account for inflation.

Before moving to H.R. 4017, I would like again to thank the Committee and its staff for all of the effort that has gone into this important bill.

The Department of Defense opposes H.R. 4017. Members of the National Guard called or ordered to duty by a governor under Sec-

tion 502(f) of title 32 of the United States Code are under the command and control of State authorities and are subject to the laws and protections afforded by that State. This is true even though National Guard members serving in this status are paid with federal funds.

A congressional determination of which civil liability protections to provide to Guardsmen serving under State control is inconsistent with our federal system. The Department believes the States should make this determination.

The Department would support a concurrent resolution in which Congress would urge the States, territories, and government of the District of Columbia to enact laws and implement policies to provide civil liability protections similar to those provided under the Soldiers' and Sailors' Civil Relief Act to members of their respective National Guard when serving other than on active duty under title 10 of the United States Code.

We recently canvassed the States and territories and found that 21 of them have laws providing some type of SSCRA protections, with 12 of those States providing protections that are identical or nearly identical to those provided under SSCRA. Several other States are currently considering legislation that would extend such protections to its Guardsmen.

We appreciate this opportunity to discuss these bills with you.

[The prepared statement of Mr. Duehring appears on p. 132.]

Mr. EVANS. May my opening statement be inserted into the record?

Mr. SIMPSON. Certainly, your opening statement will be included in the record.

[The prepared statement of Congressman Evans appears on p. 124.]

Mr. SIMPSON. Thank you, Mr. Duehring. I appreciate your testimony.

You said in your testimony that the Department of Defense finds that notifying the servicemembers in writing is unnecessary and will pose a significant burden that will accomplish little. We believe it is necessary for servicemembers to know what protections are afforded them, and I am referring to the financial and legal protections, especially. A brief fact sheet should suffice, I would think, in notifying them of those protections which are available. The National Military Family Association goes even further, stating in their testimony that the servicemembers' families should get formal notification.

How can we ensure that servicemembers are aware of those protections accorded them without creating an administrative burden for the Department?

Mr. DUEHRING. Mr. Chairman, the Department agrees that servicemembers should be aware of the act's protections. And the military services are continuously engaged in this awareness effort. Fact sheets on the act's most common provisions are found throughout the Department of Defense, in legal assistance waiting rooms and on websites.

Also, as I mentioned in my statement, servicemembers receive briefings on these common provisions upon mobilization and at other times. And the act is the subject of recurring articles in com-

mand newspapers and other publications. Throughout their time in the military, servicemembers are advised to go to a legal assistance office whenever they have a personal legal problem. It is there that they will learn if one of the more obscure provisions of the act applies to their situation.

As written, H.R. 5111 could be interpreted to require the Department to hand each servicemember a piece of paper describing every section of this long and complex law, including the provision on mining claims and desert land entry.

Our experience tells us that such an approach would not be an effective method of notifying servicemembers of what they need to know most.

Mr. SIMPSON. Well, I appreciate that. But it seems to me that we have an obligation to ensure that these individuals are properly notified.

How can you—it seems rather random if you say, well, those things are available, and there are briefings, and there are magazines and different things like that. How can we be absolutely sure that each servicemember actually does know what's available to him?

Mr. DUEHRING. I would equate this act and the provisions of this act to many other concerns that a young servicemember would have either coming into the service or upon receiving orders for mobilization. There is a lot going through his mind. He has medical problems to be concerned about, these legal problems, other legal problems perhaps, personnel issues, chaplain's issues, what have you. There is so much for these young folks to be concerned about that we have found over a period of time that the best way is to highlight what is available much as you might go, let's say, into a library. And you wouldn't know what was in every book, but you would know where the card catalogue was or you would know where to seek assistance.

The first step would be for the individual to say I have a concern in this area. And then people who are informed could refine the information they give, direct them to the experts, which is exactly what we want to do. Eventually, they will need legal help anyway and the help of their commander. It's best to establish that relationship right away.

I think picking on one issue like this and saying that this is so important that we are going to run off a copy of the law and give it to you could, in fact, be counter-productive in that a person may just disregard that.

We have found this system to work very well. In years past, we mobilize—we now have 73,000 people that have been mobilized. Additionally, we have absolutely 10,000 more in other statuses. That's just talking absolutely the Guard and Reserve. The system is working very well, and we'd like to continue with it.

Mr. SIMPSON. In your statement on H.R. 4017, which I have to say I'm a little disappointed the Department is opposing, you said that you would support a concurrent resolution from the House and Senate encouraging the States to pass protections similar to those that were guaranteed under the Soldiers' Sailors' Civil Relief Act.

You found in your surveys that 21 of the States provide some type of protection under the SSCRA. How can we be sure that they

are uniform? And how can one State that has laws relative to, say, interest rates, control what another State does?

Mr. DUEHRING. Well, from our brief review of State protections, we are aware that some States have specified interest rate limits on their State codes. State legislatures will enact those protections they believe are appropriate and within their authority to enact.

Commenting on the enforceability of specific State and federal statutes is beyond the purview of the Department. However, the Department continues to believe in the basic principle consistent with our federal system of government that when the National Guard is ordered to duty by a governor to perform duties under the command and control of State authorities, Guardsmen are subject to the laws and protection afforded by that State.

Mr. SIMPSON. Well, I suspect I am as sensitive as anybody is to the issue of States' rights. It's been argued that those against adding protections for title 32 active duty to the Soldiers' and Sailors' Civil Relief Act will claim that this is a State issue and that title 32 active duty is a State active duty.

There are two reasons this assertion is erroneous. First, title 32 active duty is, by definition, federal active duty. Title 32 is federal law, not State law. And yes, the governors do have control, but those men and women on title 32 active duty are being paid federal dollars and receiving federal benefits and protections, like the Uniform Service Employment and Re-employment Rights Act. State active duty is regulated by the State and paid for by the State.

I might add that H.R. 4017 is limited to contingency operations authorized only by the President or the Secretary of Defense. That sounds really federal to me.

Mr. DUEHRING. The issue is that no duty status under title 32 is included in title 10's definition of active duty. In fact, the definition specifically excludes full-time National Guard duty, which is the status covered by H.R. 4017.

While title 32 is a federal law providing for federal pay and regulation of the National Guard when it is training for its role as a reserve component of our Armed Forces or performing certain other duties, Guardsmen in a title 32 status are not under federal command and are not subject to the full range of federal law they are subject other while under active duty under title 10.

Most notably, they are not subject to the Uniform Code of Military Justice and the Posse Comitatus Act. Just as discipline and the extent to which Guardsmen in a title 32 status will become involved in law enforcement or State matters, we believe it should be up to the State legislature to determine what civil liability protections it wants to provide its Guardsmen knowing that these protections may impose burdens on other citizens of the State.

A State may decide to provide a somewhat different package of protections than that provided to active duty servicemembers by the SSCRA because it has determined that service within the State does not affect fulfillment of civil obligations in the same way that active duty service, which is usually out of the State or overseas, does.

From our brief review of State protections, we are aware that some States have specified interest rate limits in their State codes. State legislatures will enact those protection they believe are ap-

propriate and within their authority to enact. Commenting on the enforceability of State, a specific State and federal statutes, is again beyond the purview of the Department. However, the Department continues to believe in the basic principle consistent with our federal system of government that when the National Guard is ordered to duty by a governor to perform duties under the command and control of State authorities, Guardsmen are subject to the laws and protections afforded by that State.

Mr. SIMPSON. And I appreciate that. I know that you know what we're trying to get at here. The Guardsmen who were called to protect the airports right after September 11th were called up by the governors at the request of the President. And that certainly was a federal activity, not a State activity. They weren't protecting any State issues there. It was a federal activity. And some of those Guardsmen had protection depending on what State they lived in and what ever was enacted in that State's legislature. Some of them had no protections because the State hadn't acted in any way, and there was a whole list of different protections that different Guardsmen had all doing the same duty, protecting the airports, a federal activity. That's really what we're trying to get at here, I believe.

Mr. DUEHRING. Well, the use of the National Guardsmen to perform airport security was intended as a short-term expedient means to accomplish, at federal expense, a requirement that was, until mid-February, not the responsibility of any federal agency.

The Department of Defense does not think that federal funding and a Presidential request changed this basic principle. When the National Guard is ordered to duty by a governor to perform duties in support of a State function under the command and control of State authorities, Guardsmen are subject to the laws and protections afforded by that State.

We believe it should be up to the State legislature to determine what civil liability protections it wants to provide its Guardsmen knowing that these protections may impose burdens on other citizens of the State. For example, a State legislature may decide to provide a different package of civil liability protections than that provided to active duty servicemembers by the Soldiers' and Sailors' Civil Relief Act because it has determined that service within the State does not affect fulfillment of civil obligations in the same way that active service, usually out of State or overseas, does.

Mr. SIMPSON. Mr. Reyes.

Mr. REYES. I'm counting to ten. You know, it seems to me that a fundamental part of the reason for the Department of Defense to exist is to protect the personnel that comprise the Department of Defense. How many of our men and women would be willing to lend service under the reserve component if they are being treated differently, under different programs, under different States?

What I think makes sense is to be able to provide the same kind of protection and the same kind of benefits to everyone because they are wearing the same uniform. We talk about that on this committee repeatedly, that when you put on the uniform of one of our military services, you represent this country. This is the United States Department of Defense. What we're trying to do here is

make sure that all of our men and women in uniform are covered by this umbrella.

You know, the other thing that I would strongly urge the Department of Defense to recognize is this is a different world. I don't know how many times our current Commander in Chief has to say that. We are living under very different circumstances today. For you to sit there and tell us that States perhaps have a philosophy that one needs more protection—one person serving in the Reserves need more protection because they have served out of State and overseas just belies what our President is saying about the threat to our homeland. We need to recognize that.

You know, when I hear you talk about the fact that you're encouraging or maybe we ought to encourage the States to pass their respective packages of protection for their respective citizens, and then you say 22 have already passed, with 12 passing similar type packages of benefits—one of the fundamental and inherent rights of a military person, I think, is the ability to be treated the same whether they serve in Utah, Idaho, Texas, Florida, New York, or any of the States or territories of this country, because they all respond to the same challenge. They all, under today's world and today's threat, are responding to the same threat against our homeland.

I find it incredible, Mr. Chairman, that we can't seem to utilize common sense in this thing. And I find it very disappointing that the Department of Defense, which theoretically ought to be standing up for the men and women that comprise the defense of this country, are taking issue with interpretation.

When we talk about Section 105, clearly I think it's an issue of interpretation. I mean, you've got a copy there beside you of the American Forces Information Service that essentially gives a synopsis of the kinds of protections that are available under this provision. It's not rocket science. It's putting together a pamphlet or a handout that is authoritative because it comes out of DOD, that is official because it comes out of DOD.

Websites are a dime a dozen on the Internet. And anybody that has an axe to grind can put stuff up there. But when we include Section 105 that says please provide the information to the men and women in uniform that are going to possibly have to rely on it for their own information and protection, it's not something that hasn't already been done by other people. But it is something that would give it the authority of DOD, that would give it the protection of being an official document that is presented to somebody who is coming into the military for the first time. That's all we're asking.

I don't think it's complex. I don't think it is something that—listen, I'm a veteran. I remember going into basic training corps. You are bombarded with so many things, including different pamphlets that are provided to you on what to do if there's a gas attack, what to do if there is a nuclear attack, and all those kinds of things. If you can do that, why can't you do this? I mean, we are provided that kind of information already when you go into basic training. This is yet one more thing that is critically essential to the men and women who wear uniforms.

I don't understand the objections by DOD that I think are pretty straightforward and simple on the part of the committee. I just find it perplexing.

I don't know if you've got any comment on that, but I hope I have conveyed my dismay at the position that DOD is taking. It's a new world. The threat is to our homeland. I don't think we should ever rely on States to do the right thing when it is a federal mandate, under federal law, that they are activated.

I don't know if you have any comments.

Mr. SIMPSON. Thank you, sir. Mr. Miller.

Mr. MILLER. I think you're probably going to get the same comment from most people sitting up here today. And we all travel a lot, as probably many in the audience do. As you travel from State to State and you go through airports, you see people in uniform. I dare say that nobody, except probably a select few, can tell the difference as to who is standing there guarding that particular airport. They think, the traveling public, that those folks are part of our military in one way, shape, or form.

In your comments, you have said that DOD supports encouraging the States to do certain things. I was a member of the State legislature in Florida. We did certain things in Florida. However, there are those that do not get the same protection. And I think that what we are trying to do here is at least set a minimum standard of protection that these people, who are serving our country, deserve.

And so, you now, for DOD to say push it down to the States, I think the argument that's being presented here is somewhat flawed. As my colleagues have already said, we are in a different time. Sunday morning at church I had a member of the Guard come up to me in church and hand me a letter because he was being asked to go back to airport duty again. And he was saying he did not—he said "they're being used for window dressing," and he went on and on and on and said "I'm not doing what I think we should be doing."

So I think we've got a problem that's simmering out there that I don't know if DOD really understands the gravity of the people that are out there that are serving that may decide very shortly that they do not want to re-enlist in one way, shape, or form, and we are going to have a gap to fill. And as our strength has been gutted over the last years of active duty men and women, Guard and reserves have been asked to step into those voids. And if those Guard and reserve people step out, the United States is going to be standing there with very few people to do the job that we expect them to do.

Mr. SIMPSON. Thank you, Mr. Miller. Mr. Evans.

Mr. EVANS. I agree with you that times have changed. And I think that the military has to be more responsive to those changes in the legal services that they provide to their men and women.

From my time in the Marine Corps I know that perhaps the most used provision, at least as far as enlisted men were concerned, dealt with delaying all types of civil court actions, such as bankruptcies, foreclosures, and even divorces. And I bring the divorce up because I don't know who represents who in terms of getting ad-

vice. A counselor has one approach to the husband, another to the wife. Can you tell me what's that about, how it works?

Mr. DUEHRING. I'm not sure of the details. I'm not sure if I understand completely the question exactly. Could you restate it, sir?

Mr. EVANS. Well, I'm asking—you know, there are two parties to a divorce. Who would be helped by the legal services attorney?

Mr. DUEHRING. Be helped? Of course, the servicemember has access to the family support system, the legal system. And any dependent—whoever has the legal status of a dependent has the right to contact the same agencies. Now whether that's in their best interest or how they would handle it, I'm not really in a position to say beyond that. Certainly, initially, guidance is available both to the servicemembers and the family members until——

Mr. EVANS. Are there no set rules regarding this, or no suggested rules?

Mr. DUEHRING. I don't have that information. I would have to take that back and——

Mr. EVANS. Would you please do that? Mr. Chairman, I ask that it be included in the record.

(Subsequently, Mr. Duehring provided the following information:)

LEGAL ASSISTANCE

Question: When a servicemember and spouse each seek military legal assistance with a divorce, how is that situation handled?

Answer: Both the servicemember and the spouse are eligible for legal assistance, which in divorce cases is usually limited to advice on the applicable law and process. Legal assistance attorneys generally do not provide in-court representation in these matters, but some assist with the preparation of court documents.

All legal assistance offices have procedures for avoiding conflicts of interest. At a minimum, they involve screening clients and assigning them to different attorneys. Depending on the facts of a specific situation, a client may be referred to an attorney in another military legal office or a reserve judge advocate. In divorce cases, as with all conflict of interest cases, the second party to request assistance would be the one referred.

Some legal assistance offices provide general information divorce briefings, with the opportunity to schedule follow-on individual consultation with an attorney. Even in those cases where one party must be referred outside of the office for individual consultation, the general information briefing is available to both parties.

Mr. SIMPSON. Thank you, Mr. Duehring. I appreciate your testimony today.

I would like to just point out, though, on Mr. Evans' bill—and I point this out for emphasis again—I guess it's already been pointed out—is that this covers individuals who have been called up for 30 consecutive days. And only if they are paid for with federal funds for a contingency operation authorized by the President or Secretary of Defense. This is not just because the governor wants to call up somebody because they've got floods going on in the State or whatever and they're going to take care of those.

I think all of us would agree that these people, these National Guardsmen that were called up to serve at airports, secure airports, that was a national issue not a State issue. And to have them also subject to all different protections depending on what airport they were serving at just seems inconsistent to me. So I hope you will take that under advisement when you re-examine this.

Mr. DUEHRING. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. And I appreciate your testimony. Thank you.

Would panel two please come forward.

Panel two is made up of representatives of military and veterans' service organizations. Ms. Judy Wilson, Deputy Director, Government Relations, of The Enlisted Association of the National Guard; Mr. Bob Manhan, Assistant Director, National Legislative Service for the Veterans of Foreign Wars of the United States; Mr. Richard Jones, National Legislative Director for AMVETS; and Ms. Joyce Wessel Raezer, Director, Government Relations, of The National Military Family Association, who is here on behalf of Ms. Lilly S. Cannon, Deputy Director of Government Relations.

Thank you all for appearing here today. If I have butchered your names so far, I apologize. I'm not very good at that. I was never much of a phonetic sort of guy. I appreciate you all being here today. We will hold our questions until each of you have testified.

Mr. Jones.

STATEMENTS OF RICHARD JONES, NATIONAL LEGISLATIVE DIRECTOR, AMVETS; BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; JUDY WILSON, DEPUTY DIRECTOR, GOVERNMENT RELATIONS FOR THE ENLISTED ASSOCIATION OF THE NATIONAL GUARD; AND JOYCE WESSEL RAEZER, DIRECTOR, GOVERNMENT RELATIONS, THE NATIONAL MILITARY FAMILY ASSOCIATION

STATEMENT OF RICHARD JONES

Mr. JONES. Mr. Chairman and Ranking Member Reyes, members of the panel, thank you for the opportunity to testify before your subcommittee on the two bills subject to this legislative hearing, H.R. 5111 and H.R. 4017, bills to revise and amend the Soldiers' and Sailors' Civil Relief Act of 1940.

The Soldiers' and Sailors' Civil Relief Act was enacted by Congress in 1940 to protect individuals called to active duty. It is intended in large part to promote the national defense by suspending enforcement of civil liabilities of servicemembers and to enable servicemembers to devote their entire energies to freedom's defense. For example, the Act provides for forbearance and reduced interest on certain obligations incurred prior to service and restricts default judgments against servicemembers and rental eviction of servicemembers and their dependents.

No one must doubt the worry and concern of Reservists or National Guard when they are called to active duty. They wonder about their jobs and whether their employment will still be available when they return to civilian life. They have questions about losing seniority, health insurance and other benefits because of their absence while serving their country.

Current law provides assurances our men and women in uniform require. They are entitled under Veterans' Readjustments Rights to return to their jobs after honorable release from service if they apply within 90 days of separation. They are also currently entitled to be treated, for the purpose of seniority, as though they never left their employment.

One area overlooked is the case of a member of the National Guard called to service under the direction of the President or Secretary of Defense. H.R. 4017 would, under certain conditions, correct this deficiency for members of the Guard. It will pull members of the Guard under protection of the Soldiers' and Sailors' Civil Relief Act and thereby include them as well under the provisions contemplated in H.R. 5111, the Servicemembers' Civil Relief Act. Clearly this type of action is appropriate and timely.

When an individual is called into Guard duty, his earnings may be reduced by considerable amount. And as a result, the individual may not be able to meet car, mortgage or personal loan payments. Take, for example, a member of the Guard or Reserves making $55,000 with a wife and two children. When called to active duty, his salary can be reduced up to 50 percent. How is he going to continue to pay rent, support his family while on active duty?

The answer is simple. He can't, not without the protections provided under this act and the update provided in the legislation before the panel today. For example, H.R. 5111 would adjust the rental cap on eviction protection. Under current law, this protection applies only in cases in which the monthly rent is not more than $1,200. H.R. 5111 lifts the cap to rents not exceeding $1,700, a more generous protection. Considering the rent paid even by a family of three or four for standard quality rental housing, especially in high-cost areas, the current ceiling is unrealistically low.

AMVETS supports these measures. We call on Members of Congress who recognize the potential for Reservists and guard financial hardship to move this measure forward expeditiously. We need to ensure that civil protections for members of the Reserves and Guard reflect current economic realities. And we need, as well, to send a clear message that the difficult work of these individuals is not taken for granted or gone unnoticed.

AMVETS appreciates the opportunity to appear before you today. And we thank you for your vigilance in improving benefits and services to veterans and their families.

[The prepared statement of Mr. Jones appears on p. 137.]

Mr. SIMPSON. Thank you. Appreciate that. Mr. Manhan.

STATEMENT OF BOB MANHAN

Mr. MANHAN. Thank you, Mr. Chairman, members of the Committee. The VFW considers it an honor and privilege to participate in this very important hearing today. My written testimony I know is already part of the record. I'll address just the highlights of the two bills in chronological order.

First is Mr. Evans' bill, H.R. 4017. The long title is Soldiers' and Sailors' Civil Relief Equity Act. It's the sixth word in that title, equity, that the VFW absolutely, unconditionally supports to enact federal legislation.

There is no reason to discriminate or differentiate between National Guard personnel that may be called up under title 32, USC today at the discretion of the President or the Secretary of Defense, as authorized in bill H.R. 4017 to receive the financial assistance and protection that the present Soldiers and Sailors Act of 1940 already provides to National Guard personnel activated under title

10, USC. So this is an expansion of coverage. We absolutely support it.

The other bill is 5111, which would be the new Soldiers' and Sailors' And Airmen's Act, now called Servicemen's Civil Relief Act.

First of all, we compliment you and your staff. We know it must have been a very technical and rather complex administrative rewrite of a law that is 60 years old with many, many case amendments to it. Probably if all of the legislation were laid end to end, it would cover about 300 pages of text in title 50, USC.

The VFW strongly supports bill H.R. 5111 primarily because it will clarify definitions and expand protections.

With that, Mr. Chairman, I will close our verbal portion of the statement and will be very glad to answer any questions you or any member of the Committee may have. Thank you.

[The prepared statement of Mr. Manhan appears on p. 141.]

Mr. SIMPSON. Thank you, Mr. Manhan. Ms. Wilson.

STATEMENT OF JUDY WILSON

Ms. WILSON. I am grateful to have this opportunity to express the views of the Enlisted Association of the National Guard of the United States concerning H.R. 4017 and H.R. 5111.

The National Guard has recently been called, more than any time in history, to provide peacetime and combat-ready support for contingencies around the world. Add to that the new homeland defense mission, and it becomes clear that the National Guard will continue to be called to contribute to this Nation's defense.

Reserve Component servicemembers have been asked to shoulder a greater share of responsibility for defending the Nation's security at home and abroad. We now have more than 80,000 National Guard and Reserve troops on active duty to perform vital homeland defense mission, guarding airports, nuclear facilities, border crossings, and other potential targets of terror across the country.

The SSCRA was passed by Congress to provide protection for individuals called to active duty in any of the military services. It suspends certain civil obligations to enable servicemembers to devote full attention to duty. It protects the individual and his or her family from foreclosures, evictions and installment contracts for the purpose of real or personal property if the servicemember's ability to make payments is materially affected by the military service.

The SSCRA entitles a person called to active duty to reinstatement of any health insurance that was in effect if it was terminated during the period of service. It also protects the servicemembers against termination of private life insurance policies during the term of active service.

Currently, the SSCRA only covers members of the National Guard called to active duty under title 10, United States Code. Guard members and Reservists called to active service for Operation Enduring Freedom were called under title 10, United States Code and, therefore, are entitled to all federal benefits including protection under SSCRA. However, the majority of National Guard members called to active service for Operation Noble Eagle were called up under title 32, United States Code. Although they receive most federal benefits, they do not qualify for protection under SSCRA.

EANGUS believes that all members of the National Guard performing active duty service under title 32, United States Code status in support of a contingency operation at the request of the President should be entitled to protection under the SSCRA. And EANGUS wholeheartedly supports H.R. 4017.

Those against adding protection for title 32 active duty will claim that this is a State issue and that title 32 active duty is "State" active duty. There are two reasons this assertion is erroneous. First, title 32 active duty is by definition federal active duty. Title 32 is federal law, not State. Yes, the governor has control, but those men and women on title 32 active duty are being paid federal dollars and receiving federal benefits and protections like the Uniformed Services Employment and Re-employment Rights Act (USERRA). State active duty is regulated by the State and paid for by the State.

Secondly, only Congress has the power to regulate commerce between the States. The argument goes that the States must enact their own SSCRA laws to cover title 32 active duty. Many loans, credit cards or other installment agreements originate in a State other than that in the servicemembers resides. One State cannot regulate the interest rates in another State. If the servicemembers lives in Virginia, has a credit card from a company headquartered in New York, a mortgage from a bank with headquarters in Iowa, and a car loan from New Jersey, how will he be protected with an interest rate cap in Virginia State law. He will not. All 50 States would have to enact identical legislation if all National Guard members were to receive equal protections around the country.

To have servicemembers suffer financially while 50 States and four territories attempt to pass laws that mean nothing is neither practical nor necessary. Congress has the power to remedy the situation immediately and appropriately.

EANGUS applauds the revisions in H.R. 5111 which increase the dollar amount of rent for eviction protection. Changing the current amount from $1,200 a month to $1,700 per month will keep up with inflation and will afford added protection to the families of military members who income would be adversely affected by military service.

EANGUS is also glad to see that leases for personal property were added. However, we recommend an additional section to allow the termination of a motor vehicle lease when called to active duty. Unlike a contract to purchase a motor vehicle, which eventually becomes personal property, vehicle leases rent the use of that vehicle. If called to active duty, the lessee may not have the use of the vehicle for a long period of time and will still be required to make the payments on the lease. EANGUS believes that the servicemembers should have the option to terminate a vehicle lease of called to active duty for an extended period.

EANGUS also believes that the SSCRA should provide protections to individuals enrolled in colleges or institutions of higher learning who are involuntarily called to active duty. Many colleges do not give credit or refunds to those involuntarily called. Efforts have been made to get higher learning institutions to provide relief, and some attempts have been successful. EANGUS believes that the currently military commitments warrant federal protection.

The Army and Air National Guard are the United States' first line of defense against all enemies foreign or domestic. The men and women of the National Guard have volunteered to serve their country. They serve proudly and willingly. Your support in adding these provisions, as well as amending the SSCRA of 1940 to include title 32, United States Code will send a strong signal of support to our servicemembers going into harm's way in foreign countries and here at home.

EANGUS appreciates the dedication and commitment of the members of the subcommittee in protecting, defending and restoring the benefits earned by those who have served our Nation in peace and war. Thank you for the opportunity to submit testimony on behalf of our membership.

[The prepared statement of Ms. Wilson appears on p. 143.]

Mr. SIMPSON. Thank you, Ms. Wilson. Ms. Raezer.

STATEMENT OF JOYCE WESSEL RAEZER

Ms. RAEZER. Thank you, Mr. Chairman, Ranking Member Reyes. The National Military Family Association thanks you for this opportunity to testify on behalf of military families concerning bills to strengthen and clarify the provision in the Soldiers' and Sailors' Civil Relief Act.

For more than 60 years, this act has helped to ensure that active duty and reserve component servicemembers would not be financially penalized or lose important rights as citizens while serving their country on military orders.

Today's extraordinary operations tempo, punctuated by more frequent deployments makes the SSCRA protections more critical than ever. The changing demographics of the military with greater diversity of family structures coupled with the increasing reliance on reserve components make a critical evaluation of the protections offered through the act a priority. NMFA thanks this subcommittee for your leadership in addressing this priority.

As of July 17th, more than 82,000 National Guard and Reserve members were on active duty to support our Nation's security. Although we have heard wonderful stories about how families have supported each other and how service family support personnel have worked to provide a safety net for these families, we've also heard from the families about the frustrations when they find they cannot find information about their benefits and protections or when they find they can't take advantage of those protections. H.R. 4017 will help address a significant cause of the frustrations experienced by families of one segment of the Reserve components, the National Guard personnel called to active duty under title 32.

Although this category of Guardmembers receives some federal benefits, they only receive the interest rate reduction and other SSCRA protections if authorized under their State law and apparently, then, if the State can enforce those provisions.

NMFA supports the provisions of H.R. 4017 as a means of mitigating some of the disparity experienced by title 32 National Guardmembers called to federal service. We also believe that these provisions should be incorporated into H.R. 5111, the proposed Servicemembers' Civil Relief Act.

We thank the sponsors of H.R. 5111 for recognizing the need to update the SSCRA of 1940 to reflect the needs of today's military force and to restate its provisions in plain language.

As stated in our written statement, we believe this bill as proposed addresses many of the concerns of today's military force and their families.

NMFA especially applauds the provision and your statements today that all persons in military service and those entering military service should be provided in writing with an outline of the benefits they are afforded by the act. We believe this information should also be provided separately to servicemembers' spouse, family and/or legal representatives. Family members do not attend those legal briefings on the SSCRA. A Guard family living in Idaho where the member is a Virginia Guardsman serving in Afghanistan isn't going to have access to a military JAG office necessarily. They need a fact sheet, something they can put in their important papers' file that gives not only the outline of the act but the contact information for where they can get additional help. This is very, very important, and we do appreciate your advocacy for this kind of information to all of our servicemembers and families.

Although many provisions of H.R. 5111 reflect the evolving needs of today's force, we do believe that more could be done to address those needs and have, again, provided details in our written statement.

Our biggest concern is that many financial commitments are made jointly by the member and the spouse. Therefore, the member can only be protected from financial harm if that protection extends to the spouse if necessary. NMFA is particularly grateful for the expansion of the provision dealing with the termination of real property leases to include permanent change of station, moves or deployment order of 90 days. This provision would allow military members to relocate their families if necessary when the member deploys.

The many military families who jointly title vehicles in both the servicemembers' and spouse's name without being aware of the tax consequences will welcome the provision regarding taxes on personal property to include all forms of property owned by either the servicemember or jointly by the servicemember and spouse.

Although some provisions in the act recognize the financial partnership of the military marriage, NMFA is concerned that other provisions may not offer the complete protection needed by the military family. We hope, for example, that provisions enabling servicemembers to petition for adjustments in child or spousal support if the call to duty affects their ability to pay would not allow the responsibility of those payments to be eliminated.

Section 205(b) allows actions against co-defendants who are not in military service. Because NMFA is concerned that the spouse could be included in this category, we support a modification to state that proceedings against the spouse may be stayed when the servicemember provides the preponderance of the family's financial stability.

Section 108 provides that a servicemembers' application for protections under the act shall not adversely affect his or her future financial liability. We believe this stipulation should also be apply

to the spouse. The spouse should not be penalized because the servicemember is deployed in support of our country's national security.

In conclusion, NMFA thanks the subcommittee for your leadership and insight in making the Soldiers' and Sailors' Civil Relief Act of 1940 easier to understand and, thus, to use. Military life has changed dramatically since 1940. The benefits and protections members and their family's deserve must keep in step with the demands we place on them. The more mobile and transitory military requires more legal safeguards. Your actions will help to rebuild military members' and their family's trust and eliminate some of the stressors they experience while performing the critical task of defending our Nation. Thank you.

[The prepared statement of The National Military Family Association appears on p. 147.]

Mr. SIMPSON. Thank you. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman. I've got a couple of questions, one in particular to Ms. Raezer. Where you indicate the notice requirement in H.R. 5111, as you stated, should be provided to both the servicemember and the servicemember's family, the question I had was, are you aware of any other situations in which the military service provides any kind of notification to members of the servicemember's family or legal representatives?

Ms. RAEZER. This is a battle that we're fighting on a lot of fronts in terms of healthcare benefits. We are encouraging it, and in some offices we are seeing the need—we have encouraged Tricare contractors, for example, to provide information to families. DOD, by putting a lot of the information on the web, is recognizing that they have to find other means of getting families, especially the Reserve component families. This is something we're seeing in bits and pieces, but it's very, very difficult especially for Reserve component families. When you have active duty families who can all come in to a pre-deployment briefing, they can get a lot of information straight from the commander. But when you have Reserve component families, it's a lot harder and most of them don't go to these briefings or can't go.

Mr. REYES. Thank you. And each one of you have been given a copy of this information off the web for the American Forces Information Service. The question I had, if you've had a chance to glance at it, in your respected opinions, would the kind of information provided in this handout that was printed off the web regarding the Soldiers' and Sailors' Civil Relief Act document, does it adequately meet the informational needs of our servicemembers, in your opinion?

Ms. RAEZER. I'll go ahead, because I've used this. I give this to families, but I do add some more information contact to attach to this. I think this kind of summary is very useful because it raises the awareness. This is the kind of thing I would hope those parents of a single service member would have as they face dealing with that servicemember's financial issues while they are gone.

This is what they need. They don't need a lot of details to start off. They need the basic facts, and then where do you go to get help.

Mr. JONES. Mr. Reyes, absolutely. Taking a look at this layout, the bullets are just enormously interesting. This attracts you right way, reduced interest rates on mortgage payments for instance. If I'm in the service and my salary's been cut 50 percent; those points are very attractive. Look at these bullets, reduced interest rate on credit card debt, protection from eviction. I'd look at this and say, "Thank you very much." It's a very attractive summary, and it would catch my eye immediately. Frankly, I'd mail it pretty quickly to the one who is in charge of my wallet—my wife. (Laughter.)

Mr. SIMPSON. Anybody else?

Mr. MANHAN. Mr. Reyes, the VFW agrees, we should always have this type of information available. Several decades ago, right after the Korean War, President Eisenhower insisted that every person on active duty carry what we used to carry a Code of Conduct card. It was a tri-fold card. All military recruits could have something like this issued as a handout when the active duty person goes through basic training. And later, upon reassignment to any major command, that command could republish the same thing to update the legal staff and the local phone number. Also, today because we have the electronic individual personnel record why not, have a copy of this same information sheet there? Upon being deployed, whether it's active duty or in the Guard, the critical assistance information is automatically printed out for each person. Because there is some small slice of active duty people, primarily the lower ranking people who are not married, their parents probably have their power of attorney. These parents would have no knowledge of the Servicemen's Civil Relief Act, and they certainly would not have any idea where to obtain legal military staff assistant to preclude financial problems.

In sum, the VFW strongly supports your idea. It is common sense.

Ms. WILSON. I completely concur.

Mr. SIMPSON. Thank you.

Mr. Miller?

[No response.]

Mr. SIMPSON. Mr. Evans?

Mr. EVANS. None at this time.

Mr. SIMPSON. I thank you all for your testimony today. It's very beneficial as we work through this and make sure that we try and improve this Act. Let the record reflect that I will submit post-hearing questions to the Defense Department regarding life insurance protections accorded mobilized servicemembers in H.R. 5111 and other matters.

If there are no further questions for this panel, they are excused. If there are no further actions before the subcommittee, this hearing stands adjourned until 10 a.m. tomorrow, when we will continue the hearings on these two important bills. Thank you.

[Whereupon, at 11:23 a.m., the subcommittee was adjourned.]

H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT AND H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT

THURSDAY, JULY 25, 2002

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BENEFITS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 334, Cannon House Office Building, Hon. Michael K. Simpson (chairman of the subcommittee) presiding.

Present: Representatives Simpson, Reyes, and Evans.

OPENING STATEMENT OF CHAIRMAN SIMPSON

Mr. SIMPSON. Today is the second day of our hearings on H.R. 5111, the Servicemembers' Civil Relief Act, and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

Our Nation's active duty and activated reserve components continue to be involved in military actions against terrorism, both here and abroad. H.R. 5111, the Servicemembers' Civil Relief Act, a bipartisan bill, revises the Soldiers' and Sailors' Civil Relief Act of 1940.

H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, adds coverage under SSCRA for those National Guard members who are called up by the President or the Secretary of Defense under title 32.

Yesterday's witnesses provided a wealth of information regarding the National Guard component and brought forth the idea of fact sheets for servicemembers regarding their SSCRA rights. I look forward to hearing from each of you today.

Mr. Reyes?

OPENING STATEMENT OF HON. SILVESTRE REYES

Mr. REYES. Well, thank you very much, Mr. Chairman, and thank you, again, for holding these very important hearings.

This is our second day, as you know, of hearings on H.R. 4017, The Soldiers' and Sailors' Civil Relief Equity Act that was introduced by our good friend and colleague, Congressman Evans, our ranking Democratic member, and H.R. 5111, introduced by our chairman, Chris Smith, to modernize the Soldiers' and Sailors' Civil Relief Act.

I want to extend a warm welcome to the second day of hearings to all our panelists today, and thank all of our panelists for their

hard work and insight into these very important matters for our veterans and active duty personnel.

The information that we gather from the panelists' testimony today is highly important to this committee, and it will enable the subcommittee to make informed decisions as we go about reforming and updating the Soldiers' and Sailors' Civil Relief Act, and attempt to bring equity to our title 32 National Guard members by way of the same act.

As I said yesterday, Mr. Chairman, I support both of these bills and look forward to a markup on them soon after the recess. And again, I thank you for holding these hearings.

Mr. SIMPSON. Thank you. Will the first panel please come forward? Mr. Robert Hirshon, the president of the American Bar Association, and Mr. Eugene Fidell, attorney at law.

Mr. Hirshon, I appreciate your being here today. It's nice to have the president of the American Bar Association, an important organization in this country, here today to testify on these bills. If you would like to introduce the other individual at the head table, we would be welcome to have him here. Thank you.

Mr. HIRSHON. I would be glad to do so, too. On my immediate left is Brig. Gen. David Hague, who is the chair of our standing committee on legal assistance to military personnel.

And to my right is a gentleman whom I have just met, and his name is Eugene, Gene Fidell, who is a private practitioner in Washington, DC, an expert on military matters.

Mr. SIMPSON. All right. You may begin when you are ready.

STATEMENTS OF ROBERT E. HIRSHON, PRESIDENT, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY BRIG. GEN. DAVID HAGUE, CHAIR, COMMITTEE ON LEGAL ASSISTANCE TO MILITARY PERSONNEL, AMERICAN BAR ASSOCIATION; AND EUGENE R. FIDELL, ATTORNEY AT LAW

STATEMENT OF ROBERT E. HIRSHON

Mr. HIRSHON. Well, thank you very much, Mr. Chairman and members of the subcommittee. I am Bob Hirshon, and I am president of the American Bar Association.

First of all, I want to thank you. Indeed, I want to commend you for holding hearings on this issue, of which we believe, in the American Bar Association, is of absolutely essential and vital importance.

We support provisions in the Servicemembers' Civil Relief Act, H.R. 5111, and the Soldiers' and Sailors' Civil Relief Equity Act, H.R. 4017, and we believe they are going to provide much needed clarification and modification of the original Soldiers' and Sailors' Civil Relief Act of 1940, which I will be referring to as the Act.

The American Bar Association, which has over 400,000 members, and as such, is the world's largest professional association, has a history of partnering with the Armed Forces that dates back to the 1940s. Indeed, to the early 1900s.

For example, we successfully advocated to allow civilian lawyers to provide free legal services to those in the military, and we successfully lobbied for increased recognition and uniform procedural methods for the execution and recognition of military wills.

In response to the terrorist attacks of September 11th that claimed the lives of thousands of innocent Americans, our fellow citizens, we mobilized to provide free legal assistance to the reservists and their families who had been called to active duty around the Nation.

But unfortunately, as this committee and you, as the chair, recognize, our homeland security is still at issue, and we are still in a time of conflict. And as a result, we believe that we must provide protection for our servicemembers who risk their lives every day in order to protect their fellow citizens.

There are approximately 1.4 million servicemembers and 80,000 reservists currently serving on active duty, many of whom have families. It is imperative to our homeland security that these brave men and women devote their full and undivided attention to their military duties.

The congressional intent behind the act and, indeed, today, is to give our servicemembers peace of mind by granting special protections to their rights and property interests while they serve their country.

Since 1918, the Act has assisted servicemembers and reservists on active duties and their families by temporarily suspending or postponing civil proceedings that might prejudice their civil rights. The Act ensures that a servicemember will not be at a disadvantage—and that's what we are talking about, leveling the playing field here—in defending a civil action, due to his or her military service.

It is important to note that although this hearing is held by the House Veterans' Affairs Committee Subcommittee on Benefits, Congress enacted this Act to provide protections for servicemembers, and as I stated, to level the playing field, rather than providing extraordinary or special benefits to our members of service.

The Act currently applies to any person in military service. Military service is defined as someone who is active on federal duty under title 10 of the U.S. code, with any branch of service, as well as any member of reserves on active duty. But in response to September 11th, many of those in the National Guard are performing important full-time functions, such as airport installation security, pursuant to sections 502(f) of title 32.

Currently, the Act does not provide protection to such Guardsmen. However—and I want to state this unequivocally—the American Bar Association supports the expansion of such protections, because we believe that these men and women are performing important functions that warrant such recognition and protection, and differentiating the Guardsmen is really creating a distinction without a substance.

Our position is consistent with section 2 of H.R. 4017 that would extend the Act to the Guardsmen called to active duty for a period of more than 30 consecutive days, pursuant to 502(f) of title 32. What we are recommending to you today, Mr. Chair, is that you consider amending H.R. 5111, in order to achieve the exact same objective, in making the two acts consistent.

With regard to the rent ceiling and eviction proceedings, the Act provides that if a servicemember is renting property for $1,200 or

less per month, and those premises are used chiefly for dwelling purposes by the spouse or children, or other dependents of a person in military service, the landlord must obtain a court order—a court order—to evict those people.

However, the court can allow the eviction to stay if the court finds that the ability of the tenant to pay the agreed rent is not materially affected—or allow it to go forward, rather—because of lack of pay, or same amount of pay. In addition, the court may delay the eviction proceeding.

So basically, what we are saying is the court has the ability to take a look at the situation, and make a decision, based upon the facts.

The $1,200 rent level has remained constant, however, since 1991. And over the past several years, the cost of housing has increased significantly around the country. That's why we support the increase to $1,700.

But again, we go a little bit further, and with due respect, suggest that you consider amending the Act so that not only is it taking into account a more realistic level of $1,700, but we would also suggest that maybe we ought to tie it to some sort of cost of living. And so we would recommend amending the section to provide an escalator provision.

With regard to the stay of proceedings, we think that we must continue to allow the stay of proceedings, and we believe that the petition for stay of proceedings, pursuant to the Act, should not be construed as an appearance before a court for any purpose.

And we are very concerned about that, because some courts have taken the position that if you come before, then you have appeared before it, and then if there is a default judgement entered, you don't have the right to lift that default judgement. I think we need to clarify that within the Act, and I note that this amendment attempts to do so.

With regard to administrative proceedings, we think that the Act should be applied to the administrative proceedings, and we note, again, that this is the intent of the bill, and we are supportive of that.

In conclusion, let me simply state that the revision of the Act is an urgent issue. It should be addressed as soon as possible. We think that you have a great opportunity, an important opportunity to make some changes in an Act which, in 84 years, has remained unchanged, pretty much, and obviously, a lot has happened during that time.

As John Wigmore, author of "Wigmore on Evidence" once stated, "You know, we tell our soldiers, 'You drop everything you have, you drop your relations, drop your business affairs, all the property, you drop everything, and we are going to take you, and perhaps we are going to take your life.'"

We think that this act and these amendments, as proposed, will provide our servicemen and women with the support that they so desperately need. Thank you very much for allowing me to testify.

[The prepared statement of Mr. Hirshon appears on p. 154.]

Mr. SIMPSON. Thank you, Mr. Hirshon. Mr. Fidell.

STATEMENT OF EUGENE R. FIDELL

Mr. FIDELL. Good morning, Mr. Chairman, members of the subcommittee. My name is Eugene Fidell, I am a lawyer in private practice, here in Washington. I am with Feldesman, Tucker, Leifer, Fidell & Bank.

Ordinarily, what witnesses before congressional committees do when they start their testimony is they throw a few garlands at the members who are presiding at the session, and thank them for taking the time from their schedule as to attend to business in this fashion. I, needless to say, will hereby do that, but I would also like to throw a garland to the gentleman to my left.

Bob Hirshon's term as president of the American Bar Association—he doesn't know I am about to say this—is expiring, I think, on the occasion of the annual meeting that is upcoming. Bob has done a fabulous job—I speak now as just a member of the ABA—and he is going out in a blaze of glory, and I think his taking the time from his schedule to be here is really in keeping with the highest tradition of the American Bar. I would just like to offer that for the record.

I would also like to mention that accompanying me today is my daughter, Hannah, who is 16. She is going into her senior year in high school. This is the first congressional committee hearing that she has attended. She is working in politics this summer, and I hope this affords her a great insight into how the legislative process works in a democracy.

Mr. SIMPSON. Hannah, raise your hand. Welcome.

Mr. FIDELL. Thank you, Mr. Chairman. I have testified in the past on proposed amendments to what has been called the Soldiers' and Sailors' Civil Relief Act of 1940. In fact, in going through my treasure trove, I found the hearings from April 29, 1992. I think the next time I testify on this subject, I will probably have to be wheeled in, but it's a privilege to come back a second time on the same legislation.

As my prepared testimony indicates, I have been counsel in litigation involving the Civil Relief Act—specifically, a District of Columbia Circuit case called *Detweiler* v. *Pena.*

I appreciated the opportunity to study H.R. 5111, and I would like to compliment the subcommittee for undertaking this effort. The Act has never been the kind of legislation that makes lawyers' pulses quicken. I will be a little surprised if there is much press coverage of today's hearing. But it does remain terrifically important to military personnel, and this is increasingly so, given the tempo of military operations we are currently seeing, and unfortunately, that we can expect to see in the foreseeable future.

Military personnel, both active duty and reservist called to active duty, and I might add National Guard, have to have assurance that their affairs will not become hopelessly tangled in their absence, while protecting our Nation.

In this regard, I hope the subcommittee will give favorable consideration to the other pending proposal, H.R. 4017, which would extend the protection of the Act to National Guard personnel who are called to active duty for periods of 30 consecutive days or more.

As we come increasingly to rely on the Guard, and if the Guard is to remain a competitive option for those of our fellow citizens

who volunteer to help the Nation, this kind of equitable measure has to be put in place.

I hope H.R. 5111 is reported out and passed in the form in which it was introduced, plus the equity provision to which Mr. Hirshon and I have been referring. The legislation does what needs to be done, it doesn't try to upset the balance that has been established in years past. And beyond this, I would encourage the subcommittee to continue to keep an eye on how the legislation works in practice.

All too often, Congress launches a measure on the legal sea, and then puts it entirely out of mind until some crisis emerges. I certainly don't think Congress should be taking the Civil Relief Act's temperature every Monday and Thursday, but I do hope this subcommittee, at least, will retain a sense of ownership over the statute, and keep an eye on its brainchild at suitable intervals.

Thank you, Mr. Chairman, for the opportunity to present these remarks. It is a pleasure to appear before any committee of the Congress, and I would be happy to entertain any questions you have.

[The prepared statement of Mr. Fidell appears on p. 159.]

Mr. SIMPSON. Thank you both for being here. It is, I think, a demonstration of the importance of this hearing that the president of the ABA would be here to testify, so I certainly do appreciate your being here.

Your suggestion, Mr. Hirshon, on indexing the maximum rent level by section 301 of H.R. 5111 is a good one. And in fact, the subcommittee staff has been working for quite some time on a provision to do just that and we hope that when we go to full markup, we will be able to have an indexing provision in there, so I appreciate your comments on that.

On page 4 of your testimony, you state that a servicemember's request for a stay has been considered by some courts as an appearance for jurisdictional or other purposes, and that such a result is contrary to the SSCRA, or the Act—I like the way you put that, I don't have to say that all the time—the Act's clear intent.

I certainly agree that such a result is contrary to the intent of the Act. Does section 202(c) of H.R. 5111 adequately address this issue by providing that an application for a stay under this section does not constitute a waiver of any substantial or procedural defense, including a defense related to the lack of personal jurisdiction?

Mr. HIRSHON. Yes, sir. I believe it does. But let me tell you that I am a practitioner in a rural state, the State of Maine. And I go off to local county judges and district court judges, and I would be a little more comfortable if there was a statement as part of legislative history with that, with the intent.

And what this amounts to is a special appearance, which is a phrase, or term of art used by lawyers, a special appearance, which all judges know means does not amount to a general appearance, and an acceptance of the court's jurisdiction.

Mr. SIMPSON. Mr. Fidell?

Mr. FIDELL. Mr. Chairman, for a court to rule that the act of applying for a stay constitutes an entry of appearance is a perversion of the purposes of the Civil Relief Act. And I think the legislative

history can productively make it perfectly clear, as the language of the measure does, I think, that simply invoking the statute does not, itself, constitute subjecting oneself to the jurisdiction of a trial court.

Mr. SIMPSON. Thank you. For both of you, the committee wants to make it crystal clear that the provisions of the Act apply to administrative, as well as judicial, actions. H.R. 5111 says so in section 102, but is the drafting throughout this bill adequate to reflect its applicability to administrative actions?

Mr. FIDELL. I believe it is, Mr. Chairman.

Mr. HIRSHON. And I agree with that.

Mr. SIMPSON. Thank you.

Mr. HIRSHON. I'm comfortable.

Mr. SIMPSON. The Department of Defense has suggested that it would be desirable to include in H.R. 5111 a definition of the term "materially affected," which is a test that appears in many of the provisions of the Act but which is not defined by the Act.

For example, "A servicemember must show a material affect from the military service on the servicemember's ability to appear in court." If the servicemember is applying for a stay, should the meaning of the term "materially affected" be expressly defined, or should it be left to the judicial interpretation?

Mr. HIRSHON. Our committee looked at that, chaired by Brig. Gen. Hague, and came to the conclusion that it was not necessary.

Mr. FIDELL. I agree with that. It seems to me "material affect," like "reasonable doubt," or "a reasonable person," is broad and an intentionally malleable term. And I think you need that kind of flexibility in a statute that really cuts across all of American litigation, and a lot of administrative matters, as well.

You don't want something that could be potentially a cause for frustration of the purposes of the statute, and I think you would be doing that if you pick out and define it. I would rather leave it flexible and trust to the good sense of the people—the judges and the administrators—who are going to be on the receiving end of these requests.

Mr. SIMPSON. Mr. Hague, would you care to comment on that?

Gen. HAGUE. Usually it is just a function of reduction in income as a result of military service. That is usually what "material affect" means. Sometimes it means inaccessibility of the servicemen to the court process.

But, as Mr. Hirshon mentioned, in our review of it, the committee on legal assistance for military personnel's review of the issue, it seems better to leave it out and allow the court to determine what material affect is. We have had success with that in the past. I have every reason to believe we will have it in the future.

Mr. SIMPSON. Thank you. Again, I appreciate your testimony, all of you, being here today. It is very important to this subcommittee. And I agree with you, this is something that the subcommittee needs to keep an eye on, and the implementation of it as it goes forward, and take some ownership of this Act. So I appreciate your testimony very much.

Mr. Reyes?

Mr. REYES. Thank you, Mr. Chairman. I don't know if our ranking member has a—do you have an opening statement, or anything?

Mr. EVANS. I would just like to include it in the record.

Mr. SIMPSON. The gentleman's statement will be included in the record.

[The prepared statement of Congressman Evans appears on p. 124.]

Mr. REYES. Thank you, Mr. Chairman. I had one question on section 202. Should we include in the—under that section—the term "special appearance," and specifically include the term "special appearance"?

Mr. HIRSHON. I would be more comfortable with the inclusion of "special appearance," either within the Act, or through legislative history. But at some point—as I say, I know I go off into the counties, and I argue with some judges who just look at this as if it was, you know, some foreign language.

And it is very, very helpful to give them code words that they understand, and that they work with, rather than having to argue—and I think Gene is absolutely right, you know, it's apparent to all of us, but we then have to make an argument that we prefer, quite frankly, not to have to make.

Mr. REYES. Very good. Thank you very much. The Department of Defense has suggested that states be encouraged to pass individual acts to provide protection to members of the Guard serving under title 32 of the United States Code. Other witnesses have testified that a federal law is needed to protect these servicemembers in order to address interstate commerce issues such as interest rates paid to out-of-state lenders.

I was curious to get your opinion as to the effectiveness of a federal requirement, rather than leaving it up to the individual States.

Mr. HIRSHON. We certainly would not discourage individual States from passing legislation, but we don't think that should be to the exclusion of federal legislation. Indeed, I hope I made it clear that we feel very strongly that we need federal legislation to bring uniformity to this area, and to take care of some of the interstate commerce issues which States cannot deal with, constitutionally.

Mr. FIDELL. Of the practical wisdom of extending this to the National Guard and doing it in an across-the-board fashion, I don't think anybody could disagree with the wisdom of that end product. The question is, can Congress do it?

I have thought, over the relatively short time that I have been aware of this issue, is there some possibility here of a constitutional question? Could this be beyond the power of Congress? I have concluded that there is no doubt whatever that Congress has authority, whether under the national defense powers or under the commerce power, to achieve this end.

Congress has the authority and has exercised its authority. All you have to do is take title 32 off the shelf. Congress, for centuries now, has been passing laws with respect to the militia. And here you are talking about an integrated national defense package. You can't disconnect any element of it. You cannot sort of put your hand over one eye and pretend that the National Guard, the un-

federalized National Guard, is not there. They are all integrated, it's all an organic whole, and to not have that in place, or to have some doubt about Congress's authority, I think, is very misplaced.

Mr. REYES. Thank you. The other issue that I would like for all of you to give us an opinion on is the fact that the Department of Defense has opposed requiring written notice of the provisions of the act.

I would like to know, in your opinion, would compliance with the notice require a mandate where the Department of Defense has the interpretation that it would require handing out to everyone a list of the many provisions of this lengthy law? Or, would just a summary of the most relevant provisions meet the statutory requirement?

Mr. HIRSHON. It seems axiomatic to me that if you are going to create a law which creates benefits and creates rights, that you ought to notify those individuals of the rights that you are creating, and the benefits.

I mean, the intent is to provide the benefits, not just to pass a law and say, "Ha, ha, we have done something." You want people to actually feel some substance.

I would like to, if I may—because we discussed this issue last evening—and ask the brigadier general to talk about what I understand is the very easy and simplified mechanism for which this information could be passed on to members of the National Guard and military, if I may.

Mr. REYES. Of course. Gen. Hague?

Gen. HAGUE. The conversation that Mr. Hirshon is referring to is mention of the requirement under the Uniform Code of Military Justice that all of our people, when they come on board, receive a briefing on it. There is an entry made in their service record book to that effect, that on a certain day they were told about the rules they have to live by, and so forth. That same process could be followed with notification about Soldiers' and Sailors' Civil Relief Act.

But I suspect that it's the mile-long screwdriver concern that the Department of Defense has, that they are being kind of micromanaged on the issue. They certainly would do this in its own way, through a variety of means, through their legal assistance program, through their base newspapers, through a number of means that exist that, routinely, they pass this kind of information to people.

But that being said, it's a fairly easy—I know it is identified as an administrative burden, but it's a fairly easy, from my experience, administrative burden to meet.

Mr. REYES. Thank you. Mr. Fidell, do you have anything?

Mr. FIDELL. I do have something to add. Gen. Hague is absolutely right. The punitive articles of the UCMJ are required to be brought to the attention of GIs within 14 days of initial entry on active duty.

And there are other Acts of Congress which call for, for example, posting of various notices. I think the EEOC provisions and whistle-blower provisions have to be posted in places of employment with more than a certain number of employees.

The key thing is that the affected people—the beneficiaries of the statute—ought to have some reasonable shot at actual knowledge of this. As citizens, we are all charged with knowledge of every-

thing that is in the U.S. Code, but none of us actually knows that. You may, I don't.

So, the question is, as a practical matter, how best to do that with quite young people who may not be schooled in the ways of the world, the ways of commerce, the ways of courts, the ways of agencies that can affect their lives. I would expect that the Defense Department and the services, that have very robust legal assistance programs, to get creative and effective and find ways to do this.

What breaks my heart as a practicing lawyer—because my law firm represents a lot of people who are either in or have been in the military—is when people come to you and something has happened when they are 18 or 19, and it's just gone totally off the tracks, and it is murder to repair.

So the point is that an ounce of prevention can be so terribly important here. If we can get that ounce of prevention out to the patients, so to speak, out to the GI and out to the junior sailor at the front end by calling it to their attention in some way, that will be great. It will solve a lot of problems that could otherwise drive you crazy a year or two or three or four down the road.

Mr. REYES. Thank you very much. The only other thing that I had, Mr. Chairman, is a note here from one of the observers out in the audience that wanted us to take note that Mr. Fidell is a brilliant attorney, signed Hannah. (Laughter.)

Mr. FIDELL. I am going to ask my daughter to come with me to court next time.

Mr. SIMPSON. Thank you, Mr. Reyes. Following up on what Mr. Reyes was talking about, some of the testimony yesterday from the servicemembers' families organizations suggested that the families be notified of these benefits, also.

Because sometimes you have a young, single individual, his parents are at home and really taking care of the financial situation for this individual, and other times their spouses don't know of these benefits, and so forth. And if many of them are like me, my spouse—you know, I don't know even where I bank, or what the balance is. All I know is that when they call me and tell me that I am out of checks, or whatever—but my wife does all of that, because she is much smarter than I am.

So, it would be good, I think you're absolutely right. We have an obligation, if we're going to pass a law, to notify those individuals of what the benefits of the law are that we passed. I have a hard time understanding the Department of Defense's opposition to this, I guess.

Mr. Evans?

Mr. EVANS. Nothing.

Mr. SIMPSON. I thank you all for being here today. This is an important Act, and we will continue to work on it, and I appreciate your suggestions and comments on that.

And Hannah, have a good time. Thank you for being here today.

The panel is dismissed.

[Recess.]

Mr. SIMPSON. Good morning. Mr. James Murphy, the chairman of the Mortgage Bankers Association of America, Dr. Henry

Desmarais, senior vice president of the Health Insurance Association of America.

Thank you both for being here today. Again, if you would try and hold your oral comments to around 5 minutes, we will include your complete written statement for the record. I appreciate the time that each of you have taken to be here today, and we will save our questions until after both of you have testified.

Mr. Murphy.

STATEMENTS OF JAMES M. MURPHY, CHAIRMAN AND CEO, NEW ENGLAND REALTY RESOURCES, INC., ON BEHALF OF THE MORTGAGE BANKERS ASSOCIATION OF AMERICA; AND HENRY R. DESMARAIS, SENIOR VICE PRESIDENT OF POLICY AND INFORMATION, HEALTH INSURANCE ASSOCIATION OF AMERICA

STATEMENT OF JAMES M. MURPHY

Mr. MURPHY. Well, thank you very much for the opportunity to testify on these bills. I am chairman of the Mortgage Bankers Association of America, and a small businessman who runs his own mortgage banking firm in Boston, Massachusetts.

The MBA currently has 2,600 member firms, employing approximately 350,000 people in this country. And last year, we provided over $1 trillion in mortgage debt to Americans.

We are supportive of SSCRA and both of these bills. In fact, we have gone so far on several occasions as to run ads in military publications and *The Washington Post*, notifying military personnel of their rights under the Act, and asking them to contact their lenders when they proceed to active military duty.

What I would like to take just a couple of minutes to do today is kind of put today's environment in context, and I would like to do that with some personal notes. When my dad came back from World War II, he went out and got a mortgage. He went about it in a very different way from the way we do it today. He went to the local savings bank, sat down with his loan officer, negotiated a deal, and pretty much that was it. Signed a note, gave the bank a mortgage on the property. Interest rates at that time were 4.5 percent.

When my brother Bill came back after the Vietnam War, he had a little different experience. He worked with a mortgage banker, who then took his loan, shopped it around, got him the best possible deal in the marketplace, and then that loan, more than likely, might have been sold into a secondary market.

Today, in the year 2002, we have one of the best functioning secondary markets in the world today, and our American home finance system is the envy of the rest of the world. The reason it is is because of the secondary market. But that has changed the playing field for lenders.

The way the secondary market operates is that, as a lender, I make a loan. I then proceed to someone such as Fanny Mae, Ginnie Mae, or Freddie Mac. I offer the loan to them. They put their guarantee on that loan, and then pool that loan with many other loans and sell it as a security.

What that does, though, today, is it places responsibility on me, as a lender, to pass through the contract interest rate on that mortgage note to the security holders regardless of whether I collect it from the borrower. The holder of the security today, in many cases, is a pension fund insurance company or financial institution. Ultimately, the mortgage industry is responsible for passing through the contract interest rate.

Now, I also want to say that where we are today in the interest rate environment is a 30-year low. Mortgage rates today are somewhere around 7 percent. And if you looked at 30 years of interest rate history, you would see that that is very close to an all-time low over that 30-year period.

As you modernize the bill, there are a couple of things we respectfully ask that you would consider. First, is indexing the cap. We don't believe that the original Act intended the cost to be a burden on the private sector. I say this because originally the cap was set at 6 percent at a time when the underlying mortgage market rate was 4.5 percent. So, there was a 30-percent margin from what was the prevailing mortgage rate at that time to the rate at which the cap was set.

Second, I would ask you to consider whether the intent was postponement or forgiveness of interest. Once again, because the original rate was set above the prevailing rates, our belief is that postponement was the intent.

I must add that today, the industry is voluntarily forgiving, rather than postponing, interest to active duty personnel. And you can count on the industry's unequivocable support, whatever you decide. And if you decide that interest should be forgiven, we respectfully request that you consider how to pay for that forgiveness.

I would like to close by thanking the committee, and our servicemen and women around the world, for what they do for all of us, and to once again say that the mortgage industry will do whatever is asked to support them in their efforts overseas.

[The prepared statement of Mr. Murphy appears on p. 161.]

Mr. SIMPSON. Thank you. I appreciate your testimony. Mr. Desmarais.

STATEMENT OF HENRY R. DESMARAIS

Dr. DESMARAIS. Mr. Chairman, distinguished members of the subcommittee, my name is Henry Desmarais. I am currently the senior vice president of policy and information at the Health Insurance Association of America, HIAA. HIAA members provide the full array of health insurance products to more than 100 million Americans, and this includes medical expense, long-term care, dental, disability, and supplemental coverage.

We are really happy to be here today to talk about H.R. 5111 and H.R. 4017. H.R. 5111 is intended to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940. Health insurance reinstatement is among the issues addressed by both the existing Act and by H.R. 5111.

H.R. 4017 would have the effect of applying the provisions of the Act, including the health insurance reinstatement rights, to certain members of the National Guard.

Both bills cover a great deal of ground, and I am going to focus only on the health insurance reinstatement provisions in my remarks.

In section 704 of H.R. 5111, it speaks to the issue of health insurance reinstatement. And under that provision, the servicemember, when they terminate or are terminated from the military or released, they are entitled to reinstatement of any health insurance that was in effect on the day before such service commenced.

The same reinstatement rights also apply to any other people who are covered by the insurance, by reason of the coverage of the servicemember. And of course, that would include a spouse or child, or another dependent.

And further, such reinstatement of health insurance coverage cannot be subject to any exclusion or any waiting period for a condition, as long as three conditions are met. First, the health or physical condition arose before or during the period of military service. Second, an exclusion or waiting period would not have been imposed for the condition during the period of the coverage. And three, if the condition relates to the servicemember, the condition has not been determined to be a disability incurred or aggravated in the line of duty.

Finally, it's important to point out that the reinstatement rights do not apply to a servicemember who is entitled to participate in employer-provided insurance benefits, as a result of re-employment rights that are provided under current law.

Except for some fairly modest improvements in the wording, all of these provisions are essentially identical to those now contained in the Act. HIAA supports the basic intent of the current health insurance reinstatement protections, and so by extension, we also support the similar provisions contained in H.R. 5111.

We do have a few technical comments, however. First, the health insurance reinstatement rights are clearly triggered upon termination or release from military service. However, the statute does not specify that these rights must be exercised within a specific period of time.

And so, we recommend that the provision be amended to limit the reinstatement rights to a defined period of time of no more than 90 days. This should give servicemembers an adequate amount of time to act, would provide incentives for them to reacquire their private insurance coverage promptly, and help guard against the problem of adverse selection.

These kinds of time limitations already apply in the case of other benefits provided upon separation from military service. For example, under the Continued Health Care Benefit Program, eligible individuals must apply within 60 days. Similarly, the Department of Veterans Affairs provides one-time dental care for veterans if they apply within 90 days after separation.

But the military is not the only area where such time limits apply. For example, a Medicare beneficiary, upon leaving a Medicare+Choice plan under certain circumstances, and returning to traditional Medical coverage, does have up to 63 days to enroll in a Medicare supplemental insurance policy on a guaranteed issue basis.

Since the reinstatement rights in section 704 are triggered upon termination and release from military service, there would obviously be a natural opportunity to fully inform every servicemember about their rights, and any applicable time frames or conditions.

Servicemembers, upon discharge or release, could receive this information through brochures, through exit-type interviews, and as I understand it, this kind of thing already goes on under the DOD transition assistance program.

The second technical point I would make is that the plain reading of both current law and the new sections of H.R. 5111 is that any condition arising after separation from military service, but before application for reinstatement of health insurance, could be subject to exclusion or waiting period. And this is certainly an appropriate policy. Among other things, it provides yet another incentive for prompt exercise of the reinstatement rights.

The last point I would make is that with regard to service-connected conditions, many, if not most insurance contracts have long contained language that excludes coverage for injury or illness resulting from any war or act of war, or from service in the military. And H.R. 5111 appears to do nothing to disturb these very longstanding practices.

With that, I hope these comments are helpful, and I would be delighted to take your questions. Thank you.

[The prepared statement of Dr. Desmarais appears on p. 170.]

Mr. SIMPSON. Thank you. Thank you both for being here today.

Mr. Murphy, in your testimony, you state that the imposition of a 6-percent cap on mortgage lenders and servicers is significant, that mortgage servicers incur the cost of the interest rate reduction.

Couldn't it be structured by the agreement within the industry in a way that does not leave the mortgage servicer as the lone person absorbing the cost?

Mr. MURPHY. Well, the way it is actually functioning today, just to elaborate a little bit, is that the lender is ultimately responsible as the servicing agent to make the contracted interest payments to the investor.

Voluntarily, Fannie Mae, Freddie Mac, and Ginnie Mae are reimbursing lenders for that lost interest today. But that does not mean lenders are not incurring costs. The way it practically works is the lender has to go out and borrow the money it does not collect from the borrower to advance to the investor. That interest advance is not immediately reimbursed. So lenders go out and borrow the money, and eventually get reimbursed by Fannie Mae, Freddie Mac or Ginnie Mae. In Ginnie Mae's case, they are theater-specific, in terms of covered personnel meaning Ginnie Mae only reimburses for named missions or military operations in specific geographic locations, but not all SSCRA eligible loans. We would like to spend some time with Ginnie Mae, talking about how lenders get covered.

But the complexity of the marketplace today is what really sets up the issue, because when you look at how our mortgage market functions, and the fact that liquidity is provided in the secondary markets, and the fact that the ultimate beneficiaries of those securities in many cases are pension funds, insurance companies, the

public as a whole, you have to guarantee those people that payment.

And I don't know of any way, other than the private sector bearing it today, that you could do that and keep that market functioning. Again, I want to state that we have the best functioning home financing market in the world today. Because of the secondary market, liquidity it created, which allows lenders to go out and relend that same money time and time again.

So, I think securitization adds tremendous complexity to SSCRA and the interest rate cap. And then you must look at the private labels MBS. Although not every loan is securitized, Wells Fargo may choose to put its own pool together. Chase may choose to put its own pool together. Countrywide may choose to put its own pool together. And when they do that, the issuer may be liable for that interest. And the people that buy that bond expect that to be the case.

So I don't see any way to structure an agreement, other than indexing the cap, that might work. And I would, again, point out that we are at a 30-year low today. So while there is only a 1 percent gap today, in my career I have seen single family mortgage rates in excess of 12 percent.

In terms of quantifying it, it's roughly $31 million a year today that is voluntarily being forgiven by the industry.

Mr. SIMPSON. Thank you. Regarding your statement, your suggestion on page 7 of your testimony, I agree that section 207(a)(3) of H.R. 5111 preventing acceleration of principal could be read to prevent an increase in allocation to principal with a reduced mortgage payment. But could that really be expected to happen in a reduced-payment situation?

Mr. MURPHY. Well, as a practical matter, when you reduce the interest rate, the payment doesn't necessarily get reduced at the same time. You can reschedule and re-amortize the mortgage based on the 6-percent interest rate cap, but keep the same monthly payment.

But there is actually a benefit to the borrower here, if you maintain the payment at the same level, give them the break on the interest rate. The extra amount above what the scheduled payment is then goes to reduce principal, and in fact, builds equity in the home for the borrower.

One of the things that I guess is a little concerning in the act, as a whole, is the fact that the Act also imposes the 6-percent cap on rental property. And when it comes to rental property, if there is not a disruption of the rental stream of that property, you would question whether, in fact, there is hardship on the service people.

Mr. SIMPSON. I appreciate your comments, and I agree that maintaining a payment, obviously, is a benefit. That's why my spouse, again, actually adds to the payment each time, because she knows it goes to the principal, and reduces it at a more rapid rate.

Mr. MURPHY. Right.

Mr. SIMPSON. But the idea is actually to reduce the overall payment, because a servicemember has a reduced income. And that's really what we are looking at with this.

Mr. MURPHY. Right. We would—what we would say is it's the eviction and foreclosure stays that are a problem for us, if it's clear that the borrower is unable to pay.

But if the interest rate cap applies to all servicemembers including career military personnel, and personnel with income-producing properties—I stress that piece—regardless of their financial situations provided the servicemembers are on active duty, and the debts are pre-existing, then we just question whether that is a fair application of the law.

Mr. SIMPSON. Thank you, I appreciate your testimony. Dr. Desmarais, I don't have any questions for you, but I would like to comment on page 2 of your statement, noting that section 704 of H.R. 5111 on reinstatement of health insurance does not specify a specific time period for applying for reinstatement.

I very much appreciate your pointing this out. This is apparently an omission of the bill, and we will give your discussion of various similar provisions careful consideration.

I do appreciate that; that's why we have experts like you coming and testifying and pointing out drafting errors.

Dr. DESMARAIS. Thank you, Mr. Chairman.

Mr. SIMPSON. I appreciate it.

Mr. Reyes?

Mr. REYES. Thank you, Mr. Chairman.

I have got a question for each of you. The first one, Mr. Murphy, deals with the fact that you state that the current 6 percent interest rate cap for outstanding mortgages is too low, and suggest Congress increase the rate by indexing it to a margin over a 10-year Treasury securities rate.

I am kind of curious. By your calculations, what would that rate be, today?

Mr. MURPHY. Well, if you ask our economists at MBA, they would probably say that the underlying mortgage rate on a 30-year loan today correlates fairly closely to a 10-year Treasury bill, somewhere in the neighborhood of 150 basis points, or 1.5 percent over the 10-year Treasury.

If you go back to the original act and look at the cap at 6 percent, with a prevailing market of 4.5 at that point in time, that would say that some margin above what was the prevailing rate would be appropriate.

So if in fact, 150 basis points, or 1.5 percent above the 10-year Treasury rate, is the current rate, then there ought to be some additional indexing above that, as a cap.

Mr. REYES. Should I repeat that for you, or was that clear?

Mr. SIMPSON. That was clear to me.

Mr. REYES. That was clear as mud to me. (Laughter.)

Mr. SIMPSON. Well——

Mr. REYES. So what—so instead of 6 percent, what would it be?

Mr. MURPHY. Well, in today's environment, you would take the current note rate of—let's say 7 percent. Then apply the cap above that rate. The cost would be indexed at something above the current market rate.

Mr. REYES. Like?

Mr. MURPHY. I really don't have an exact number for you on this, I'm just trying to point out a problem, that if you fix the cap at

any point in time, it will not resolve the problem of interest rate volatility. Rates vary dramatically over time and a static cap could be a problem. You could run into it very, very quickly.

Mr. REYES. Would it be possible for you to get back to us with a recommendation?

Mr. MURPHY. Sure, we can provide you some information through our economics and research people.

Mr. REYES. Thank you. I understood everything you said, it's just for the purposes of the record. (Laughter.)

Mr. MURPHY. I apologize for getting too technical.

Mr. REYES. Mr. Desmarais, you state that most existing insurance contracts contain language that excludes coverage for injury or illness resulting from any war or act of war, or from service in the military.

I am curious, because we have heard from the VA that this, in most cases, this language is no longer language included in most insurance contracts. So in your expert opinion, are insurance contracts currently being written with that kind of language, still?

Dr. DESMARAIS. Yes. In fact, I have brought today with me a copy of the insurance policy that applies to HIAA's own staff, and there are two exclusions that are relevant, I think, to today's discussion.

The first one says that health services for treatment of military service-related disabilities are excluded when the covered person is legally entitled to other coverage, and facilities are reasonably available to the covered person.

And a separate exclusion says that in the case of an otherwise eligible person or a dependent who is on active military duty, health services received as a result of war, or any act of war, whether declared or undeclared, or caused during service in the armed forces of any country, are also excluded from coverage. And in part, because war is considered an uninsurable event.

Mr. REYES. Very good. Thank you, Mr. Chairman.

Mr. SIMPSON. Thank you. Mr. Evans?

Mr. EVANS. Nothing at this time.

Mr. SIMPSON. I thank you both for being here. Your input is very important to our discussion on this legislation, and we will take your comments into consideration. Thank you very much.

Dr. DESMARAIS. Thank you.

Mr. MURPHY. Thank you, again, for having us.

Mr. SIMPSON. Finally, would the third panel please come forward? Ms. Kimberlee Vockel, Director of Legislative Affairs for the Non Commissioned Officers Association of the United States of America, Lt. Col. William B. Loper, Director of Government Affairs for the Association of the United States Army, and Mr. James Tierney, Deputy Director of Legislative Programs for the National Guard Association of the United States.

Thank you all for being here today to help us with this important legislation.

Mr. Loper, we will begin with you.

STATEMENTS OF WILLIAM B. LOPER, U.S. ARMY, RETIRED, DIRECTOR OF GOVERNMENT AFFAIRS, ASSOCIATION OF THE UNITED STATES ARMY; KIMBERLEE D. VOCKEL, DIRECTOR OF LEGISLATIVE AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA; AND JAMES TIERNEY, DEPUTY DIRECTOR OF LEGISLATIVE PROGRAMS, NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

STATEMENT OF WILLIAM B. LOPER

Mr. LOPER. Mr. Chairman and members of the subcommittee, on behalf of the 100,000 members of the Association of the United States Army, thank you for the opportunity to present our association's views concerning H.R. 4017 and H.R. 5111.

The Association of the United States Army is a diverse organization representing Army personnel on active duty, in the Army National Guard, in the Army Reserve, Department of the Army civilians, retirees, and family members. AUSA wishes to commend the subcommittee for its leadership in keeping the Soldiers' and Sailors' Civil Relief Act of 1940 relevant to the new realities of our post-9/11 world.

With more than 80,000 National Guard and reserve personnel on active duty in both homeland security and overseas operations-related missions, and clear indications that reserve component personnel will shoulder an ever-increasing share of the defense burden in the future, it's essential that the provisions of the SSCRA be reviewed and made applicable to the type of service required of today's reserve component personnel.

H.R. 4017 is a perfect example of legislation that is needed in the face of today's new realities. The majority of National Guard soldiers and airmen called to active duty to secure airports, nuclear facilities, border crossings, and other sites were called under the provisions of title 32 by their governors, at the request of the President.

The SSCRA, as it is currently written, does not provide coverage to them, but covers personnel called up under title 10. The result can be that some Guard personnel from the same State performing similar missions have SSCRA protections and some do not.

H.R. 4017 clearly delineates the criteria under which a title 32-activated Guard member would be covered by SSCRA. AUSA wholeheartedly endorses the enactment of H.R. 4017. AUSA is pleased to see that H.R. 5111 has been introduced to revise the SSCRA.

It's important that the SSCRA is seen by servicemembers as being up to date and capable of protecting them from undue economic burdens when they are called to protect our Nation. AUSA is pleased that in section 301 of the bill, the rental rate ceiling is increased from $1,200 to $1,700. However, AUSA recommends that, in lieu of a set amount, the bill provide for an automatic periodic or annual adjustment to the maximum monthly rent for which the coverage applies, based on a federal standard for tracking average monthly rental rates across the Nation.

AUSA suggests that in Title III of the bill, an additional section be added to authorize the termination of motor vehicle leases for

personnel who are called to active duty for a period of time not less than 90 days. Authorization of termination would preclude the servicemember from losing the use of the vehicle for an extended period, but being liable for the lease payments, nonetheless.

AUSA further suggests that consideration be given to including in the SSCRA provisions which would protect servicemembers who are called to active duty while enrolled to attend college or university classes. While there have been many successful efforts to enjoin the institutions of higher learning to provide tuition credits or refunds voluntarily, protection under the provisions of SSCRA would remove uncertainty from those servicemembers who wish to pursue higher education while also serving in the Armed Forces.

AUSA is pleased to note the inclusion of section 703, professional liability protection. The protections afforded by the inclusion of this section will help recruit and keep physicians, dentists, and attorneys serving in our Armed Forces.

In conclusion, the Association of the United States Army appreciates and supports the work of the subcommittee and its staff to update, clarify, and improve the provisions of the SSCRA and to amend the SSCRA in accordance with H.R. 4017. Your tireless efforts to ensure protection of the rights and interests of servicemembers are critical to military morale and readiness.

Thank you for the opportunity to submit testimony on behalf of the members of the Association of the United States Army, their families, and today's soldiers, who are tomorrow's veterans. Thank you.

[The prepared statement of Mr. Loper appears on p. 174.]

Mr. SIMPSON. Thank you. I appreciate that testimony. Ms. Vockel.

STATEMENT OF KIMBERLEE D. VOCKEL

Ms. VOCKEL. Good morning, Mr. Chairman, members of the subcommittee. Thank you for this opportunity to present the Non-Commissioned Officers Association's comments on H.R. 4017 and H.R. 5111, both of which are intended to modify the Soldiers' and Sailors' Civil Relief Act.

I would like to take this time to briefly address two issues concerning the SSCRA. First, the National Guard has played an invaluable role in the war on terrorism by working to secure our airports and borders.

However, because of an oversight in the current law, members of the National Guard receive no protection under the SSCRA when participating in a federal contingency. As a part of the total force, the National Guard should not be excluded from the protections of the SSCRA when participating in a federal mission.

The language in H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act provides the much-needed coverage for members of the National Guard, and NCOA recommends that this subcommittee ensure that such language be included in the final overhaul of the SSCRA.

Second, H.R. 5111 contains many necessary revisions and additions to the outdated Soldiers' and Sailors' Civil Relief Act, and NCOA commends Chairman Smith for introducing this bill, and

this subcommittee for your efforts to ensure that this law accurately protects the modern servicemember.

The Association supports the revisions contained in H.R. 5111, but I would like to suggest some changes to the provision concerning residence for tax purposes. Recent court cases, which I cite in my written statement, have brought to light several gaps in the language concerning servicemembers' residence and domicile.

In 2000, a Minnesota federal district court determined that the SSCRA preempted the State from being able to use a servicemember's existence in a State solely by reason of his military orders as evidence of that servicemember's residence and domicile, for tax purposes.

However, the court decided that the word "solely" left the door open for the States to use other factors, such as location of their home, driver's license and registration, and civic involvement, to determine the servicemember's residence and domicile.

As a result of this case, NCOA recommends that this subcommittee remove the word "solely" from section 511(a) of H.R. 5111 to prevent such open interpretation of a servicemember's residence and domicile.

Several other cases outlined in my written statement show that home ownership can be used against a servicemember when their residence and domicile are in question. Because of the financial benefits of home ownership, numerous servicemembers purchase homes when they have transferred to a new location.

NCOA wants to make sure that the States do not discourage such a practice by using home ownership as a tool to force a servicemember to change his or her desired residence and domicile. NCOA recommends that this subcommittee amend section 511 to include language that would give credence to a servicemember's declaration of residence by filing their State of legal residence certificate if they choose to change it from their home of record.

Acceptance of these recommendations would prevent the States from overruling a servicemember's voluntary declaration of residence. Therefore, servicemembers would be protected from a greedy State's manipulation of the SSCRA for its own benefit.

In conclusion, the SSCRA, over its history, provided much-needed security for members of the Armed Forces. These, and other improvements to the SSCRA will allow our servicemembers to focus on their mission of defending our homeland, and not be concerned about the personal issues that they had to leave behind.

Mr. Chairman, members of the committee, thank you very much for this opportunity to appear before you today, and I will be glad to take any questions you may have.

[The prepared statement of Ms. Vockel appears on p. 179.]

Mr. SIMPSON. Thank you, I appreciate your testimony and your suggestions. Mr. Tierney.

STATEMENT OF JAMES TIERNEY

Mr. TIERNEY. Mr. Chairman, and distinguished subcommittee members, good morning. On behalf of the men and women of the National Guard Association of the United States, I thank you for the opportunity to provide input and recommendations for improving the protections provided for members of the Armed Forces

under the Soldiers' and Sailors' Civil Relief Act, as proposed under H.R. 4017 and H.R. 5111.

In today's high-demand military environment, the integration of the active, National Guard, and reserve components has been a success. The National Guard is deeply engaged across the spectrum in support of Operations Noble Eagle and Enduring Freedom. The Guard is present today in Afghanistan, Guantanamo Bay, Bosnia, providing force protection to our military installations, and supporting the INS, border patrol, and the customs service along our Nation's borders.

In addition to that, however, many thousands more have been called to active duty under command and control of their governors. Recently, the National Guard completed its mission supporting the Federal Aviation Administration, by providing interim security at our Nation's airports. This successful mission was created and authorized by the President, and was properly executed through the governors.

In addition, over 4,000 members of the National Guard from several States bolstered security at the Winter Olympics in Salt Lake City.

However, the thousands of volunteer soldiers and airmen were not protected by the safety net of the SSCRA.

Mobilization of the National Guard is dependent upon the mission requirements. The three distinct legal authorities available to mobilize the National Guard provide an important tool for the governors and the Department of Defense.

United State Code title 10, often referred to as "active duty," is federal active duty under command and control of the President.

U.S. Code title 32 is federally-funded active duty in the service of the United States, but where command and control remains with the governors and the adjutants general.

The third authority, State active duty, allows the governor to utilize the National Guard with State funding for State-specific events.

Unfortunately, many times, title 32 and State active duty are confused. Soldiers and airmen called to federal active duty in the service of the United States under title 32 receive federal pay and allowance, federal benefits, and other federal protections, such as the Uniformed Services Re-employment Rights Act, USRRA.

As the SSCRA is currently written, only those soldiers mobilized under title 10 are protected during these activations. Protecting our men and women while they serve in the service of the United States is the responsibility of the Federal Government. Currently, National Guardsmen are performing identical missions across the country, but are not receiving the same protections.

The growing sentiment is that those soldiers and airmen who protect our bridges, airports, and even the Olympics, are not as important as those who have been called to perform the same types of functions at federal installations.

According to a recent informal poll conducted by the Office of the Secretary of Defense, approximately 18 States have enacted State protections for members of the National Guard. While there is a definite need for States to enact legislation that provides civil protections when the governors call up the Guard in a State active

duty status, they are limited by the powers provided to the congress under article 1, section a, clause 3, the commerce clause of constitution.

One of the major provisions of the Act is the 6-percent cap of interest rates on credit cards, loans, and mortgages. The Supreme Court rules in 1978 that the interest rate a national bank may charge is governed by federal law, thereby prohibiting the States from regulating those rates across State lines.

Under this ruling, any State version of the SSCRA would be prohibited from providing one of the most beneficial protections, the 6-percent cap, to Guardsmen who utilize those national banks.

Additionally, many members of the National Guard travel substantial distances between their duty stations and their home. It is not uncommon for a soldier or airmen who reside in one State to be members of the National Guard of a different State. Any State version of SSCRA, unfortunately, would be restricted in its ability to provide civil protections to those servicemembers who travel across State lines for duty.

The SSCRA is in need of review and modernization. More than a decade has elapsed since Congress made enhancements to ensure the protections are relevant. The National Guard Association strongly urges this committee and the congress to support changes to the SSCRA to include members of the National Guard called to duty in the service of the United States under title 32, as provided under H.R. 4017.

The National Guard Association also supports all provisions of H.R. 5111, especially the efforts to increase the monthly rent eviction protection, and asks the committee to consider a scaled increase approach for the cap.

Today, members of the National Guard have been mobilized across the country, protecting our skies, the airports, nuclear power plants, bridges, the Olympics, and the borders of our Nation. Never before in the American history has the dual mission capability of the National Guard merged so effectively to provide the Nation, State, and community a cost-effective, highly competent force.

This increased reliance upon the National Guard units, its members, and their families requires that equitable protections and benefits be provided, similar to those we serve alongside.

On behalf of the National Guard Association and our soldiers and airmen, I thank the subcommittee for allowing me the opportunity to testify before you today, and I look forward to any questions you might have.

[The prepared statement of Mr. Tierney appears on p. 186.]

Mr. SIMPSON. Thank you. I thank all of you for your testimony and your suggestions and ideas. We will be looking at those suggestions and then making any improvements we can to the bill. They are very important.

I do want to say that it does surprise me—we have only heard the Department of Defense as being opposed to the idea of including the National Guard people called up under a national situation from being included under this, and the protections of this, and it kind of surprises me.

It almost seems like they are unaware of, or resistant to the changing nature of our defense of this country, and the important

role that the National Guard is playing, and how narrowly crafted this is. You have to be called up for 30 days, and the President or the Secretary of Defense has to do the call up, and even though they are under the control of the governors—I mean, it truly is a national issue, a federal issue, rather than a State issue.

And the fact that they suggest that—they encourage the States to pass laws protecting these National Guard people who are called up when every State would have different laws, just seems bizarre to me. Hopefully, we can get this done. It just makes common sense to me.

But I appreciate all of your testimony here, and your suggestions. Mr. Reyes?

Mr. REYES. Thank you, Mr. Chairman. And I wholeheartedly agree with your observation. It certainly is inconsistent with common sense and the reality of the challenge that we face as a Nation.

And the integration of our reserve and National Guard components is certainly an integral part of our national defense policy, and therefore, the benefits ought to be commensurate with those duties, as well. So, I too appreciate the testimony of our panelists.

And I had a question regarding the issue of automobile leases. I know Mr. Loper, LTC Loper, addressed that issue and made that recommendation. I was curious, do you agree with that aspect of it to be included, or do you have some other opinion?

Ms. VOCKEL. No, we do agree. Leasing vehicles is very popular today, and we want to make sure there is protection for servicemembers who have entered into a lease.

Mr. TIERNEY. We at the National Guard Association also support the expansion of automobile leases, as well, into the provision.

Mr. REYES. And the other question that I have is that you have heard in the previous panel the issue of the Congress considering raising the cap of 6 percent. I am curious what is your opinion on that.

Mr. LOPER. Yes, I think our association's concern, is for fairness and equity for the soldiers, and I presume that should not come at the expense of the economy as well.

But the most important thing for us is to ensure that there is equity and fairness when soldiers, airmen, sailors, and Marines are serving their county.

Mr. TIERNEY. I would submit that the 6 percent cap would be—if it is looked at, we want to make sure that it is relevant, and it is competitive with today, so that if it does provide protections, that it is consistent with where our economy is going. And if it does need to be adjusted, then we would support that.

Ms. VOCKEL. We would support an indexing of it, to a certain extent. I didn't exactly follow the gentleman on the panel before.

Mr. REYES. The formula was very clear.

Ms. VOCKEL. Right. (Laughter.)

I heard something along the lines of whatever the interest rate today, it would be capped at something higher than that, and I am not sure I understand why it would be higher than what it is today, but I would like to echo Mr. Loper's comments, that it needs to be fair for the servicemember, and not there to benefit the mortgage companies.

Mr. REYES. Would you organizationally have the capability to have somebody look at this, and also make a recommendation to us, again, based on somebody that really knows what the formula is, and economic practice?

Mr. TIERNEY. I don't think the—we don't have those capabilities that the previous gentleman had, as far as the economic——

Mr. LOPER. I don't think we have that expertise, but we can certainly look into it, and get back to the——

Mr. REYES. Because otherwise, you are placing us at the mercy of that very complex economic formula.

I just wanted to ask LTC Loper, you testified that currently, National Guard members may perform identical missions across the country, and that however, depending on which State they perform such activities, they may or may not receive the same kinds of protections.

And I know Ms. Vockel mentioned the issue of total force. In my mind, isn't this a situation that is contrary to the concept of the total force policy?

Mr. LOPER. Yes, sir. That is the essence of our testimony. We believe that, indeed, the Guard, the reserve, and the active army are one force, and they need to be afforded the same protections and equity, in terms of this Act. And that is not occurring right now. If it's left to the States, that could take many, many years, and you would continue that inequity over a long period of time.

Whereas, if it's agreed that Congress has the authority to make the change, it can be made all at once, now, and then you no longer have that inequity, you have equity immediately.

Mr. REYES. Can you also elaborate on the issue of the statement you made regarding the limitations that are placed on the States because of the commerce clause of the Constitution?

Mr. TIERNEY. The Supreme Court ruled in 1978, I believe it was, that a national bank—there were national banks that were established, and there are several States that don't have interest rate caps within those States. I think there are about four that don't have any level, set level. That's where you are seeing a lot more banks are located.

The ability for one State to regulate another State—to restrict it for a cap, if Virginia has a 10 percent cap on interest rates, it cannot regulate Nebraska from having a 25 percent cap. So any State legislation that is passed in Virginia is going to have no impact in Nebraska, under this ruling.

Mr. REYES. Any other thoughts?

[No response.]

Mr. REYES. If not, thank you so much for your testimony.

Thank you, Mr. Chairman.

Mr. SIMPSON. Mr. Evans?

Mr. EVANS. Nothing at this time.

Mr. SIMPSON. Again, I thank each of you for being here, for your suggestions, your interest in this. We will continue to work with you as we develop this, and move toward markup. Thank you all very much.

Members will have 5 legislative days to submit questions to the subcommittee to be sent to the witnesses and answered for the record.

With no further action before the subcommittee, this hearing stands adjourned.

[Whereupon, at 11:16 a.m., the subcommittee was adjourned.]

APPENDIX

I

107TH CONGRESS
2D SESSION

H. R. 5111

To restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2002

Mr. SMITH of New Jersey (for himself, Mr. EVANS, Mr. SIMPSON, and Mr. REYES) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RESTATEMENT OF ACT.**

4 The Soldiers' and Sailors' Civil Relief Act of 1940
5 (50 U.S.C. App. 501 et seq.) is amended to read as fol-
6 lows:

7 **"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

8 "(a) SHORT TITLE.—This Act may be cited as the
9 'Servicemembers' Civil Relief Act'.

1 "(b) TABLE OF CONTENTS.—The table of contents
2 of this Act is as follows:

"Sec. 1. Short title; table of contents.
"Sec. 2. Purpose.

"TITLE I—GENERAL PROVISIONS

"Sec. 101. Definitions.
"Sec. 102. Jurisdiction and applicability of Act.
"Sec. 103. Protection of persons secondarily liable.
"Sec. 104. Extension of protections to citizens serving with allied forces.
"Sec. 105. Notification of benefits.
"Sec. 106. Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.
"Sec. 107. Waiver of rights pursuant to written agreement.
"Sec. 108. Exercise of rights under Act not to affect certain future financial transactions.
"Sec. 109. Legal representatives.

"TITLE II—GENERAL RELIEF

"Sec. 201. Protection of servicemembers against default judgments.
"Sec. 202. Stay of proceedings when servicemember defendant has notice.
"Sec. 203. Fines and penalties under contracts.
"Sec. 204. Stay or vacation of execution of judgments, attachments, and garnishments.
"Sec. 205. Duration and term of stays; codefendants not in service.
"Sec. 206. Statute of limitations.
"Sec. 207. Maximum rate of interest on debts incurred before military service.

"TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES.

"Sec. 301. Evictions and distress.
"Sec. 302. Protection under installment contracts for purchase or lease.
"Sec. 303. Mortgages and trust deeds.
"Sec. 304. Settlement of stayed cases relating to personal property.
"Sec. 305. Termination of leases by lessees.
"Sec. 306. Protection of life insurance policy.
"Sec. 307. Enforcement of storage liens.
"Sec. 308. Extension of protections to dependents.

"TITLE IV—INSURANCE

"Sec. 401. Definitions.
"Sec. 402. Insurance rights and protections.
"Sec. 403. Application for insurance protection.
"Sec. 404. Policies entitled to protection and lapse of policies.
"Sec. 405. Policy restrictions.
"Sec. 406. Deduction of unpaid premiums.
"Sec. 407. Premiums and interest guaranteed by United States.
"Sec. 408. Regulations.
"Sec. 409. Review of findings of fact and conclusions of law.

"TITLE V—TAXES AND PUBLIC LANDS

"Sec. 501. Taxes respecting personal property, money, credits, and real property.
"Sec. 502. Rights in public lands.
"Sec. 503. Desert-land entries.
"Sec. 504. Mining claims.
"Sec. 505. Mineral permits and leases.
"Sec. 506. Perfection or defense of rights.
"Sec. 507. Distribution of information concerning benefits of title.
"Sec. 508. Land rights of servicemembers.
"Sec. 509. Regulations.
"Sec. 510. Income taxes.
"Sec. 511. Residence for tax purposes.

"TITLE VI—ADMINISTRATIVE REMEDIES

"Sec. 601. Inappropriate use of Act.
"Sec. 602. Certificates of service; persons reported missing.
"Sec. 603. Interlocutory orders.

"TITLE VII—FURTHER RELIEF

"Sec. 701. Anticipatory relief.
"Sec. 702. Power of attorney.
"Sec. 703. Professional liability protection.
"Sec. 704. Health insurance reinstatement.
"Sec. 705. Guarantee of residency for military personnel.

1 **"SEC. 2. PURPOSE.**

2 "The purposes of this Act are—

3 "(1) to provide for, strengthen, and expedite
4 the national defense through protection extended by
5 this Act to servicemembers of the United States to
6 enable such persons to devote their entire energy to
7 the defense needs of the Nation; and

8 "(2) to provide for the temporary suspension of
9 judicial and administrative proceedings and trans-
10 actions that may adversely affect the civil rights of
11 servicemembers during their military service.

12 **"TITLE I—GENERAL PROVISIONS**

13 **"SEC. 101. DEFINITIONS.**

14 "For the purposes of this Act:

1 "(1) SERVICEMEMBER.—The term
2 'servicemember' means a member of the uniformed
3 services, as that term is defined in section 101(a)(5)
4 of title 10, United States Code.
5 "(2) MILITARY SERVICE.—
6 "(A) With respect to a member of the
7 Army, Navy, Air Force, Marine Corps, or Coast
8 Guard, the term 'military service' means active
9 duty, as that term is defined in section
10 101(d)(1) of title 10, United States Code.
11 "(B) Active service of commissioned offi-
12 cers of the Public Health Service or National
13 Oceanic and Atmospheric Administration shall
14 be deemed to be 'military service' for the pur-
15 poses of this Act.
16 "(3) PERIOD OF MILITARY SERVICE.—The term
17 'period of military service' means the period begin-
18 ning on the date on which a servicemember enters
19 military service and ending on the date on which the
20 servicemember is released from military service or
21 dies while in military service.
22 "(4) DEPENDENT.—The term 'dependent', with
23 respect to a servicemember, means—
24 "(A) the servicemember's spouse;

"(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

"(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

"(5) COURT.—The term 'court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

"(6) STATE.—The term 'State' includes—

"(A) a commonwealth, territory, or possession of the United States; and

"(B) the District of Columbia.

"(7) SECRETARY CONCERNED.—The term 'Secretary concerned'—

"(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

"(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

"(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

"SEC. 102. JURISDICTION AND APPLICABILITY OF ACT.

"(a) JURISDICTION.—This Act applies to—

"(1) the United States;

"(2) each of the States, including the political subdivisions thereof; and

"(3) all territory subject to the jurisdiction of the United States.

"(b) APPLICABILITY TO PROCEEDINGS.—This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

"(c) COURT IN WHICH APPLICATION MAY BE MADE.—When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

1 **"SEC. 103. PROTECTION OF PERSONS SECONDARILY LIA-**
2 **BLE.**

3 "(a) EXTENSION OF PROTECTION WHEN ACTIONS
4 STAYED, POSTPONED, OR SUSPENDED.—Whenever pur-
5 suant to this Act a court stays, postpones, or suspends
6 (1) the enforcement of an obligation or liability, (2) the
7 prosecution of a suit or proceeding, (3) the entry or en-
8 forcement of an order, writ, judgment, or decree, or (4)
9 the performance of any other act, the court may likewise
10 grant such a stay, postponement, or suspension to a sur-
11 ety, guarantor, endorser, accommodation maker, comaker,
12 or other person who is or may be primarily or secondarily
13 subject to the obligation or liability the performance or
14 enforcement of which is stayed, postponed, or suspended.

15 "(b) VACATION OR SET-ASIDE OF JUDGMENTS.—
16 When a judgment or decree is vacated or set aside, in
17 whole or in part, pursuant to this Act, the court may also
18 set aside or vacate, as the case may be, the judgment or
19 decree as to a surety, guarantor, endorser, accommodation
20 maker, comaker, or other person who is or may be pri-
21 marily or secondarily liable on the contract or liability for
22 the enforcement of the judgment or decree.

23 "(c) BAIL BOND NOT TO BE ENFORCED DURING
24 PERIOD OF MILITARY SERVICE.—A court may not enforce
25 a bail bond during the period of military service of the
26 principal on the bond when military service prevents the

1 surety from obtaining the attendance of the principal. The
2 court may discharge the surety and exonerate the bail, in
3 accordance with principles of equity and justice, during
4 or after the period of military service of the principal.

5 "(d) WAIVER OF RIGHTS.—

6 "(1) WAIVERS NOT PRECLUDED.—This Act
7 does not prevent a waiver in writing by a surety,
8 guarantor, endorser, accommodation maker,
9 comaker, or other person (whether primarily or sec-
10 ondarily liable on an obligation or liability) of the
11 protections provided under subsections (a) and (b).
12 Any such waiver is effective only if it is executed as
13 an instrument separate from the obligation or liabil-
14 ity with respect to which it applies.

15 "(2) WAIVER INVALIDATED UPON ENTRANCE
16 TO MILITARY SERVICE.—If a waiver under para-
17 graph (1) is executed by an individual who after the
18 execution of the waiver enters military service, or by
19 a dependent of an individual who after the execution
20 of the waiver enters military service, the waiver is
21 not valid after the beginning of the period of such
22 military service unless the waiver was executed by
23 such individual or dependent during the period spec-
24 ified in section 106.

1 **"SEC. 104. EXTENSION OF PROTECTIONS TO CITIZENS**
2 **SERVING WITH ALLIED FORCES.**

3 "A citizen of the United States who is serving with
4 the forces of a nation with which the United States is al-
5 lied in the prosecution of a war or military action is enti-
6 tled to the relief and protections provided under this Act
7 if that service with the allied force is similar to military
8 service as defined in this Act. The relief and protections
9 provided to such citizen shall terminate on the date of dis-
10 charge or release from such service.

11 **"SEC. 105. NOTIFICATION OF BENEFITS.**

12 "The Secretary concerned shall ensure that notice of
13 the benefits accorded by this Act is provided in writing
14 to persons in military service and to persons entering mili-
15 tary service.

16 **"SEC. 106. EXTENSION OF RIGHTS AND PROTECTIONS TO**
17 **RESERVES ORDERED TO REPORT FOR MILI-**
18 **TARY SERVICE AND TO PERSONS ORDERED**
19 **TO REPORT FOR INDUCTION.**

20 "(a) RESERVES ORDERED TO REPORT FOR MILI-
21 TARY SERVICE.—A member of a reserve component who
22 is ordered to report for military service is entitled to the
23 rights and protections of this title and titles II and III
24 during the period beginning on the date of the member's
25 receipt of the order and ending on the date on which the
26 member reports for military service (or, if the order is re-

1 voked before the member so reports, or the date on which
2 the order is revoked).
3 "(b) PERSONS ORDERED TO REPORT FOR INDUC-
4 TION.—A person who has been ordered to report for in-
5 duction under the Military Selective Service Act (50
6 U.S.C. App. 451 et seq.) is entitled to the rights and pro-
7 tections provided a servicemember under this title and ti-
8 tles II and III during the period beginning on the date
9 of receipt of the order for induction and ending on the
10 date on which the person reports for induction (or, if the
11 order to report for induction is revoked before the date
12 on which the person reports for induction, on the date on
13 which the order is revoked).

14 **"SEC. 107. WAIVER OF RIGHTS PURSUANT TO WRITTEN**
15 **AGREEMENT.**

16 "(a) IN GENERAL.—A servicemember may waive any
17 of the rights and protections provided by this Act. In the
18 case of a waiver that permits an action described in sub-
19 section (b), the waiver is effective only if made pursuant
20 to a written agreement of the parties that is executed dur-
21 ing or after the servicemember's period of military service.
22 The written agreement shall specify the legal instrument
23 to which the waiver applies and, if the servicemember is
24 not a party to that instrument, the servicemember con-
25 cerned.

1 "(b) ACTIONS REQUIRING WAIVERS IN WRITING.—
2 The requirement in subsection (a) for a written waiver ap-
3 plies to the following:
4 "(1) The modification, termination, or cancella-
5 tion of—
6 "(A) a contract, lease, or bailment; or
7 "(B) an obligation secured by a mortgage,
8 trust, deed, lien, or other security in the nature
9 of a mortgage.
10 "(2) The repossession, retention, foreclosure,
11 sale, forfeiture, or taking possession of property
12 that—
13 "(A) is security for any obligation; or
14 "(B) was purchased or received under a
15 contract, lease, or bailment.
16 "(c) COVERAGE OF PERIODS AFTER ORDERS RE-
17 CEIVED.—For the purposes of this section—
18 "(1) a person to whom section 106 applies shall
19 be considered to be a servicemember; and
20 "(2) the period with respect to such a person
21 specified in subsection (a) or (b), as the case may
22 be, of section 106 shall be considered to be a period
23 of military service.

1 **"SEC. 108. EXERCISE OF RIGHTS UNDER ACT NOT TO AF-**
2 **FECT CERTAIN FUTURE FINANCIAL TRANS-**
3 **ACTIONS.**

4 "Application by a servicemember for, or receipt by
5 a servicemember of, a stay, postponement, or suspension
6 pursuant to this Act in the payment of a tax, fine, penalty,
7 insurance premium, or other civil obligation or liability of
8 that servicemember shall not itself (without regard to
9 other considerations) provide the basis for any of the fol-
10 lowing:

11 "(1) A determination by a lender or other per-
12 son that the servicemember is unable to pay the civil
13 obligation or liability in accordance with its terms.

14 "(2) With respect to a credit transaction be-
15 tween a creditor and the servicemember—

16 "(A) a denial or revocation of credit by the
17 creditor;

18 "(B) a change by the creditor in the terms
19 of an existing credit arrangement; or

20 "(C) a refusal by the creditor to grant
21 credit to the servicemember in substantially the
22 amount or on substantially the terms requested.

23 "(3) An adverse report relating to the credit-
24 worthiness of the servicemember by or to a person
25 engaged in the practice of assembling or evaluating
26 consumer credit information.

1 "(4) A refusal by an insurer to insure the
2 servicemember.
3 "(5) An annotation in a servicemember's record
4 by a creditor or a person engaged in the practice of
5 assembling or evaluating consumer credit informa-
6 tion, identifying the servicemember as a member of
7 the National Guard or a reserve component.
8 "(6) A change in the terms offered or condi-
9 tions required for the issuance of insurance.

10 **"SEC. 109. LEGAL REPRESENTATIVES.**

11 "(a) REPRESENTATIVE.—A legal representative of a
12 servicemember for purposes of this Act is either of the
13 following:
14 "(1) An attorney acting on the behalf of a
15 servicemember.
16 "(2) An individual possessing a power of attor-
17 ney.
18 "(b) APPLICATION.—Whenever the term
19 'servicemember' is used in this Act, such term shall be
20 treated as including a reference to a legal representative
21 of the servicemember.

"TITLE II—GENERAL RELIEF

"SEC. 201. PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

"(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant does not make an appearance.

"(b) AFFIDAVIT REQUIREMENT.—

"(1) PLAINTIFF TO FILE AFFIDAVIT.—In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

"(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

"(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

"(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE.—If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an

1 attorney to represent the defendant. If an attorney
2 appointed under this section to represent a
3 servicemember cannot locate the servicemember, ac-
4 tions by the attorney in the case shall not waive any
5 defense of the servicemember or otherwise bind the
6 servicemember.

7 "(3) DEFENDANT'S MILITARY STATUS NOT
8 ASCERTAINED BY AFFIDAVIT.—If based upon the af-
9 fidavits filed in such an action, the court is unable
10 to determine whether the defendant is in military
11 service, the court, before entering judgment, may re-
12 quire the plaintiff to file a bond in an amount ap-
13 proved by the court. If the defendant is later found
14 to be in military service, the bond shall be available
15 to indemnify the defendant against any loss or dam-
16 age the defendant may suffer by reason of any judg-
17 ment for the plaintiff against the defendant, should
18 the judgment be set aside in whole or in part. The
19 bond shall remain in effect until expiration of the
20 time for appeal and setting aside of a judgment
21 under applicable Federal or State law or regulation
22 or under any applicable ordinance of a political sub-
23 division of a State. The court may issue such orders
24 or enter such judgments as the court determines

1 necessary to protect the rights of the defendant
2 under this Act.
3 "(4) SATISFACTION OF REQUIREMENT FOR AF-
4 FIDAVIT.—The requirement for an affidavit under
5 paragraph (1) may be satisfied by a statement, dec-
6 laration, verification, or certificate, in writing, sub-
7 scribed and certified or declared to be true under
8 penalty of perjury.
9 "(c) PENALTY FOR MAKING OR USING FALSE AFFI-
10 DAVIT.—A person who makes or uses an affidavit per-
11 mitted under subsection (b) (or a statement, declaration,
12 verification, or certificate as authorized under subsection
13 (b)(4)) knowing it to be false, shall be fined as provided
14 in title 18, United States Code, or imprisoned for not more
15 than one year, or both.
16 "(d) STAY OF PROCEEDINGS.—In an action covered
17 by this section in which the defendant is in military serv-
18 ice, the court shall grant a stay of proceedings for a min-
19 imum period of 90 days under this subsection upon appli-
20 cation of counsel, or on the court's own motion, if the
21 court determines that—
22 "(1) there may be a defense to the action and
23 a defense cannot be presented without the presence
24 of the defendant; or

1 "(2) after due diligence, counsel has been un-
2 able to contact the defendant or otherwise determine
3 if a meritorious defense exists.
4 "(e) INAPPLICABILITY OF SECTION 202 PROCE-
5 DURES.—A stay of proceedings under subsection (d) shall
6 not be controlled by procedures or requirements under sec-
7 tion 202.
8 "(f) SECTION 202 PROTECTION.—If a servicemember
9 who is a defendant in an action covered by this section
10 receives actual notice of the action, the servicemember
11 may request a stay of proceeding under section 202.
12 "(g) VACATION OR SETTING ASIDE OF DEFAULT
13 JUDGMENTS.—
14 "(1) AUTHORITY FOR COURT TO VACATE OR
15 SET ASIDE JUDGMENT.—If a default judgment is en-
16 tered in an action covered by this section against a
17 servicemember during the servicemember's period of
18 military service (or within 60 days after termination
19 of or release from such military service), the court
20 entering the judgment shall, upon application by or
21 on behalf of the servicemember, reopen the judgment
22 for the purpose of allowing the servicemember to de-
23 fend the action if it appears that—

1 "(A) the servicemember was materially af-
2 fected by reason of that military service in mak-
3 ing a defense to the action; and
4 "(B) the servicemember has a meritorious
5 or legal defense to the action or some part of
6 it.
7 "(2) TIME FOR FILING APPLICATION.—An ap-
8 plication under this subsection must be filed not
9 later than 90 days after the date of the termination
10 of or release from military service.
11 "(h) PROTECTION OF BONA FIDE PURCHASER.—If
12 a court vacates, sets aside, or reverses a default judgment
13 against a servicemember and the vacating, setting aside,
14 or reversing is because of a provision of this Act, that ac-
15 tion shall not impair a right or title acquired by a bona
16 fide purchaser for value under the default judgment.
17 **"SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER**
18 **DEFENDANT HAS NOTICE.**
19 "(a) APPLICABILITY OF SECTION.—This section ap-
20 plies to any civil action or proceeding in which the defend-
21 ant at the time of filing an application under this
22 section—
23 "(1) is in military service or is within 90 days
24 after termination of or release from military service;
25 and

1 "(2) has received notice of the action or pro-
2 ceeding.
3 "(b) AUTOMATIC STAY.—
4 "(1) AUTHORITY FOR STAY.—At any stage be-
5 fore final judgment in a civil action or proceeding in
6 which a servicemember described in subsection (a) is
7 a party, the court may on its own motion and shall,
8 upon application by the servicemember, stay the ac-
9 tion for a period of not less than 90 days, if the con-
10 ditions in paragraph (2) are met.
11 "(2) CONDITIONS FOR STAY.—An application
12 for a stay under paragraph (1) shall include the fol-
13 lowing:
14 "(A) A letter or other communication set-
15 ting forth facts stating the manner in which
16 current military duty requirements materially
17 affect the servicemember's ability to appear and
18 stating a date when the servicemember will be
19 available to appear.
20 "(B) A letter or other communication from
21 the servicemember's commanding officer stating
22 that the servicemember's current military duty
23 prevents appearance and that military leave is
24 not authorized for the servicemember at the
25 time of the letter.

1 "(c) APPLICATION NOT A WAIVER OF DEFENSES.—
2 An application for a stay under this section does not con-
3 stitute a waiver of any substantive or procedural defense
4 (including a defense relating to lack of personal jurisdic-
5 tion).

6 "(d) ADDITIONAL STAY.—

7 "(1) APPLICATION.—A servicemember who is
8 granted a stay of a civil action or proceeding under
9 subsection (b) may apply for an additional stay
10 based on continuing material affect of military duty
11 on the servicemember's ability to appear. Such an
12 application may be made by the servicemember at
13 the time of the initial application under subsection
14 (b) or when it appears that the servicemember is un-
15 available to prosecute or defend the action. The
16 same information required under subsection (b)(2)
17 shall be included in an application under this sub-
18 section.

19 "(2) APPOINTMENT OF COUNSEL WHEN ADDI-
20 TIONAL STAY REFUSED.—If the court refuses to
21 grant an additional stay of proceedings under para-
22 graph (1), the court shall appoint counsel to rep-
23 resent the servicemember in the action or pro-
24 ceeding.

1 "(e) COORDINATION WITH SECTION 201.—A
2 servicemember who applies for a stay under this section
3 and is unsuccessful may not seek the protections afforded
4 by section 201.

5 "(f) INAPPLICABILITY TO SECTION 301.—The pro-
6 tections of this section do not apply to section 301.

7 **"SEC. 203. FINES AND PENALTIES UNDER CONTRACTS.**

8 "(a) PROHIBITION OF PENALTIES.—When an action
9 for compliance with the terms of a contract is stayed pur-
10 suant to this Act, a penalty shall not accrue for failure
11 to comply with the terms of the contract during the period
12 of the stay.

13 "(b) REDUCTION OR WAIVER OF FINES OR PEN-
14 ALTIES.—If a servicemember fails to perform an obliga-
15 tion arising under a contract and a penalty is incurred
16 arising from that nonperformance, a court may reduce or
17 waive the fine or penalty if—

18 "(1) the servicemember was in military service
19 at the time the fine or penalty was incurred; and

20 "(2) the ability of the servicemember to per-
21 form the obligation was materially affected by such
22 military service.

1 **"SEC. 204. STAY OR VACATION OF EXECUTION OF JUDG-**
2 **MENTS, ATTACHMENTS, AND GARNISHMENTS.**

3 "(a) COURT ACTION UPON MATERIAL AFFECT DE-
4 TERMINATION.—If a servicemember, in the opinion of the
5 court, is materially affected by reason of military service
6 in complying with a court judgment or order, the court
7 may on its own motion and shall on application by the
8 servicemember—

9 "(1) stay the execution of any judgment or
10 order entered against the servicemember; and

11 "(2) vacate or stay an attachment or garnish-
12 ment of property, money, or debts in the possession
13 of the servicemember or a third party, whether be-
14 fore or after judgment.

15 "(b) APPLICABILITY.—This section applies to an ac-
16 tion or proceeding commenced in a court against a
17 servicemember before or during the period of the
18 servicemember's military service or within 60 days after
19 such service terminates.

20 **"SEC. 205. DURATION AND TERM OF STAYS; CODEFEND-**
21 **ANTS NOT IN SERVICE.**

22 "(a) PERIOD OF STAY.—A stay of an action, pro-
23 ceeding, attachment, or execution made pursuant to the
24 provisions of this Act by a court may be ordered for the
25 period of military service and 90 days thereafter, or for
26 any part of that period. The court may set the terms and

1 amounts for such installment payments as is considered
2 reasonable by the court.

3 "(b) CODEFENDANTS.—If the servicemember is a co-
4 defendant with others not in military service, the plaintiff
5 may proceed against the other defendants with the ap-
6 proval of the court.

7 "(c) INAPPLICABILITY OF SECTION.—This section
8 does not apply to sections 202 and 701.

9 **"SEC. 206. STATUTE OF LIMITATIONS.**

10 "(a) TOLLING OF STATUTES OF LIMITATION DURING
11 MILITARY SERVICE.—The period of a servicemember's
12 military service may not be included in computing any pe-
13 riod limited by law, regulation, or order for the bringing
14 of any action or proceeding in a court, or in any board,
15 bureau, commission, department, or other agency of a
16 State (or political subdivision of a State) or the United
17 States by or against the servicemember or the
18 servicemember's heirs, executors, administrators, or as-
19 signs.

20 "(b) REDEMPTION OF REAL PROPERTY.—A period
21 of military service may not be included in computing any
22 period provided by law for the redemption of real property
23 sold or forfeited to enforce an obligation, tax, or assess-
24 ment.

1 "(c) INAPPLICABILITY TO INTERNAL REVENUE
2 LAWS.—This section does not apply to any period of limi-
3 tation prescribed by or under the internal revenue laws
4 of the United States.

5 **"SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS IN-**
6 **CURRED BEFORE MILITARY SERVICE.**

7 "(a) INTEREST RATE LIMITATION.—
8 "(1) 6-PERCENT LIMIT.—An obligation or liabil-
9 ity bearing interest at a rate in excess of 6 percent
10 per year that is incurred by a servicemember, or the
11 servicemember and the servicemember's spouse joint-
12 ly, before the servicemember enters military service
13 shall not bear interest at a rate in excess of 6 per-
14 cent per year during the period of military service.
15 "(2) FORGIVENESS OF INTEREST IN EXCESS OF
16 6 PERCENT.—Interest at a rate in excess of 6 per-
17 cent per year that would otherwise be incurred but
18 for the prohibition in paragraph (1) is forgiven.
19 "(3) PREVENTION OF ACCELERATION OF PRIN-
20 CIPAL.—The portion of any periodic payments that
21 is allocated to principal under an obligation or liabil-
22 ity covered by this section may not be increased by
23 the lender above that specified in the original con-
24 tract with the servicemember.
25 "(b) IMPLEMENTATION OF LIMITATION.—

1 "(1) WRITTEN NOTICE TO CREDITOR.—In
2 order for an obligation or liability of a
3 servicemember to be subject to the interest rate limi-
4 tation in subsection (a), the servicemember shall
5 provide to the creditor written notice and a copy of
6 the military orders calling the servicemember to mili-
7 tary service and any orders further extending mili-
8 tary service, not later than 180 days after the date
9 of the servicemember's termination or release from
10 military service.

11 "(2) LIMITATION EFFECTIVE AS OF DATE OF
12 ORDER TO ACTIVE DUTY.—Upon receipt of written
13 notice and a copy of orders calling a servicemember
14 to military service, the creditor shall treat the debt
15 in accordance with subsection (a), effective as of the
16 date on which the servicemember is called to military
17 service.

18 "(c) CREDITOR PROTECTION.—A court may grant a
19 creditor relief from the limitations of this section if, in
20 the opinion of the court, the ability of the servicemember
21 to pay interest upon the obligation or liability at a rate
22 in excess of 6 percent per year is not materially affected
23 by reason of the servicemember's military service.

24 "(d) INTEREST DEFINED.—As used in this section,
25 the term 'interest' means simple interest plus service

1 charges, renewal charges, fees, or any other charges (ex-
2 cept bona fide insurance) with respect to an obligation or
3 liability.

4 "TITLE III—RENT, INSTALLMENT 5 CONTRACTS, MORTGAGES, 6 LIENS, ASSIGNMENT, LEASES

7 **"SEC. 301. EVICTIONS AND DISTRESS.**

8 "(a) COURT-ORDERED EVICTION.—Except by court
9 order, a landlord (or another person with paramount title)
10 may not—

11 "(1) evict a servicemember, or the dependents
12 of a servicemember, during a period of military serv-
13 ice of the servicemember, from premises—

14 "(A) that are occupied or intended to be
15 occupied primarily as a residence; and

16 "(B) for which the monthly rent does not
17 exceed $1,700; or

18 "(2) subject such premises to a distress during
19 the period of military service.

20 "(b) STAY OF EXECUTION.—

21 "(1) COURT AUTHORITY.—Upon an application
22 for eviction or distress with respect to premises cov-
23 ered by this section, the court may on its own mo-
24 tion and shall, if a request is made by or on behalf

1 of a servicemember whose ability to pay the agreed
2 rent is materially affected by military service—
3 "(A) stay the proceedings for a period of
4 90 days, unless in the opinion of the court, jus-
5 tice and equity require a longer or shorter pe-
6 riod of time; or
7 "(B) adjust the obligation under the lease
8 to preserve the interests of all parties.
9 "(2) RELIEF TO LANDLORD.—If a stay is
10 granted under paragraph (1), the court may grant
11 to the landlord (or other person with paramount
12 title) such relief as equity may require.
13 "(c) PENALTIES.—
14 "(1) MISDEMEANOR.—Except as provided in
15 subsection (a), a person who knowingly takes part in
16 an eviction or distress described in subsection (a), or
17 who knowingly attempts to do so, shall be fined as
18 provided in title 18, United States Code, or impris-
19 oned for not more than one year, or both.
20 "(2) PRESERVATION OF OTHER REMEDIES AND
21 RIGHTS.—The remedies and rights provided under
22 this section are in addition to and do not preclude
23 any remedy for wrongful conversion (or wrongful
24 eviction) otherwise available under the law to the

1 person claiming relief under this section, including
2 any award for consequential and punitive damages.
3 "(d) RENT ALLOTMENT FROM PAY OF
4 SERVICEMEMBER.—To the extent required by a court
5 order related to property which is the subject of a court
6 action under this section, the Secretary concerned shall
7 make an allotment from the pay of a servicemember to
8 satisfy the terms of such order, except that any such allot-
9 ment shall be subject to regulations prescribed by the Sec-
10 retary concerned establishing the maximum amount of pay
11 of servicemembers that may be allotted under this sub-
12 section.
13 "(e) LIMITATION OF APPLICABILITY.—Section 202 is
14 not applicable to this section.
15 **"SEC. 302. PROTECTION UNDER INSTALLMENT CONTRACTS**
16 **FOR PURCHASE OR LEASE.**
17 "(a) PROTECTION UPON BREACH OF CONTRACT.—
18 "(1) PROTECTION AFTER ENTERING MILITARY
19 SERVICE.—After a servicemember enters military
20 service, a contract by the servicemember for—
21 "(A) the purchase of real or personal prop-
22 erty; or
23 "(B) the lease or bailment of such prop-
24 erty,

1 may not be rescinded or terminated for a breach of
2 terms of the contract occurring before or during that
3 person's military service, nor may the property be
4 repossessed for such breach without a court order.
5 "(2) APPLICABILITY.—This section applies only
6 to a contract for which a deposit or installment has
7 been paid by the servicemember before the
8 servicemember enters military service.
9 "(b) PENALTIES.—
10 "(1) MISDEMEANOR.—A person who knowingly
11 resumes possession of property in violation of sub-
12 section (a), or in violation of section 108 of this Act,
13 or who knowingly attempts to do so, shall be fined
14 as provided in title 18, United States Code, or im-
15 prisoned for not more than one year, or both.
16 "(2) PRESERVATION OF OTHER REMEDIES AND
17 RIGHTS.—The remedies and rights provided under
18 this section are in addition to and do not preclude
19 any remedy for wrongful conversion otherwise avail-
20 able under law to the person claiming relief under
21 this section, including any award for consequential
22 and punitive damages.
23 "(c) AUTHORITY OF COURT.—In a hearing based on
24 this section, the court—

"(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

"(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

"(3) may make other disposition as is equitable to preserve the interests of all parties.

"SEC. 303. MORTGAGES AND TRUST DEEDS.

"(a) MORTGAGE AS SECURITY.—This section applies only to an obligation on real or personal property owned by a servicemember that—

"(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

"(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

"(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION.—In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court

1 may after a hearing and on its own motion and shall upon
2 application by a servicemember when the servicemember's
3 ability to comply with the obligation is materially affected
4 by military service—

5 "(1) stay the proceedings for a period of time
6 as justice and equity require, or

7 "(2) adjust the obligation to preserve the inter-
8 ests of all parties.

9 "(c) SALE OR FORECLOSURE.—A sale, foreclosure, or
10 seizure of property for a breach of an obligation described
11 in subsection (a) shall not be valid if made during, or with-
12 in 90 days after, the period of the servicemember's mili-
13 tary service except—

14 "(1) upon a court order granted before such
15 sale, foreclosure, or seizure with a return made and
16 approved by the court; or

17 "(2) if made pursuant to an agreement as pro-
18 vided in section 108.

19 "(d) PENALTIES.—

20 "(1) MISDEMEANOR.—A person who knowingly
21 makes or causes to be made a sale, foreclosure, or
22 seizure of property that is prohibited by subsection
23 (c), or who knowingly attempts to do so, shall be
24 fined as provided in title 18, United States Code, or
25 imprisoned for not more than one year, or both.

1 "(2) PRESERVATION OF OTHER REMEDIES.—
2 The remedies and rights provided under this section
3 are in addition to and do not preclude any remedy
4 for wrongful conversion otherwise available under
5 law to the person claiming relief under this section,
6 including consequential and punitive damages.

7 **"SEC. 304. SETTLEMENT OF STAYED CASES RELATING TO**
8 **PERSONAL PROPERTY.**

9 "(a) APPRAISAL OF PROPERTY.—When a stay is
10 granted pursuant to this Act in a proceeding to foreclose
11 a mortgage on or to repossess personal property, or to re-
12 scind or terminate a contract for the purchase of personal
13 property, the court may appoint three disinterested parties
14 to appraise the property.

15 "(b) EQUITY PAYMENT.—Based on the appraisal,
16 and if undue hardship to the servicemember's dependents
17 will not result, the court may order that the amount of
18 the servicemember's equity in the property be paid to the
19 servicemember, or the servicemember's dependents, as a
20 condition of foreclosing the mortgage, repossessing the
21 property, or rescinding or terminating the contract.

22 **"SEC. 305. TERMINATION OF LEASES BY LESSEES.**

23 "(a) COVERED LEASES.—This section applies to the
24 lease of premises occupied, or intended to be occupied, by
25 a servicemember or a servicemember's dependents for a

1 residential, professional, business, agricultural, or similar
2 purpose if—
3 "(1) the lease is executed by or on behalf of a
4 person who thereafter and during the term of the
5 lease enters military service; or
6 "(2) the servicemember, while in military serv-
7 ice, executes a lease and thereafter receives military
8 orders for a permanent change of station or to de-
9 ploy with a military unit for a period of not less
10 than 90 days.
11 "(b) NOTICE TO LESSOR.—
12 "(1) DELIVERY OF NOTICE.—A lease described
13 in subsection (a) is terminated when written notice
14 is delivered by the lessee to the lessor (or the lessor's
15 grantee) or to the lessor's agent (or the agent's
16 grantee).
17 "(2) TIME FOR NOTICE.—The written notice
18 may be delivered at any time after the lessee's entry
19 into military service or the date of the military or-
20 ders for a permanent change of station or to deploy
21 for a period of not less than 90 days.
22 "(3) NATURE OF NOTICE.—Delivery may be
23 accomplished—
24 "(A) by hand delivery;
25 "(B) by private business carrier; or

1 "(C) by placing the written notice in an
2 envelope with sufficient postage and addressed
3 to the lessor (or the lessor's grantee) or to the
4 lessor's agent (or the agent's grantee) and de-
5 positing the written notice in the United States
6 mails.
7 "(c) EFFECTIVE DATE OF TERMINATION.—
8 "(1) LEASE WITH MONTHLY RENT.—Termi-
9 nation of a lease providing for monthly payment of
10 rent shall be effective 30 days after the first date on
11 which the next rental payment is due and payable
12 after the date on which the notice is delivered.
13 "(2) OTHER LEASE.—All other leases terminate
14 on the last day of the month following the month in
15 which the notice is delivered.
16 "(d) ARREARAGES IN RENT.—Rents unpaid for the
17 period preceding termination shall be paid on a prorated
18 basis.
19 "(e) RENT PAID IN ADVANCE.—Rents paid in ad-
20 vance for a period succeeding termination shall be re-
21 funded to the lessee by the lessor (or the lessor's assignee
22 or the assignee's agent).
23 "(f) RELIEF TO LESSOR.—Upon application by the
24 lessor to a court before the termination date provided in
25 the written notice, relief granted by this section to a

1 servicemember may be modified as justice and equity re-
2 quire.
3 "(g) PENALTIES.—
4 "(1) MISDEMEANOR.—Any person who know-
5 ingly seizes, holds, or detains the personal effects,
6 security deposit, or other property of a
7 servicemember or a servicemember's dependent who
8 lawfully terminates a lease covered by this section,
9 or who knowingly interferes with the removal of such
10 property from premises covered by such lease, for
11 the purpose of subjecting or attempting to subject
12 any of such property to a claim for rent accruing
13 subsequent to the date of termination of such lease,
14 or attempts to do so, shall be fined as provided in
15 title 18, United States Code, or imprisoned for not
16 more than one year, or both.
17 "(2) PRESERVATION OF OTHER REMEDIES.—
18 The remedy and rights provided under this section
19 are in addition to and do not preclude any remedy
20 for wrongful conversion otherwise available under
21 law to the person claiming relief under this section,
22 including any award for consequential or punitive
23 damages.

1 **"SEC. 306. PROTECTION OF LIFE INSURANCE POLICY.**

2 "(a) ASSIGNMENT OF POLICY PROTECTED.—If a life
3 insurance policy on the life of a servicemember is assigned
4 before military service to secure the payment of an obliga-
5 tion, the assignee of the policy (except the insurer in con-
6 nection with a policy loan) may not exercise, during a pe-
7 riod of military service of the servicemember or within one
8 year thereafter, any right or option obtained under the
9 assignment without a court order.

10 "(b) EXCEPTION.—The prohibition in subsection (a)
11 shall not apply—

12 "(1) if the assignee has the written consent of
13 the insured made during the period described in sub-
14 section (a)(1);

15 "(2) when the premiums on the policy are due
16 and unpaid; or

17 "(3) upon the death of the insured.

18 "(c) ORDER REFUSED BECAUSE OF MATERIAL AF-
19 FECT.—A court which receives an application for an order
20 required under subsection (a) may refuse to grant such
21 order if the court determines the ability of the
22 servicemember to comply with the terms of the obligation
23 is materially affected by military service.

24 "(d) TREATMENT OF GUARANTEED PREMIUMS.—
25 For purposes of this subsection, premiums guaranteed

1 under the provisions of title IV of this Act shall not be
2 considered due and unpaid.
3 "(e) PENALTIES.—
4 "(1) MISDEMEANOR.—A person who knowingly
5 takes an action contrary to this section, or attempts
6 to do so, shall be fined as provided in title 18,
7 United States Code, or imprisoned for not more
8 than one year, or both.
9 "(2) PRESERVATION OF OTHER REMEDIES.—
10 The remedy and rights provided under this section
11 are in addition to and do not preclude any remedy
12 for wrongful conversion otherwise available under
13 law to the person claiming relief under this section,
14 including any consequential or punitive damages.
15 **"SEC. 307. ENFORCEMENT OF STORAGE LIENS.**
16 "(a) LIENS.—
17 "(1) LIMITATION ON FORECLOSURE OR EN-
18 FORCEMENT.—A person holding a lien on the prop-
19 erty or effects of a servicemember may not, during
20 any period of military service of the servicemember
21 and for 90 days thereafter, foreclose or enforce any
22 lien on such property or effects without a court
23 order granted before foreclosure or enforcement.
24 "(2) LIEN DEFINED.—For the purposes of
25 paragraph (1), the term 'lien' includes a lien for

1 storage, repair, or cleaning of the property or effects
2 of a servicemember or a lien on such property or ef-
3 fects for any other reason.
4 "(b) STAY OF PROCEEDINGS.—In a proceeding to
5 foreclose or enforce a lien subject to this section, the court
6 may on its own motion, and shall if requested by a
7 servicemember whose ability to comply with the obligation
8 resulting in the proceeding is materially affected by mili-
9 tary service—
10 "(1) stay the proceeding for a period of time as
11 justice and equity require; or
12 "(2) adjust the obligation to preserve the inter-
13 ests of all parties.
14 The provisions of this subsection do not affect the scope
15 of section 303.
16 "(c) PENALTIES.—
17 "(1) MISDEMEANOR.—A person who knowingly
18 takes an action contrary to this section, or attempts
19 to do so, shall be fined as provided in title 18,
20 United States Code, or imprisoned for not more
21 than one year, or both.
22 "(2) PRESERVATION OF OTHER REMEDIES.—
23 The remedy and rights provided under this section
24 are in addition to and do not preclude any remedy
25 for wrongful conversion otherwise available under

1 law to the person claiming relief under this section,
2 including any consequential or punitive damages.

3 **"SEC. 308. EXTENSION OF PROTECTIONS TO DEPENDENTS.**

4 "Upon application to a court, a dependent of a
5 servicemember is entitled to the protections of this title
6 if the dependent's ability to comply with a lease, contract,
7 bailment, or other obligation is materially affected by rea-
8 son of the servicemember's military service.

9 "TITLE IV—INSURANCE

10 **"SEC. 401. DEFINITIONS.**

11 "For the purposes of this title:

12 "(1) POLICY.—The term 'policy' means any
13 contract for whole, endowment, universal, or term
14 life insurance, including any benefit in the nature of
15 such insurance arising out of membership in any
16 fraternal or beneficial association which—

17 "(A) provides that the insurer may not—

18 "(i) decrease the amount of coverage
19 or increase the amount of premiums if the
20 insured is in military service; or

21 "(ii) limit or restrict coverage for any
22 activity required by military service; and

23 "(B) is in force not less than 180 days be-
24 fore the date of the insured's entry into military

1 service and at the time of application under this
2 title.
3 "(2) PREMIUM.—The term 'premium' means
4 the amount specified in an insurance policy to be
5 paid to keep the policy in force.
6 "(3) INSURED.—The term 'insured' means a
7 servicemember whose life is insured under a policy.
8 "(4) INSURER.—The term 'insurer' includes
9 any firm, corporation, partnership, association, or
10 business that is chartered or authorized to provide
11 insurance and issue contracts or policies by the laws
12 of a State or the United States.

13 **"SEC. 402. INSURANCE RIGHTS AND PROTECTIONS.**

14 "(a) RIGHTS AND PROTECTIONS.—The rights and
15 protections under this title apply to the insured when the
16 insured, the insured's designee, or the insured's bene-
17 ficiary applies in writing for protection under this title,
18 unless the Secretary of Veterans Affairs determines that
19 the insured's policy is not entitled to protection under this
20 title.
21 "(b) NOTIFICATION AND APPLICATION.—The Sec-
22 retary of Veterans Affairs shall notify the Secretary con-
23 cerned of the procedures to be used to apply for the pro-
24 tections provided under this title. The applicant shall send

1 the original application to the insurer and a copy to the
2 Secretary of Veterans Affairs.
3 "(c) LIMITATION ON AMOUNT.—The total amount of
4 life insurance coverage protection provided by this title for
5 a servicemember may not exceed $250,000, or an amount
6 equal to the Servicemember's Group Life Insurance max-
7 imum limit, whichever is greater, regardless of the number
8 of policies submitted.
9 **"SEC. 403. APPLICATION FOR INSURANCE PROTECTION.**
10 "(a) APPLICATION PROCEDURE.—An application for
11 protection under this title shall—
12 "(1) be in writing and signed by the insured,
13 the insured's designee, or the insured's beneficiary,
14 as the case may be;
15 "(2) identify the policy and the insurer; and
16 "(3) include an acknowledgement that the in-
17 sured's rights under the policy are subject to and
18 modified by the provisions of this title.
19 "(b) ADDITIONAL REQUIREMENTS.—The Secretary
20 of Veterans Affairs may require additional information
21 from the applicant, the insured and the insurer to deter-
22 mine if the policy is entitled to protection under this title.
23 "(c) NOTICE TO THE SECRETARY BY THE IN-
24 SURED.—Upon receipt of the application of the insured,
25 the insurer shall furnish a report concerning the policy

1 to the Secretary of Veterans Affairs as required by regula-
2 tions prescribed by the Secretary.

3 "(d) POLICY MODIFICATION.—Upon application for
4 protection under this title, the insured and the insurer
5 shall have constructively agreed to any policy modification
6 necessary to give this title full force and effect.

7 **"SEC. 404. POLICIES ENTITLED TO PROTECTION AND**
8 **LAPSE OF POLICIES.**

9 "(a) DETERMINATION.—The Secretary of Veterans
10 Affairs shall determine whether a policy is entitled to pro-
11 tection under this title and shall notify the insured and
12 the insurer of that determination.

13 "(b) LAPSE PROTECTION.—A policy that the Sec-
14 retary determines is entitled to protection under this title
15 shall not lapse or otherwise terminate or be forfeited for
16 the nonpayment of a premium, or interest or indebtedness
17 on a premium, after the date of the application for protec-
18 tion.

19 "(c) TIME APPLICATION.—The protection provided
20 by this title applies during the insured's period of military
21 service and for a period of two years thereafter.

22 **"SEC. 405. POLICY RESTRICTIONS.**

23 "(a) DIVIDENDS.—While a policy is protected under
24 this title, a dividend or other monetary benefit under a
25 policy may not be paid to an insured or used to purchase

1 dividend additions without the approval of the Secretary
2 of Veterans Affairs. If such approval is not obtained, the
3 dividends or benefits shall be added to the value of the
4 policy to be used as a credit when final settlement is made
5 with the insurer.

6 "(b) SPECIFIC RESTRICTIONS.—While a policy is
7 protected under this title, cash value, loan value, with-
8 drawal of dividend accumulation, unearned premiums, or
9 other value of similar character may not be available to
10 the insured without the approval of the Secretary. The
11 right of the insured to change a beneficiary designation
12 or select an optional settlement for a beneficiary shall not
13 be affected by the provisions of this title.

14 **"SEC. 406. DEDUCTION OF UNPAID PREMIUMS.**

15 "(a) SETTLEMENT OF PROCEEDS.—If a policy ma-
16 tures as a result of a servicemember's death or otherwise
17 during the period of protection of the policy under this
18 title, the insurer in making settlement shall deduct from
19 the insurance proceeds the amount of the unpaid pre-
20 miums guaranteed under this title, together with interest
21 due at the rate fixed in the policy for policy loans.

22 "(b) INTEREST RATE.—If the interest rate is not
23 specifically fixed in the policy, the rate shall be the same
24 as for policy loans in other policies issued by the insurer
25 at the time the insured's policy was issued.

1 "(c) REPORTING REQUIREMENT.—The amount de-
2 ducted under this section, if any, shall be reported by the
3 insurer to the Secretary of Veterans Affairs.

4 **"SEC. 407. PREMIUMS AND INTEREST GUARANTEED BY**
5 **UNITED STATES.**

6 "(a) GUARANTEE OF PREMIUMS AND INTEREST BY
7 THE UNITED STATES.—

8 "(1) GUARANTEE.—Payment of premiums, and
9 interest on premiums at the rate specified in section
10 406, which become due on a policy under the protec-
11 tion of this title is guaranteed by the United States.
12 If the amount guaranteed is not paid to the insurer
13 before the period of insurance protection under this
14 title expires, the amount due shall be treated by the
15 insurer as a policy loan on the policy.

16 "(2) POLICY TERMINATION.—If, at the expira-
17 tion of insurance protection under this title, the cash
18 surrender value of a policy is less than the amount
19 due to pay premiums and interest on premiums on
20 the policy, the policy shall terminate. Upon such ter-
21 mination, the United States shall pay the insurer the
22 difference between the amount due and the cash sur-
23 render value.

24 "(b) RECOVERY FROM INSURED OF AMOUNTS PAID
25 BY THE UNITED STATES.—

1 "(1) DEBT PAYABLE TO THE UNITED
2 STATES.—The amount paid by the United States to
3 an insurer under this title shall be a debt payable
4 to the United States by the insured on whose policy
5 payment was made.
6 "(2) COLLECTION.—Such amount may be col-
7 lected by the United States, either as an offset from
8 any amount due the insured by the United States or
9 as otherwise authorized by law.
10 "(3) DEBT NOT DISCHARGEABLE IN BANK-
11 RUPTCY.—Such debt payable to the United States is
12 not dischargeable in bankruptcy proceedings.
13 "(c) CREDITING OF AMOUNTS RECOVERED.—Any
14 amounts received by the United States as repayment of
15 debts incurred by an insured under this title shall be cred-
16 ited to the appropriation for the payment of claims under
17 this title.
18 **"SEC. 408. REGULATIONS.**
19 "The Secretary of Veterans Affairs shall prescribe
20 regulations for the implementation of this title.
21 **"SEC. 409. REVIEW OF FINDINGS OF FACT AND CONCLU-**
22 **SIONS OF LAW.**
23 "The findings of fact and conclusions of law made
24 by the Secretary of Veterans Affairs in administering this
25 title may be reviewed by the Board of Veterans' Appeals

1 and the United States Court of Appeals for Veterans
2 Claims.

3 "TITLE V—TAXES AND PUBLIC
4 LANDS

5 "SEC. 501. TAXES RESPECTING PERSONAL PROPERTY,
6 MONEY, CREDITS, AND REAL PROPERTY.

7 "(a) APPLICATION.—This section applies in any case
8 in which a tax or assessment, whether general or special
9 (other than a tax on personal income), falls due and re-
10 mains unpaid before or during a period of military service
11 with respect to a servicemember's—
12 "(1) personal property; or
13 "(2) real property occupied for dwelling, profes-
14 sional, business, or agricultural purposes by a
15 servicemember or the servicemember's dependents or
16 employees—
17 "(A) before the servicemember's entry into
18 military service; and
19 "(B) during the time the tax or assessment
20 remains unpaid.
21 "(b) SALE OF PROPERTY.—
22 "(1) LIMITATION ON SALE OF PROPERTY TO
23 ENFORCE TAX ASSESSMENT.—Property described in
24 subsection (a) may not be sold to enforce the collec-
25 tion of such tax or assessment except by court order

1 and upon the determination by the court that mili-
2 tary service does not materially affect the
3 servicemember's ability to pay the unpaid tax or as-
4 sessment.

5 "(2) STAY OF COURT PROCEEDINGS.—A court
6 may stay a proceeding to enforce the collection of
7 such tax or assessment, or sale of such property,
8 during a period of military service of the
9 servicemember and for a period not more than 180
10 days after the termination of, or release of the
11 servicemember from, military service.

12 "(c) REDEMPTION.—When property described in sub-
13 section (a) is sold or forfeited to enforce the collection of
14 a tax or assessment, a servicemember shall have the right
15 to redeem or commence an action to redeem the
16 servicemember's property during the period of military
17 service or within 180 days after termination of or release
18 from military service. This subsection may not be con-
19 strued to shorten any period provided by the law of a State
20 (including any political subdivision of a State) for redemp-
21 tion.

22 "(d) INTEREST ON TAX OR ASSESSMENT.—Whenever
23 a servicemember does not pay a tax or assessment on
24 property described in subsection (a) when due, the amount
25 of the tax or assessment due and unpaid shall bear inter-

1 est until paid at the rate of 6 percent per year. An addi-
2 tional penalty or interest shall not be incurred by reason
3 of nonpayment. A lien for such unpaid tax or assessment
4 may include interest under this subsection.

5 "(e) JOINT OWNERSHIP APPLICATION.—This section
6 applies to all forms of property described in subsection (a)
7 owned individually by a servicemember or jointly by a
8 servicemember and a dependent or dependents.

9 **"SEC. 502. RIGHTS IN PUBLIC LANDS.**

10 "(a) RIGHTS NOT FORFEITED.—The rights of a
11 servicemember to lands owned or controlled by the United
12 States, and initiated or acquired by the servicemember
13 under the laws of the United States (including the mining
14 and mineral leasing laws) before military service, shall not
15 be forfeited or prejudiced as a result of being absent from
16 the land, or by failing to begin or complete any work or
17 improvements to the land, during the period of military
18 service.

19 "(b) TEMPORARY SUSPENSION OF PERMITS OR LI-
20 CENSES.—If a permittee or licensee under the Act of June
21 28, 1934 (43 U.S.C. 315 et seq.), enters military service,
22 the permittee or licensee may suspend the permit or li-
23 cense for the period of military service and for 180 days
24 after termination of or release from military service.

1 "(c) REGULATIONS.—Regulations prescribed by the
2 Secretary of the Interior shall provide for such suspension
3 of permits and licenses and for the remission, reduction,
4 or refund of grazing fees during the period of such suspen-
5 sion.

6 **"SEC. 503. DESERT-LAND ENTRIES.**

7 "(a) DESERT-LAND RIGHTS NOT FORFEITED.—A
8 desert-land entry made or held under the desert-land laws
9 before the entrance of the entryman or the entryman's
10 successor in interest into military service shall not be sub-
11 ject to contest or cancellation—

12 "(1) for failure to expend any required amount
13 per acre per year in improvements upon the claim;

14 "(2) for failure to effect the reclamation of the
15 claim during the period the entryman or the
16 entryman's successor in interest is in the military
17 service, or for 180 days after termination of or re-
18 lease from military service; or

19 "(3) during any period of hospitalization or re-
20 habilitation due to an injury or disability incurred in
21 the line of duty.

22 The time within which the entryman or claimant is re-
23 quired to make such expenditures and effect reclamation
24 of the land shall be exclusive of the time periods described
25 in paragraphs (2) and (3).

1 "(b) SERVICE-RELATED DISABILITY.—If an
2 entryman or claimant is honorably discharged and is un-
3 able to accomplish reclamation of, and payment for, desert
4 land due to a disability incurred in the line of duty, the
5 entryman or claimant may make proof without further
6 reclamation or payments, under regulations prescribed by
7 the Secretary of the Interior, and receive a patent for the
8 land entered or claimed.

9 "(c) FILING REQUIREMENT.—In order to obtain the
10 protection of this section, the entryman or claimant shall,
11 within 180 days after entry into military service, cause
12 to be filed in the land office of the district where the claim
13 is situated a notice communicating the fact of military
14 service and the desire to hold the claim under this section.

15 **"SEC. 504. MINING CLAIMS.**

16 "(a) REQUIREMENTS SUSPENDED.—The provisions
17 of section 2324 of the Revised Statutes of the United
18 States (30 U.S.C. 28) specified in subsection (b) shall not
19 apply to a servicemember's claims or interests in claims,
20 regularly located and recorded, during a period of military
21 service and 180 days thereafter, or during any period of
22 hospitalization or rehabilitation due to injuries or disabil-
23 ities incurred in the line of duty.

24 "(b) REQUIREMENTS.—The provisions in section
25 2324 of the Revised Statutes that shall not apply under

1 subsection (a) are those which require that on each mining
2 claim located after May 10, 1872, and until a patent has
3 been issued for such claim, not less than $100 worth of
4 labor shall be performed or improvements made during
5 each year.

6 "(c) PERIOD OF PROTECTION FROM FORFEITURE.—
7 A mining claim or an interest in a claim owned by a
8 servicemember that has been regularly located and re-
9 corded shall not be subject to forfeiture for nonperform-
10 ance of annual assessments during the period of military
11 service and for 180 days thereafter, or for any period of
12 hospitalization or rehabilitation described in subsection
13 (a).

14 "(d) FILING REQUIREMENT.—In order to obtain the
15 protections of this section, the claimant of a mining loca-
16 tion shall, before the end of the assessment year in which
17 military service is begun or within 60 days after the end
18 of such assessment year, cause to be filed in the office
19 where the location notice or certificate is recorded a notice
20 communicating the fact of military service and the desire
21 to hold the mining claim under this section.

22 **"SEC. 505. MINERAL PERMITS AND LEASES.**

23 "(a) SUSPENSION DURING MILITARY SERVICE.—A
24 person holding a permit or lease on the public domain
25 under the Federal mineral leasing laws who enters mili-

1 tary service may suspend all operations under the permit
2 or lease for the duration of military service and for 180
3 days thereafter. The term of the permit or lease shall not
4 run during the period of suspension, nor shall any rental
5 or royalties be charged against the permit or lease during
6 the period of suspension.

7 "(b) NOTIFICATION.—In order to obtain the protec-
8 tion of this section, the permittee or lessee shall, within
9 180 days after entry into military service, notify the Sec-
10 retary of the Interior by registered mail of the fact that
11 military service has begun and of the desire to hold the
12 claim under this section.

13 "(c) CONTRACT MODIFICATION.—This section shall
14 not be construed to supersede the terms of any contract
15 for operation of a permit or lease.

16 **"SEC. 506. PERFECTION OR DEFENSE OF RIGHTS.**

17 "(a) RIGHT TO TAKE ACTION NOT AFFECTED.—
18 This title shall not affect the right of a servicemember to
19 take action during a period of military service that is au-
20 thorized by law or regulations of the Department of the
21 Interior, for the perfection, defense, or further assertion
22 of rights initiated or acquired before entering military
23 service.

24 "(b) AFFIDAVITS AND PROOFS.—

"(1) IN GENERAL.—A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

"(2) LEGAL STATUS OF AFFIDAVITS.—Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

"SEC. 507. DISTRIBUTION OF INFORMATION CONCERNING BENEFITS OF TITLE.

"(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED.—The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

"(b) APPLICATION FORMS.—The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

"(c) INFORMATION FROM SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall furnish to the

1 Secretary concerned information explaining the provisions
2 of this title (other than sections 501, 510, and 511) and
3 related application forms.

4 **"SEC. 508. LAND RIGHTS OF SERVICEMEMBERS.**

5 "(a) NO AGE LIMITATIONS.—Any servicemember
6 under the age of 21 in military service shall be entitled
7 to the same rights under the laws relating to lands owned
8 or controlled by the United States, including mining and
9 mineral leasing laws, as those servicemembers who are 21
10 years of age.

11 "(b) RESIDENCY REQUIREMENT.—Any requirement
12 related to the establishment of a residence within a limited
13 time shall be suspended as to entry by a servicemember
14 in military service until 180 days after termination of or
15 release from military service.

16 "(c) ENTRY APPLICATIONS.—Applications for entry
17 may be verified before a person authorized to administer
18 oaths under section 1044a of title 10, United States Code,
19 or under the laws of the State where the land is situated.

20 **"SEC. 509. REGULATIONS.**

21 "The Secretary of the Interior may issue regulations
22 necessary to carry out this title (other than sections 501,
23 510, and 511).

1 **"SEC. 510. INCOME TAXES.**

2 "(a) DEFERRAL OF TAX.—Upon notice to the Inter-
3 nal Revenue Service or the tax authority of a State or
4 a political subdivision of a State, the collection of income
5 tax on the income of a servicemember falling due before
6 or during military service shall be deferred for a period
7 not more than 180 days after termination of or release
8 from military service, if a servicemember's ability to pay
9 such income tax is materially affected by military service.

10 "(b) ACCRUAL OF INTEREST OR PENALTY.—No in-
11 terest or penalty shall accrue for the period of deferment
12 by reason of nonpayment on any amount of tax deferred
13 under this section.

14 "(c) STATUTE OF LIMITATIONS.—The running of a
15 statute of limitations against the collection of tax deferred
16 under this section, by seizure or otherwise, shall be sus-
17 pended for the period of military service of the
18 servicemember and for an additional period of 270 days
19 thereafter.

20 "(d) APPLICATION LIMITATION.—This section shall
21 not apply to the tax imposed on employees by section 3101
22 of the Internal Revenue Code of 1986.

23 **"SEC. 511. RESIDENCE FOR TAX PURPOSES.**

24 "(a) RESIDENCE OR DOMICILE.—A servicemember
25 shall neither lose nor acquire a residence or domicile for
26 purposes of taxation with respect to the person, personal

1 property, or income of the servicemember by reason of
2 being absent or present in any tax jurisdiction of the
3 United States solely in compliance with military orders.
4 "(b) MILITARY SERVICE COMPENSATION.—Com-
5 pensation of a servicemember for military service shall not
6 be deemed to be income for services performed or from
7 sources within a tax jurisdiction of the United States if
8 the servicemember is not a resident or domiciliary of the
9 jurisdiction in which the servicemember is serving in com-
10 pliance with military orders.
11 "(c) PERSONAL PROPERTY.—
12 "(1) RELIEF FROM PERSONAL PROPERTY
13 TAXES.—The personal property of a servicemember
14 shall not be deemed to be located or present in, or
15 to have a situs for taxation in, the tax jurisdiction
16 in which the servicemember is serving in compliance
17 with military orders.
18 "(2) EXCEPTION FOR PROPERTY WITHIN MEM-
19 BER'S DOMICILE OR RESIDENCE.—This subsection
20 applies to personal property or its use within any tax
21 jurisdiction other than the servicemember's domicile
22 or residence.
23 "(3) EXCEPTION FOR PROPERTY USED IN
24 TRADE OR BUSINESS.—This section does not prevent
25 taxation by a tax jurisdiction with respect to per-

1 sonal property used in or arising from a trade or
2 business, if it has jurisdiction.
3 "(4) RELATIONSHIP TO LAW OF STATE OF
4 DOMICILE.—Eligibility for relief from personal prop-
5 erty taxes under this subsection is not contingent on
6 whether or not such taxes are paid to the State of
7 domicile.
8 "(d) INCREASE OF TAX LIABILITY.—A tax jurisdic-
9 tion may not use the military compensation of a non-
10 resident servicemember to increase the tax liability im-
11 posed on other income earned by the nonresident
12 servicemember or spouse subject to tax by the jurisdiction.
13 "(e) FEDERAL INDIAN RESERVATIONS.—An Indian
14 servicemember whose legal residence or domicile is a Fed-
15 eral Indian reservation shall be taxed by the laws applica-
16 ble to Federal Indian reservations and not the State where
17 the reservation is located.
18 "(f) DEFINITIONS.—For purposes of this section:
19 "(1) PERSONAL PROPERTY.—The term 'per-
20 sonal property' means intangible and tangible prop-
21 erty (including motor vehicles).
22 "(2) TAXATION.—The term 'taxation' includes
23 licenses, fees, or excises imposed with respect to
24 motor vehicles and their use, if the license, fee, or

excise is paid by the servicemember in the servicemember's State of domicile or residence.

"(3) TAX JURISDICTION.—The term 'tax jurisdiction' means a State or a political subdivision of a State.

"TITLE VI—ADMINISTRATIVE REMEDIES

"SEC. 601. INAPPROPRIATE USE OF ACT.

"If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

"SEC. 602. CERTIFICATES OF SERVICE; PERSONS REPORTED MISSING.

"(a) PRIMA FACIE EVIDENCE.—In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

"(1) That a person named is, is not, has been, or has not been in military service.

"(2) The time and the place the person entered military service.

"(3) The person's residence at the time the person entered military service.

"(4) The rank, branch, and unit of military service of the person upon entry.

"(5) The inclusive dates of the person's military service.

"(6) The monthly pay received by the person at the date of the certificate's issuance.

"(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

"(b) CERTIFICATES.—The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

"(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS.—A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

1 **"SEC. 603. INTERLOCUTORY ORDERS.**

2 "An interlocutory order issued by a court under this
3 Act may be revoked, modified, or extended by that court
4 upon its own motion or otherwise, upon notification to af-
5 fected parties as required by the court.

6 "TITLE VII—FURTHER RELIEF

7 **"SEC. 701. ANTICIPATORY RELIEF.**

8 "(a) APPLICATION FOR RELIEF.—A servicemember
9 may, during military service or within 180 days of termi-
10 nation of or release from military service, apply to a court
11 for relief—

12 "(1) from any obligation or liability incurred by
13 the servicemember before the servicemember's mili-
14 tary service; or

15 "(2) from a tax or assessment falling due be-
16 fore or during the servicemember's military service.

17 "(b) TAX LIABILITY OR ASSESSMENT.—In a case
18 covered by subsection (a), the court may, if the ability of
19 the servicemember to comply with the terms of such obli-
20 gation or liability or pay such tax or assessment has been
21 materially affected by reason of military service, after ap-
22 propriate notice and hearing, grant the following relief:

23 "(1) STAY OF ENFORCEMENT OF REAL ESTATE
24 CONTRACTS.—

25 "(A) In the case of an obligation payable
26 in installments under a contract for the pur-

chase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

"(i) during the servicemember's period of military service; and

"(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

"(B) Any stay under this paragraph shall be—

"(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

"(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid

1 balance prescribed in the contract or other
2 instrument evidencing the obligation, and
3 subject to other terms as may be equitable.
4 "(2) STAY OF ENFORCEMENT OF OTHER CON-
5 TRACTS.—
6 "(A) In the case of any other obligation, li-
7 ability, tax, or assessment, the court may grant
8 a stay of enforcement—
9 "(i) during the servicemember's mili-
10 tary service; and
11 "(ii) from the date of termination of
12 or release from military service, or from
13 the date of application if made after termi-
14 nation or release from military service.
15 "(B) Any stay under this paragraph shall
16 be—
17 "(i) for a period of time equal to the
18 period of the servicemember's military
19 service or any part of such period; and
20 "(ii) subject to payment of the bal-
21 ance of principal and accumulated interest
22 due and unpaid at the date of termination
23 or release from military service, or the date
24 of application, in equal periodic install-
25 ments during this extended period at the

rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

"(c) AFFECT OF STAY ON FINE OR PENALTY.—When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

"SEC. 702. POWER OF ATTORNEY.

"(a) AUTOMATIC EXTENSION.—A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

"(1) was duly executed by the servicemember—

"(A) while in military service; or

"(B) before entry into military service but after the servicemember—

"(i) received a call or order to report for military service; or

"(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

1 "(2) designates the servicemember's spouse,
2 parent, or other named relative as the
3 servicemember's attorney in fact for certain, speci-
4 fied, or all purposes; and
5 "(3) expires by its terms after the
6 servicemember entered a missing status.
7 "(b) LIMITATION ON POWER OF ATTORNEY EXTEN-
8 SION.—A power of attorney executed by a servicemember
9 may not be extended under subsection (a) if the document
10 by its terms clearly indicates that the power granted ex-
11 pires on the date specified even though the servicemember,
12 after the date of execution of the document, enters a miss-
13 ing status.
14 **"SEC. 703. PROFESSIONAL LIABILITY PROTECTION.**
15 "(a) APPLICABILITY.—This section applies to a
16 servicemember who—
17 "(1) after July 31, 1990, is ordered to active
18 duty (other than for training) pursuant to sections
19 688, 12301(a), 12301(g), 12302, 12304, 12306, or
20 12307 of title 10, United States Code, or who is or-
21 dered to active duty under section 12301(d) of such
22 title during a period when members are on active
23 duty pursuant to any of the preceding sections; and
24 "(2) immediately before receiving the order to
25 active duty—

1 "(A) was engaged in the furnishing of
2 health-care or legal services or other services
3 determined by the Secretary of Defense to be
4 professional services; and
5 "(B) had in effect a professional liability
6 insurance policy that does not continue to cover
7 claims filed with respect to the servicemember
8 during the period of the servicemember's active
9 duty unless the premiums are paid for such cov-
10 erage for such period.
11 "(b) SUSPENSION OF COVERAGE.—
12 "(1) SUSPENSION.—Coverage of a
13 servicemember referred to in subsection (a) by a
14 professional liability insurance policy shall be sus-
15 pended by the insurance carrier in accordance with
16 this subsection upon receipt of a written request
17 from the servicemember, or the servicemember's
18 legal representative, by the insurance carrier.
19 "(2) PREMIUMS FOR SUSPENDED CON-
20 TRACTS.—A professional liability insurance carrier—
21 "(A) may not require that premiums be
22 paid by or on behalf of a servicemember for any
23 professional liability insurance coverage sus-
24 pended pursuant to paragraph (1); and

1 "(B) shall refund any amount paid for cov-
2 erage for the period of such suspension or, upon
3 the election of such servicemember, apply such
4 amount for the payment of any premium be-
5 coming due upon the reinstatement of such cov-
6 erage.

7 "(3) NONLIABILITY OF CARRIER DURING SUS-
8 PENSION.—A professional liability insurance carrier
9 shall not be liable with respect to any claim that is
10 based on professional conduct (including any failure
11 to take any action in a professional capacity) of a
12 servicemember that occurs during a period of sus-
13 pension of that servicemember's professional liability
14 insurance under this subsection.

15 "(4) CERTAIN CLAIMS CONSIDERED TO ARISE
16 BEFORE SUSPENSION.—For the purposes of para-
17 graph (3), a claim based upon the failure of a pro-
18 fessional to make adequate provision for a patient,
19 client, or other person to receive professional serv-
20 ices or other assistance during the period of the pro-
21 fessional's active duty service shall be considered to
22 be based on an action or failure to take action before
23 the beginning of the period of the suspension of pro-
24 fessional liability insurance under this subsection,
25 except in a case in which professional services were

1 provided after the date of the beginning of such pe-
2 riod.
3 "(c) REINSTATEMENT OF COVERAGE.—
4 "(1) REINSTATEMENT REQUIRED.—Profes-
5 sional liability insurance coverage suspended in the
6 case of any servicemember pursuant to subsection
7 (b) shall be reinstated by the insurance carrier on
8 the date on which that servicemember transmits to
9 the insurance carrier a written request for reinstate-
10 ment.
11 "(2) TIME AND PREMIUM FOR REINSTATE-
12 MENT.—The request of a servicemember for rein-
13 statement shall be effective only if the
14 servicemember transmits the request to the insur-
15 ance carrier within 30 days after the date on which
16 the servicemember is released from active duty. The
17 insurance carrier shall notify the servicemember of
18 the due date for payment of the premium of such in-
19 surance. Such premium shall be paid by the
20 servicemember within 30 days after receipt of that
21 notice.
22 "(3) PERIOD OF REINSTATED COVERAGE.—The
23 period for which professional liability insurance cov-
24 erage shall be reinstated for a servicemember under
25 this subsection may not be less than the balance of

1 the period for which coverage would have continued
2 under the insurance policy if the coverage had not
3 been suspended.
4 "(d) INCREASE IN PREMIUM.—
5 "(1) LIMITATION ON PREMIUM INCREASES.—
6 An insurance carrier may not increase the amount
7 of the premium charged for professional liability in-
8 surance coverage of any servicemember for the min-
9 imum period of the reinstatement of such coverage
10 required under subsection (c)(3) to an amount
11 greater than the amount chargeable for such cov-
12 erage for such period before the suspension.
13 "(2) EXCEPTION.—Paragraph (1) does not pre-
14 vent an increase in premium to the extent of any
15 general increase in the premiums charged by that
16 carrier for the same professional liability coverage
17 for persons similarly covered by such insurance dur-
18 ing the period of the suspension.
19 "(e) CONTINUATION OF COVERAGE OF UNAFFECTED
20 PERSONS.—This section does not—
21 "(1) require a suspension of professional liabil-
22 ity insurance protection for any person who is not a
23 person referred to in subsection (a) and who is cov-
24 ered by the same professional liability insurance as
25 a person referred to in such subsection; or

"(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

"(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS.—

"(1) STAY OF ACTIONS.—A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

"(A) the action was commenced during the period of the suspension;

"(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

"(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

"(2) DATE OF COMMENCEMENT OF ACTION.—Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of

1 any servicemember, the action shall have been
2 deemed to have been filed on the date on which the
3 professional liability insurance coverage of the
4 servicemember is reinstated under subsection (c).

5 "(g) EFFECT OF SUSPENSION UPON LIMITATIONS
6 PERIOD.—In the case of a civil or administrative action
7 for which a stay could have been granted under subsection
8 (f) by reason of the suspension of professional liability in-
9 surance coverage of the defendant under this section, the
10 period of the suspension of the coverage shall be excluded
11 from the computation of any statutory period of limitation
12 on the commencement of such action.

13 "(h) DEATH DURING PERIOD OF SUSPENSION.—If
14 a servicemember whose professional liability insurance
15 coverage is suspended under subsection (b) dies during the
16 period of the suspension—

17 "(1) the requirement for the grant or continu-
18 ance of a stay in any civil or administrative action
19 against such servicemember under subsection (f)(1)
20 shall terminate on the date of the death of such
21 servicemember; and

22 "(2) the carrier of the professional liability in-
23 surance so suspended shall be liable for any claim
24 for damages for professional negligence or other pro-
25 fessional liability of the deceased servicemember in

1 the same manner and to the same extent as such
2 carrier would be liable if the servicemember had died
3 while covered by such insurance but before the claim
4 was filed.
5 "(i) DEFINITIONS.—For purposes of this section:
6 "(1) The term 'active duty' has the meaning
7 given that term in section 101(d)(1) of title 10,
8 United States Code.
9 "(2) The term 'profession' includes occupation.
10 "(3) The term 'professional' includes occupa-
11 tional.
12 **"SEC. 704. HEALTH INSURANCE REINSTATEMENT.**
13 "(a) REINSTATEMENT OF HEALTH INSURANCE.—A
14 servicemember who, by reason of military service as de-
15 fined in section 703(a)(1), is entitled to the rights and
16 protections of this Act shall also be entitled upon termi-
17 nation or release from such service to reinstatement of any
18 health insurance that—
19 "(1) was in effect on the day before such serv-
20 ice commenced; and
21 "(2) was terminated effective on a date during
22 the period of such service.
23 "(b) NO EXCLUSION OR WAITING PERIOD.—The re-
24 instatement of health care insurance coverage for the
25 health or physical condition of a servicemember described

1 in subsection (a), or any other person who is covered by
2 the insurance by reason of the coverage of the
3 servicemember, shall not be subject to an exclusion or a
4 waiting period, if—
5 "(1) the condition arose before or during the
6 period of such service;
7 "(2) an exclusion or a waiting period would not
8 have been imposed for the condition during the pe-
9 riod of coverage; and
10 "(3) if the condition relates to the
11 servicemember, the condition has not been deter-
12 mined by the Secretary of Veterans Affairs to be a
13 disability incurred or aggravated in the line of duty
14 (within the meaning of section 105 of title 38,
15 United States Code).
16 "(c) EXCEPTIONS.—Subsection (a) does not apply to
17 a servicemember entitled to participate in employer-of-
18 fered insurance benefits pursuant to the provisions of
19 chapter 43 of title 38, United States Code.
20 **"SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PER-**
21 **SONNEL.**
22 "For the purposes of voting for any Federal office
23 (as defined in section 301 of the Federal Election Cam-
24 paign Act of 1971 (2 U.S.C. 431)) or a State or local
25 office, a person who is absent from a State in compliance

1 with military or naval orders shall not, solely by reason
2 of that absence—
3 "(1) be deemed to have lost a residence or
4 domicile in that State, without regard to whether or
5 not the person intends to return to that State;
6 "(2) be deemed to have acquired a residence or
7 domicile in any other State; or
8 "(3) be deemed to have become a resident in or
9 a resident of any other State.".
10 **SEC. 2. CONFORMING AMENDMENTS.**
11 (a) MILITARY SELECTIVE SERVICE ACT.—Section 14
12 of the Military Selective Service Act (50 U.S.C. App. 464)
13 is repealed.
14 (b) TITLE 5, UNITED STATES CODE.—
15 (1) Section 5520a(k)(2)(A) of title 5, United
16 States Code, is amended by striking "Soldiers' and
17 Sailors' Civil Relief Act of 1940" and inserting
18 "Servicemembers' Civil Relief Act"; and
19 (2) Section 5569(e) of title 5, United States
20 Code, is amended—
21 (A) in paragraph (1), by striking "provided
22 by the Soldiers' and Sailors' Civil Relief Act of
23 1940" and all that follows through "of such
24 Act" and inserting "provided by the
25 Servicemembers' Civil Relief Act , including the

1 benefits provided by section 702 of such Act
2 but excluding the benefits provided by sections
3 104 and 106, title IV, and title V (other than
4 sections 501 and 510) of such Act"; and
5 (B) in paragraph (2), by striking "person
6 in the military service" and inserting
7 "servicemember."
8 (c) TITLE 10, UNITED STATES CODE.—Section
9 1408(b)(1)(D) of title 10, United States Code, is amended
10 by striking "Soldiers' and Sailors' Civil Relief Act of
11 1940" and inserting "Servicemembers' Civil Relief Act."
12 (d) INTERNAL REVENUE CODE.—Section 7654(d)(1)
13 of the Internal Revenue Code of 1986 is amended by strik-
14 ing "Soldiers' and Sailors' Civil Relief Act" and inserting
15 "Servicemembers' Civil Relief Act."
16 (e) PUBLIC LAW 91–621.—Section 3(a)(3) of Public
17 Law 91–621 (33 U.S.C. 857–3(a)(3)) is amended by
18 striking "Soldiers' and Sailors' Civil Relief Act of 1940,
19 as amended" and inserting "Servicemembers' Civil Relief
20 Act."
21 (f) PUBLIC HEALTH SERVICE ACT.—Section 212(e)
22 of the Public Health Service Act (42 U.S.C. 213(e)) is
23 amended by striking "Soldiers' and Sailors' Civil Relief
24 Act of 1940" and inserting "Servicemembers' Civil Relief
25 Act."

1 (g) ELEMENTARY AND SECONDARY EDUCATION ACT
2 OF 1965.—Section 8001 of the Elementary and Secondary
3 Education Act of 1965 (20 U.S.C. 7701) is amended by
4 striking "section 514 of the Soldiers' and Sailors' Civil
5 Relief Act of 1940 (50 U.S.C. App. 574)" and inserting
6 "section 511 of the Servicemembers' Civil Relief Act."

7 **SEC. 3. EFFECTIVE DATE.**

8 The amendment made by section 1 shall apply to any
9 case decided after the date of the enactment of this Act.

107TH CONGRESS
2D SESSION

H. R. 4017

To amend the Soldiers' and Sailors' Civil Relief Act of 1940 to treat as military service under that Act certain National Guard duty under a call to active service for a period of 30 consecutive days or more.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. EVANS (for himself, Mr. REYES, Mrs. DAVIS of California, Mr. DINGELL, Mr. UNDERWOOD, Mr. PASTOR, Mr. MEEHAN, Mr. MALONEY of Connecticut, Mr. ANDREWS, Ms. MCKINNEY, Mr. COSTELLO, and Ms. CARSON of Indiana) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend the Soldiers' and Sailors' Civil Relief Act of 1940 to treat as military service under that Act certain National Guard duty under a call to active service for a period of 30 consecutive days or more.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Soldiers' and Sailors'
5 Civil Relief Equity Act".

SEC. 2. TREATMENT OF CERTAIN NATIONAL GUARD DUTY AS MILITARY SERVICE UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking "and all" and inserting "all"; and

(B) by inserting before the period the following: ", and all members of the National Guard on duty described in the following sentence"; and

(2) in the second sentence, by inserting before the period the following: ", and, in the case of a member of the National Guard, shall include service under a call to active service for a period of more than 30 consecutive days if such service is prescribed by the Secretary of the Army or Secretary of the Air Force under section 502(f) of title 32, United States Code, and is supported by Federal funds for a contingency operation authorized by the President or Secretary of Defense".

PREPARED STATEMENT CONGRESSMAN EVANS

July 24, 2002

I thank Subcommittee Chairman Simpson and Ranking Member Reyes for holding this hearing.

I am pleased that we are considering H.R. 4017, the "Soldiers' and Sailors' Civil Relief Equity Act."

I introduced this bill at the request of members of the National Guard who were called into service at the request of the President following the events of September 11th.

These members of the Guard were, called up under Title 32 of the United States Code to address a national emergency.

They were concerned that they were not able to receive the protections of the Soldiers' and Sailors' Civil Relief Act (SSCRA) during their extended periods of national service.

Members of the National Guard who are requested to perform national service paid by federal funds should be eligible to receive the same protections whether they are called up under Title 10 or Title 32.

The bottom line is that too many Guard personnel who have been activated for more than 30 days under Title 32 may have the same trouble meeting civil obligations as personnel called up under Title 10.

We should pass this legislation to insure that now and in future activations, all Guard personnel are provided with the financial protections that will enable them to perform their national missions without distraction by civil obligations.

I also wish to voice my strong support for H.R. 5111. This bill will modernize the SSCRA to meet the needs of today's servicemen and servicewomen.

I want to offer a warm welcome to all of the witnesses and thank you for your testimony.

I yield back the balance of my time.

Statement of Congresswoman Susan Davis
Benefits Subcommittee Hearing
July 25, 2002

Mr. Chairman,

- I would like to thank you and the ranking member for your work on the Soldiers' and Sailors' Civil Relief Act and the Servicemembers' Civil Relief Act. Yesterday's hearing was valuable and I look forward to continuing the dialogue today.

- In particular, I am pleased to see an effort to strengthen existing eviction protection in light of the national housing crisis. San Diego has one of the nation's least affordable housing markets. The existing supply-demand imbalance means apartment owners can charge high prices. This increase in protection will mean a great deal to the service members in my district.

- I look forward to hearing today's witnesses offer their suggestions for updating and improving SSCRA.

- Thank you, Mr. Chairman.

Soldiers' and Sailors' Civil Relief Act Provides Umbrella of Protection

American Forces Information Service

If you're a reserve component service member called to active duty, you're protected by a law that can save you some legal problems and possibly some money as well.
Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, you may qualify for any or all of the following:

- Reduced interest rate on mortgage payments.
- Reduced interest rate on credit card debt.
- Protection from eviction if your rent is $1,200 or less.
- Delay of all civil court actions, such as bankruptcy, foreclosure or divorce proceedings.

"Although all service members receive some protections under the SSCRA, additional protections are available to reserve components called to active duty," said Lt. Col. Patrick Lindemann, deputy director for legal policy in the Office of the Undersecretary of Defense for Personnel and Readiness. Most active duty service members are familiar with the provisions of the SSCRA that guarantee service members the right to vote in the state of their home of record and protect them from paying taxes in two different states.

One of the most significant provisions under the act limits the amount of interest that may be collected on debts of persons in military service to 6 percent per year during the period of military service. This provision applies to all debts incurred prior to the commencement of active duty and includes interest on credit card debt, mortgages, car loans and other debts. The provision, Lindemann emphasized, applies to pre-service

debts, and the interest rate reduction doesn't occur automatically — service members must request it.

"Material Effect"

Once a service member requests the rate reduction, the creditor must either comply or apply for court relief. The SSCRA puts the burden on the creditor to show that military service has not "materially affected" a member's ability to repay the debt. The court generally grants relief if the creditor can make his case.

Lindemann advised that service members notify lenders of their intent to invoke the 6 percent cap in writing, along with proof of mobilization/activation to active duty and evidence of the difference in the member's military and civilian pay. This could prevent creditors from attempting to challenge interest rate reduction requests in court.

The interest rate cap does not apply to federal guaranteed student loans. However, according to Lindemann, the Department of Education has in the past deferred or suspended payments on student loans for reserve component military members called to active duty. Service members should contact their lenders or schools to determine if such a program has been implemented and its eligibility requirements.

- Reduced interest rate on mortgage payments.
- Reduced interest rate on credit card debt.
- Protection from eviction if your rent is $1,200 or less.
- Delay of all civil court actions, such as bankruptcy, foreclosure or divorce proceedings.

Another key provision under the SSCRA protects your dependents from being evicted while you are serving your country. If you rent a house or apartment that is occupied for dwelling purposes and the rent does not exceed $1,200 per month, the landlord must obtain a court order authorizing eviction. This provision applies regardless of whether quarters were rented before or after entry into military service.

A Brief History

View a brief history of the Soldiers' and Sailors' Relief Act of 1940

In cases of eviction from dwelling quarters, courts may grant a stay of

up to three months or enter any other "order as may be just" if military service materially affects the service member's ability to pay the rent. This provision is not intended to allow military members to avoid paying rent, said Lindemann, but rather to protect families when they cannot pay the rent because military service has affected their ability to do so.

Civil Proceedings

Another significant protection under the act relates to civil proceedings. Service members involved in civil litigation can request a delay in proceedings if they can show their military responsibilities preclude their proper representation in court. This provision is most often invoked by service members who are on an extended deployment or stationed overseas. "I would recommend a service member contact the unit or installation legal office immediately if they receive notice of court proceedings against them," Lindemann said. "Civil court proceedings can involve very complex issues and no one should do anything, including requesting a stay of proceedings, prior to seeking legal advice."

To learn more about these or other provisions of the Soldiers' and Sailors' Civil Relief Act, contact your unit or installation legal assistance office.

TOP

TESTIMONY OF
CRAIG W. DUEHRING
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE
RESERVE AFFAIRS

BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

THE SERVICEMEMBERS' CIVIL RELIEF ACT
H.R. 5111

AND

THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT
H.R. 4017

JULY 24, 2002

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Mr. Chairman and members of the Subcommittee, thank you for giving me the opportunity to come before you this morning to discuss H.R. 5111, the Servicemembers' Civil Relief Act and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

The Department of Defense supports H.R. 5111's restatement of the Soldiers' and Sailors' Civil Relief Act as the Servicemembers' Civil Relief Act. The need to modernize the language of the Act, incorporate over 60 years of case law, and add generally accepted practices is evident. The Department of Defense believes H.R. 5111 accomplishes this goal and would like to thank the Committee and its staff for their work on this important bill.

The Soldiers' and Sailors' Civil Relief Act of 1940 has been an essential ingredient in the total quality of life package for our military men and women, and their families, since its passage. In passing this Act and its Civil War and World War I era predecessors, Congress recognized that active military service may cause severe, often insurmountable, problems in handling personal affairs back home: frequent involuntary moves, extended deployments overseas, long separations from families sometimes with little advance notice. Congress also recognized the need to have military men and women focused on their operational mission free from worry about the welfare of their families or their personal affairs.

Congress addressed these problems adequately and equitably through the Act's skillfully crafted balance among the needs of our nation for a strong national defense, the needs of Servicemembers – and their families – for security in their personal affairs, and the needs of those who have dealt with and depend upon Servicemembers for fulfillment of their obligations.

H.R. 5111 maintains this important balance while addressing three areas where our experience with the Act indicates that change is needed: clarifying and simplifying the language; incorporating generally accepted procedures; and updating the Act to reflect 60 years of change in America. With the on-going war and reserve mobilization, now is a good time to update and clarify the Act so it can remain vital and continue to serve the needs of military members and those with whom they do business.

The questions most frequently asked by Servicemembers, their families, and those who deal with them reveal that parts of the Act are difficult to read and understand, and therefore difficult to follow. It is apparent from these questions that the entire Act needs to be rewritten in plain English and in modern legislative drafting form. H.R. 5111 redrafts each section, updating the language and removing much ambiguity.

Additionally, the Act fails to provide necessary procedural guidance in many areas. For example, although the Act specifically provides protections for Servicemembers in the form of a request for a stay of proceedings, it does not explain how to go about obtaining the needed relief. H.R. 5111 provides this missing procedural guidance.

Finally, the world of 1940 could not have foreseen all the changes in American life that more than 60 years of technological advances and business practices would bring. The extensive use of leases for automobiles and business equipment could not possibly have been imagined over 60 years ago. H.R. 5111 reflects over 60 years of progress in America.

The Department of Defense has only a few concerns with H.R. 5111. First, the requirement of Section 105 that all persons in military service and entering military service be notified in writing of the benefits of this Act is unnecessary and would impose

a significant administrative burden that would accomplish little. As under the current law, Congress should allow the Military Services to choose the most appropriate means for notifying servicemembers of their civil liability protections. Our experience indicates that handing everyone a list of the many provisions of this lengthy law would not be effective. Currently, the most widely used provisions are typically explained in briefings by legal assistance attorneys and in command newspapers and other command information forums. Also, servicemembers having civil legal problems are routinely referred to a legal assistance office, where even the infrequently used provisions of the Act are explained, if applicable to a servicemember's situation.

Additionally, the Department would like the Committee to consider adding language to H.R. 5111 that would define the meaning of the important term "material effect," incorporate case law holding that the Act's protections apply to business debts for which a servicemember is personally liable, and index the maximum rental amount covered by section 301 to account for inflation.

Finally, it appears that both sections 302 and 303 may have inadvertently been drafted to include a reference to section 108. We believe that the reference should be to section 107.

Before moving to H.R. 4017, I would again like to thank the Committee and its staff for all of the effort that has gone into this important bill.

The Department of Defense opposes H.R. 4017.

Members of the National Guard called or ordered to duty by a governor under section 502(f) of title 32 of the United States Code are under the command and control of

state authorities and are subject to the laws and protections afforded by that state . This is true even though National Guard members serving in this status are paid by the United States. A Congressional determination of which civil liability protections to provide to Guardsmen serving under state control is inconsistent with our federal system. The Department believes the states should make this determination.

The Department would support a concurrent resolution in which Congress would urge the

states, territories, and government of the District of Columbia to enact laws and implement policies to provide civil liability protections similar to those provided under the Soldiers' and Sailors' Civil Relief Act (SSCRA) to members of their respective National Guard when serving other than on active duty under title 10 of the United States Code. We recently canvassed the states and territories and found that 21 of them have laws providing some type of SSCRA protections, with 12 of those states providing protections that are identical or nearly identical to those provided under SSCRA; several other states currently are considering legislation that would extend such protections to its Guardsmen.

We appreciate this opportunity to discuss these bills with you.

SERVING
WITH
PRIDE

TESTIMONY

of

RICHARD JONES
AMVETS NATIONAL LEGISLATIVE DIRECTOR

before the

COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
U.S. HOUSE OF REPRESENTATIVES

on

H.R. 5111, the SERVICEMEMBERS' CIVIL RELIEF ACT, and H.R. 4017, the SOLDIER'S AND SALIORS' CIVIL RELIEF EQUITY ACT

Wednesday, July 24, 2002,
10:00 am, Room 334
Cannon House Office Building

A M V E T S

NATIONAL
HEADQUARTERS
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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to testify before the Benefits Subcommittee on the two bills subject to this legislative hearing. AMVETS is pleased to present our viewpoint regarding H.R. 5111, a bill to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940, and H.R. 4017, a bill to amend the Soldiers' and Sailors' Civil relief Act of 1940 to treat as military service under that Act certain National Guard duty under the call to active service for a period of 30 consecutive days or more.

Mr. Chairman, AMVETS has been a leader since 1944 in helping to preserve the freedoms secured by America's Armed Forces. Today, our organization continues its proud tradition, providing, not only support for veterans and the active military in procuring their earned entitlements, but also an array of community services that enhance the quality of life for this nation's citizens.

The Soldier's and Sailor's Civil Relief Act was enacted by Congress in 1940 to protect individuals called to active duty. It is intended in large part to promote the national defense by suspending enforcement of civil liabilities of service members to enable them to devote their entire energies to freedom's defense. For example, the act provides for forbearance and reduced interest on certain obligations incurred prior to service and restricts default judgments against service members and rental evictions of service members and their dependents.

No one must doubt the worry and concern of Reservists or National Guard when they are called to active duty. They wonder about their jobs and whether their employment will still be available when they return to civilian life. They have questions about losing seniority, health insurance, and other benefits because of their absence while serving their country. Current law provides the assurances our men and women in uniform require. They are entitled under Veterans Readjustment Rights to return to their jobs after honorable release from service if they apply within 90 days of separation. They are also currently entitled to be treated, for purposes of seniority, as though they never left their employment.

One area overlooked was the case of a member of the National Guard called to service under the direction of the President or Secretary of Defense. H.R 4017 would, under certain conditions, correct this deficiency for members of the Guard. It would pull members of the Guard under protection of the Soldier's and Sailor's Civil Relief Act and thereby include them under the provisions contemplated in H.R. 5111, the Servicemembers' Civil Relief Act. Clearly, this type of action is appropriate and timely. When an individual is called into Guard duty, his earning may be reduced by a considerable amount and, as a result, the individual may not be able to meet his car, mortgage, or personal loan payments.

Take for example a member of the Guard or Reserves making $55,000 a year, with a wife and two children. When called to active duty his salary can be reduced up to 50 percent. How is he going to continue to pay rent and support his family while on active duty?

The answer is simple: He can't, not without the protections provided under this Act and the update provided in the legislation before the panel today. H.R. 5111 would adjust the rental cap on eviction protection. Under current law, this protection applies only in cases in which the monthly rent is not more than $1,200. H.R. 5111 lifts this cap to rents not exceeding $1,700, a more generous protection. Considering the rent paid even by a family of three or four for standard-quality rental housing, especially in high cost areas, the current ceiling is unrealistically low.

AMVETS supports these measures. We call on members of Congress who recognize the potential for Reservists and Guard financial hardship to move this measure forward expeditiously. We need to ensure that civil protections for members of the Reserves and Guard reflect current economic realities, and we need, as well, to send a clear message that the difficult work of these individuals is not taken for granted or gone unnoticed.

H.R. 5111, the Servicemembers' Civil Relief Act:

This legislative seeks to restate, clarify, and revise the Soldiers' and Sailors' Relief Act (SSCRA)

of 1940. Specifically, H.R. 5111, increases protection afforded our servicemembers in the areas of housing, finances, insurance, contracts, taxes, and residency.

In this time of war, when our nation has sent its fighting men and women to distant lands, the changes incumbent in H.R. 5111 are needed as recognition of the changing responsibilities of the modern world.

Of particular importance to AMVETS are the changes brought about by Title VII, pertaining to medical insurance and voting rights. Health insurance is something that is important in the lives of all Americans, especially our servicemembers and their families. By ensuring our servicemembers that their coverage will be reinstated when their service is concluded, we give our servicemembers the peace of mind that serving our nation will not cause them undue hardship upon release from active duty.

Further, as servicemembers are called upon to defend our rights and freedoms, including the right to vote, our nation should ensure that their right to vote is protected as well. Merely answering your nation's call should not disqualify you from voting in the residency of your choice. H.R. 5111 would allow our servicemembers a secure voice in the nation they defend.

H.R. 4017, the Soldiers' and Sailors' Civil Relief Act:

Mr. Chairman, as the scope and role of our National Guard personnel has changed, so must the laws that govern their service. As H.R. 4017 would bring all members of the National Guard covered by its provisions under the protections of H.R. 5111, AMVETS believes all comments afforded H.R. 5111 apply to H.R. 4017, and we offer our full support to both pieces of legislation.

AMVETS sincerely appreciates the opportunity to appear before you today, and we, again, thank you for your vigilance in improving benefits and services to veterans and their families.

STATEMENT OF

BOB MANHAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 4017, *Soldiers' and Sailors' Civil Relief Equity Act* and
H.R. 5111, *Servicemembers' Civil Relief Act*

WASHINGTON, DC JULY 24, 2002

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.7 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I thank you for this opportunity to present our views on these two important bills—H.R. 4017, *Soldiers' and Sailors' Civil Relief Equity Act* and H.R. 5111, *Servicemembers' Civil Relief Act.*

H.R. 4017
Soldiers' and Sailors' Civil Relief Equity Act

The main thrust of this bill is to amend the *Soldiers' and Sailors' Civil Relief Act of 1940* (SSCRA), to treat as military service certain National Guard duty when called to active service under Title 32, U.S.C., for a period of 30 or more consecutive days.

Although this category of guardsmen receives some federal benefits, they do not presently enjoy the full protection of the SSCRA as does the National Guard personnel called to active duty under Title 10, U.S.C. A case in point is "Operation Noble Eagle" wherein Guard personnel are called to active duty to provide security for commercial airports under the more limited conditions of Title 32, U.S.C., that is titled "National Guard" rather than Title 10, U.S.C., that is titled "Armed Forces".

H.R. 4017 would ensure equitable protection for all members of the National Guard when called to active duty for a contingency operation authorized by the President or the Secretary of Defense under Title 32, U.S.C. Therefore, the VFW is pleased to offer its full support to this important piece of legislation.

H.R. 5111
Servicemembers' Civil Relief Act

The VFW strongly supports the intent of this legislation to restate, clarify, and revise the SSCRA. We also acknowledge and appreciate the effort of the professional staff that went into updating this 62-year old law. We would take this opportunity to highlight certain sections of particular interest.

The major improvements backed by the VFW in Title II–*General Relief* would expand the temporary suspension of legal proceedings under certain circumstances and establish a 90-day automatic stay of legal proceedings based on military duty. Further, this 90-day suspension may be extended because of military necessity. Equally important is the clarification and reinforcement of the six percent (6%) interest rate cap.

The three enhancements in Title III—*Rent, Installment, Contracts, Mortgages, Liens, Assignments, and Leases* include: (1) increasing from $1,200 to $1,700 the monthly rent eviction protection; (2) allowing servicemembers to terminate housing leases based on a permanent change of station (PCS) or a deployment of 90 or more days, and; (3) adding leases under installment protection for contracts. We believe these changes to be necessary and timely.

Further, we support the two technical changes in Title IV—*Taxes and Public Lands*, that clarify tax protection on personal property to include property owned jointly with the servicemember's spouse; and adding a technical, but important, provision prohibiting state taxation of certain non-resident servicemembers.

The last item of note we approve of is the additional inclusion of the legal profession for suspension and subsequent reinstatement of existing liability insurance, as currently provided for in the medical profession under Title VII—*Further Relief*.

In summary, the VFW strongly supports both bills because they treat more equitably today's active duty personnel and more properly address the changes in our nation's current security requirements.

Mr. Chairman, this concludes the VFW's testimony. I will be happy to answer any questions you and the members of the subcommittee may have.

STATEMENT OF
JUDY WILSON
DEPUTY DIRECTOR, GOVERNMENT RELATIONS

THE ENLISTED ASSOCIATION
OF THE NATIONAL GUARD
OF THE UNITED STATES (EANGUS)

BEFORE THE

SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS AFFAIRS

JULY 24, 2002

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Enlisted Association of the National Guard of the United States (EANGUS) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

Mr. Chairman, Members of the Subcommittee, I am grateful to have this opportunity to express the views of the Enlisted Association of the National Guard of the United States (EANGUS) concerning H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, and H.R. 5111, the Servicemembers' Civil Relief Act.

The National Guard has recently been called more than at any time in history to provide peacetime and combat-ready support for contingencies around the world. Add to that the new homeland defense mission, and it becomes very clear that the National Guard will continue to be called to contribute to this nation's defense more than ever before.

Reserve Component servicemembers have been asked to shoulder a greater and greater share of the responsibility for defending the nation's security at home and abroad. We now have more than 80,000 National Guard and Reserve troops on active duty to perform vital homeland defense missions – guarding airports, nuclear facilities, border crossings, and other potential targets of terror across the country.

The SSCRA was passed by Congress to provide protection for individuals called to active duty in any of the military services. The SSCRA suspends certain civil obligations to enable service members to devote full attention to duty. It protects the individual and his or her family from foreclosures, evictions, and installment contracts for the purchase of real or personal property if the service member's ability to make payments is "materially affected" by the military service. The SSCRA entitles a person called to active duty to reinstatement of any health insurance that was in effect on the day before such service commenced, and was terminated during the period of service. It also protects the service member against termination of private life insurance policies during the term of active service.

Currently, the SSCRA only covers members of the National Guard called to active duty under Title 10 (federal active duty). Guard members and Reservists called to active service for Operation Enduring Freedom were called under Title 10 and therefore are entitled to all federal benefits including protection under SSCRA; however, the majority of National Guard members called to active service for Operation Noble Eagle were called up under title 32, which is also federal service, and, although they receive most federal benefits, they do not qualify for protection under the SSCRA.

EANGUS believes that all members of the National Guard performing active duty service in Title 32 status in support of a contingency operation at the request of the President should be entitled to protection under the SSCRA and wholeheartedly supports H.R. 4017.

Those against adding protection for Title 32 active duty to the SSCRA will claim that this is a State issue, and that Title 32 active duty is "State" active duty. There are two reasons this assertion is erroneous. First, Title 32 active duty is by definition, federal active duty – Title 32 is federal law, not state. Yes, the governor has control, but those men and women on Title 32 active duty are being paid *federal* dollars and receiving federal benefits and protections like the Uniformed Services Employment and Re-employment Rights Act (USERRA). State active duty is regulated by the state and paid for by the state.

Secondly, only Congress has the power to regulate commerce between the states. The argument goes that the states must enact their own SSCRA laws to cover Title 32 active duty. Many loans, credit cards, or other installment agreements originate in a state other than that in which the servicemember resides. One state cannot regulate the interest rates in another state. If the servicemember lives in Virginia, has a credit card from a company headquartered in New York, a mortgage from a bank with headquarters in Iowa and a car loan from New Jersey, how will he be protected with an interest rate cap in Virginia state law? They will not. All 50 states would have to enact identical legislation if all National Guard members were to receive equal protections around the country. This approach is neither practical nor necessary. Congress has the power to remedy the situation immediately and appropriately.

Because the SSCRA has not been revised since 1991, shortly after the beginning of the Gulf War, EANGUS is glad to see the revisions in H.R. 5111 which increases the dollar amount for rent for eviction protection. The current amount, $1,200 per month, needs to be adjusted to keep up with inflation. By changing this amount to $1,700, it would afford added protection to the families of military members whose income would be affected by military service.

EANGUS is also glad to see that leases for personal property were added. However, EANGUS recommends a new section be added which would allow the termination of a motor vehicle lease when called to active duty. Unlike the purchase or a contract to purchase a motor vehicle, which eventually becomes personal property, vehicle leases rent the *use* of that vehicle. If called to active duty, the lessee may not have the use of the vehicle for a long period of time and will still be required to make the payments on the lease. EANGUS believes that the servicemember should have the option to terminate a vehicle lease if called to active duty for a long period of time.

EANGUS also believes that the SSCRA should provide protections to individuals who are enrolled in colleges or institutions of higher learning who are involuntarily called to active duty. Currently, many colleges do not give credit or refunds to those involuntarily called to active duty. Over the years, many efforts have been made to get higher learning institutions to voluntarily provide relief to service members, and some, but not all, attempts have been successful. EANGUS believes that the current military commitments warrant federal protection.

The Army and Air National Guard are the United State's first line of defense against all enemies foreign or domestic. The men and women of the National Guard have volunteered to serve their country. They serve proudly and willingly. Your support in adding these provisions as well as amending the SSCRA of 1940 to include Title 32 active duty at the request of the President will send a very strong signal of support to our servicemembers who will be going into harm's way. It will alleviate some areas of concern; they will be less distracted and more secure knowing that their families will be protected while they are away.

EANGUS appreciates the dedication and commitment of the members of the Subcommittee in protecting, defending and restoring the benefits earned by those who have served our nation in peace and war. Thank you for the opportunity to submit testimony on behalf of our membership.

NMFA
National Military Family Association, Inc.
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The Voice for Military Families

Statement of

Lillie S. Cannon

Deputy Director, Government Relations

The National Military Family Association

Before the

SUBCOMMITTEE ON BENEFITS

Of the

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

July 24, 2002

Not for publication until
Released by the Committee

The National Military Family Association (NMFA) is the only national organization whose sole focus is the military family and whose goal is to educate family members about their rights and benefits and educate policymakers about the issues affecting those family members. Its mission is to serve the families of the seven Uniformed Services through education, information and advocacy.

Founded in 1969 as the National Military Wives Association, NMFA is a non-profit 501 (c)(3) primarily volunteer organization. NMFA today represents the interests of family members and the active duty, National Guard, Reserve and retired personnel of the seven Uniformed Services: Army, Navy, Air Force, Marine Corps, Coast Guard, U.S. Public Health Service and the National Oceanic and Atmospheric Administration (NOAA).

NMFA Representatives in military communities worldwide provide a direct link between military families and NMFA staff in the nation's capital. Representatives are the "eyes and ears" of NMFA, bringing local concerns to national attention.

NMFA receives no federal grants and has no federal contracts.

NMFA has been the recipient of the following awards:

- Defense Commissary Agency award for Outstanding Support As Customer Advocates (1993)
- Department of the Army Commander Award for Public Service (1988)
- Association of the United States Army Citation for Exceptional Service in Support of National Defense (1988)
- Military Impacted Schools Association "Champion for Children" award (1998)

Various members of NMFA's staff have also received personal awards for their support of military families.

NMFA's web site is located at http://www.nmfa.org.

Lillie S. Cannon

Deputy Director, Government Relations

Lillie has served as the Deputy Director, Government Relations for the National Military Family Association since July 2001. She is a retired Air Force Officer and the spouse of an active duty Army officer. Lillie monitors issues relevant to the quality of life of the families of the Uniformed Services and represents the Association at briefings and meetings with other organizations, Members of Congress and their staffs, and members of the Executive branch.

A North Carolina native, Lillie is a distinguished graduate from Air Force Reserve Officers' Training Corps Detachment 585, Duke University, and a graduate from North Carolina Central University, Durham, North Carolina. She received her undergraduate degree in Criminal Justice and Pre-Law. She has Master's degrees in Aviation Management and Abnormal Psychology. Although commissioned as an Aircraft Maintenance Officer, she has served in a variety of logistics assignments at the strategic, tactical, and operational level at various Air Force bases. In addition to maintenance and logistics assignments, she also held positions as a military instructor, foreign liaison instructor, strategic planner, acquisition officer, military liaison, chief of quality improvement and strategic development.

As the first female logistics/maintenance liaison officer in the Joint Military Assistance Group Korea, she was instrumental in the Korean Air Force's procurement of two major military weapon systems, the F-16 and C-130. She was also influential in numerous innovative programs for the Air Force directorate. Her major accomplishment was to develop the Strategic Planning Process and Quality Improvement Process for Air Combat Command.

Moreover, she developed inspection and training criteria for numerous military weapon systems. Lillie has been stationed at 10 locations in the United States and 4 overseas locations. She was the military training officer for the Iranian Air Force Maintenance Officers assigned to the United States. Her final assignment in the Air Force was as the Deputy Commander for Maintenance, 23 Fighter Group, Pope Air Force Base North Carolina. Lillie retired after 20 plus years in 2000 to spend time more with family and to pursue her other interests.

Lillie was the recipient of numerous Joint Military Air Force awards and decorations. Additionally, she was awarded the Army's Commanders Award for Public Service and the Department of the Army Outstanding Civilian Service Medal for her work with military families during unit deployments and hurricane disaster relief operations. She is the recipient of the Dr. Mary Walker Award and Molly Pritchard Award.

As an active duty officer and military spouse Lillie has dedicated her spare time to supporting military families as a volunteer. She has held numerous key positions on spouses' clubs, chapel boards, family readiness groups, PTA boards, booster clubs and advocacy committees. She has also worked as an instructor for Emory Riddle Aeronautical University and a Tax Preparer and Officer Supervisor for H&R Block Inc.

She is married to LTC Michael M. Cannon; they have two daughters and one granddaughter.

Mister Chairman and distinguished members of the House Veterans Affairs Subcommittee on Benefits, the National Military Family Association (NMFA) is honored to have the opportunity to present testimony on this vital legislation on behalf of military families.

For more than 60 years, the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940 has proven to be the bedrock of protections for military personnel and a key component of command legal readiness, especially for deployed and mobilized servicemembers from all components of the Uniformed Services. It is a significant law for servicemembers and their families, most importantly for Reserve Component (National Guard and Reserve) servicemembers called to active duty. It is obvious that considerable thought and hard work has been devoted to making an outstanding law even better. Accordingly, NMFA is pleased to extend its strong support for H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, and H.R. 5111, the Servicemembers' Civil Relief Act.

Today's extraordinary operations tempo, punctuated by more frequent deployments, forces military families to endure untold sacrifices, including enforced family separations, disruption of spousal employment and children's schooling and a seemingly never ending search for adequate housing. It is important to note that the profile of military families is changing from that which existed when the SSCRA was enacted and more particularly over the three decades that have elapsed since the advent of the All Volunteer Force.

Today approximately 57 percent of servicemembers are married with children. NMFA believes the important message we bring to you today is that because of the changing demographics of military members, there is a greater diversity of family structure, each with unique stresses and needs. These groups include married junior enlisted members, women, single parents, and those in joint military marriages. Additionally, the increasing reliance on the Reserve Components in our Nation's War on Terrorism and Homeland Defense requires a critical evaluation of the protections that exist for our servicemembers and their families.

The intent of the SSCRA is to postpone or suspend certain civil obligations of military personnel to allow them to give full attention to their military duties. NMFA appreciates the opportunity to provide its suggestions on how to strengthen further the protections incorporated in H.R. 4017 and H.R. 5111.

H.R. 4017: The Soldiers' and Sailors' Civil Relief Equity Act

As of July 10, 2002, 83,470 National Guard and Reserve members were on active duty in support our Nation's security. NMFA has been in regular contact with family support personnel and families over the past several months. One of their main concerns is being treated as equals to each other and to the active duty component. We have heard wonderful stores of families caring and supporting each other and how their leaders have attempted to ease the problems experienced by servicemembers and their families. We have also heard the frustrations and concerns expressed by these families, particularly the frustration of not being aware of the protections guaranteed them under the SSCRA.

NMFA believes H.R. 4017 will help eliminate a significant concern we have heard frequently from National Guard families in recent months. During "Operation Noble Eagle" National Guard personnel were called to active duty to provide security for commercial airports and bridges under the more limited conditions of Title 32. Although this category of Guard members receives some federal benefits, they do not presently enjoy the full protection of the SSCRA afforded to National Guard personnel called to active duty under Title 10, U.S.C. As a result, we heard of disparities between two military members serving side by side, one activated under Title 32, and the other under Title 10. The National Guard member mobilized under Title 10, for example, could seek a reduction in the interest rate for loans incurred prior to activation. The Guard member mobilized under Title 32 could only receive this reduction if authorized under his or her state's law and if the lending institution was also under that state's jurisdiction. Neither the servicemembers nor their respective family members could understand why there should be a difference in the protections and benefits available to them, but they knew they were somehow totally different. Not a great boost for morale!

The fact that some of these families were being subjected to military family life for the first time, and most were dealing with numerous deployment-related stresses, without the support of a military installation family support resource, only added to the level of frustration and concern. Even though there have been numerous pronouncements by the Office of the Secretary of Defense (OSD) and the Services about the fully integrated "total force" – active and Reserve Component personnel seamlessly molded together to carry out the mission – what NMFA hears from Guard families is that the "total force" concept has not been extended to them. NMFA believes H.R. 4017 would be one means of mitigating some of the disparity. This bill would ensure equitable protection for all members of the National Guard when called under Title 32 to active duty for a period of 30 days or more for a contingency operation, supported by federal funds and authorized by the President or the Secretary of Defense. Therefore, NMFA recommends that its provisions be incorporated into H.R. 5111.

H.R. 5111: The Servicemember's Civil Relief Act

The intent of H.R. 5111 is to restate, clarify, and revise the *Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940*. NMFA is pleased to offer our support for this legislation and offers the following comments and suggestions to strengthen its protections for service families.

NMFA applauds the provision that all persons in the military service and those entering military service should be provided, in writing, the benefits they are afforded by the SSCRA. We strongly believe this information should also be provided separately to the servicemember's spouse/ family and /or legal representative. With the changing demographics of the military population, we often find less traditional families. With more single parents or dual military couples who rely on grandparents, and/or friends to step in and care for their children when called to duty or deployed, it is imperative that the communication of benefits and protections afforded spouses also be communicated to those persons designated to care for a military dependent in the absence of the parents.

The military spouse or an individual designated by the servicemember, who has Power of Attorney and is responsible for legal and financial obligations that must be addressed in the servicemembers' absence, should be aware of the protections the servicemember is afforded by law. NMFA believes in order to ensure additional stress is not placed on the family, the spouse or designated legal representative should also be provided notice of the servicemember's benefits in writing. We have heard from parents whose military child has deployed and left them to take care of pending financial obligations. If the parent was unaware of the protections, in some cases they took on huge financial burdens to ensure their child's career was not adversely affected. To depend on the servicemember to ensure family members are informed of all the protections they are afforded would be a terrible error.

NMFA knows some families communicate daily and/or weekly to discuss financial obligations. If the spouse or designated representative were aware of the protections under the SSCRA, it would relieve some of the stress placed on the military member. Additionally, to totally rely on the availability of regular communication could be somewhat risky. Communication blackouts between the servicemember and their family or designated legal representative frequently occur in a wartime or deployment situation. Written provisions to all concerned will eliminate possible miscommunication and stress on the family and servicemember.

NMFA believes the highlights of H.R. 5111 include sections 108 and 109, which would provide a new and additional protection regarding future financial transactions and legal representation for the military member. We applaud the provisions stipulating that the application by a servicemember for a stay, postponement, or suspension shall not adversely affect the member's future financial liability. However, we believe this stipulation should also apply to the servicemember's spouse. The majority of all families' financial obligations are joint ventures and the spouse should not be held liable if the servicemember is deployed in support of our country's national security.

NMFA generally supports the reductions or stay of any judgment entered against the servicemember. Current law as written provides for the reduction of child or spousal support

if the call to duty has materially affected the servicemember's ability to pay; however, it does not allow the responsibility for payment to be eliminated. NMFA is concerned that provisions in H.R. 5111, as introduced, might enable a servicemember to vacate payment of child support or alimony. We support stipulations that child and spousal support cannot be vacated.

Sec 205 (b) allows actions against co-defendants who are not in military service. NMFA is concerned that the spouse could be included in this category. We support a modification to state that proceedings may only be stayed "when the servicemember provides the preponderance of the family's financial stability".

NMFA supports the provision in Section 304 (b) concerning the settlement of stay cases relating to personal property. This section stipulates that if a foreclosure occurs, the amount of the servicemember's equity payment would be paid to the member's dependent. Therefore, the spouse will not be left without a means to secure housing.

NMFA is pleased to note the improvement to eviction protections contained in H.R. 5111, which precludes evictions from premises occupied by servicemembers for which the monthly rent does not exceed $1,700. The SSCRA currently has a ceiling of $1,200.

We also applaud adding leases to the provision protecting servicemembers who, prior to entry into military service, have entered an installment contract for the purchase of real or personal property by prohibiting creditors without court action from terminating contracts and repossessing property for nonpayment or breach occurring prior to or during military service. Language has been needed in the SSCRA to deal with the rising popularity of auto leasing. It is our assumption that Section 302 would permit, for example, a Guard member, who has a two-year lease on a car, and gets orders for 179 days when he still has time left on the lease, to return the car and get out of the lease without penalty. If this is not correct, we urge the Subcommittee to modify Section 302 to make this protection explicit.

NMFA is particularly grateful for the expansion of the termination of real property leases provision to include a permanent change of station (PCS) move or a deployment order of 90 days. The SSCRA's current termination provision does not specifically include PCS moves or deployment orders. This change to the "military clause," which is often contained in leases signed by military members, has long been of concern to NMFA. NMFA supports this provision as it allows military members to relocate their families if financial, economic or other situations require the family to relocate when the member deploys. We are also pleased to note that dependents are afforded the same rights as servicemembers if their ability to comply with lease, contract, bailment, or other obligation is materially affected by reason of the servicemembers' military service.

NMFA welcomes the inclusion of protections regarding taxes on personal property to include all forms of property owned by either the servicemember or jointly by the servicemember and the servicemember's spouse. This would preclude servicemembers from having to title property solely in the servicemember's name to avoid taxation by a state where they live due to military orders.

NMFA supports the provision that prohibits a tax jurisdiction from using the military compensation of the non-resident servicemember to increase tax liability imposed on other income earned by the servicemembers or spouse.

The hardships military families experience when the servicemember is missing in action create not only an emotional strain on the family, but a financial one as well. The clarification of the treatment of servicemembers in missing status recognizes the potential burden the family will experience and extends protections and benefits until a definite determination has been made by a creditable authority. However, we would ask that the extension of the Power of Attorney when the servicemember is in a missing status be extended to non-family members. NMFA is aware of situations in which the servicemember

has placed his/her children in the custody of a friend and/or provided a friend with a Power of Attorney to act on the servicemember's behalf.

NMFA is very appreciative of the provision requiring reinstatement of the health insurance for both the servicemember and his/her family.

We thank this Subcommittee for your leadership and insight in making the Soldier's Sailor's Civil Relief Act of 1940 easier to understand by putting it in plain language. Military life has changed dramatically since 1940; the benefits and protections members and their families deserve must keep in step with the demands we place on them. The more mobile and transitory military requires more legal safeguards. Your actions will help to rebuild military members' and their families' trust and eliminate some of the stressors they experience. We ask that you remember that in time of war or a contingency, the readiness of our military member depends significantly on his/her assurance that their family is taken care of and provided for. Mission readiness is linked to servicemember readiness, which is tied to family readiness. Communication is the key to insure these links function in a positive manner. Military members and their families look to you for guidance and depend on you to provide protections for them while in the service of our country.

AMERICAN BAR ASSOCIATION

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STATEMENT OF AMERICAN BAR ASSOCIATION PRESIDENT

ROBERT E. HIRSHON

before the

SUBCOMMITTEE ON BENEFITS

of the

COMMITTEE ON VETERANS' AFFAIRS

of the

U.S. HOUSE OF REPRESENTATIVES

on the subject of the

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

July 25, 2002

Mr. Chairman and Members of the Subcommittee,

As President of the American Bar Association, I commend you for holding hearings on an issue of great importance to our men and women in uniform and their families--the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). We support provisions in the Servicemembers' Civil Relief Act (H.R. 5111) and the Soldiers' and Sailors' Civil Relief Equity Act (H.R. 4017) that would provide much-needed clarification and modernization of the SSCRA.

The ABA, which has over 400,000 members, has a history of partnering with the armed forces that dates back to the 1940s. For example, we successfully advocated for voluntary legal services for those in the military. We successfully lobbied for increased recognition and uniform procedural methods for the execution and recognition of military wills. And in response to the terrorist attacks of September 11th that claimed the lives of thousands of innocent Americans, we mobilized to provide legal assistance to reservists who have been called to active duty around the nation. Unfortunately, our homeland security is still at issue in this time of conflict. As a result, we must provide protections for our servicemembers who risk their lives everyday, in order to protect our nation.

There are approximately 1.4 million servicemembers and 80,000 reservists currently serving on active duty, many of whom have families. It is imperative to our homeland security that these brave men and women devote their full and undivided attention to their military duties. The Congressional intent behind the SSCRA in 1918 and today is to give our servicemembers peace of mind by granting special protections to their rights and property interests while they serve our country. Since 1918, the SSCRA has assisted servicemembers and reservists on active duty, and their families, by temporarily suspending or postponing civil proceedings (such as bankruptcy, foreclosure, civil lawsuits and divorce) that might prejudice their civil rights. The SSCRA ensures that a servicemember will not be at a disadvantage in defending a civil action due to his or her military service.

It is important to note that although this hearing is being held by the House Veterans' Affairs Committee's Subcommittee on Benefits, Congress enacted the SSCRA to provide protections for servicemembers, rather than benefits. While the SSCRA

suspends civil action until the servicemember's ability to answer or comply is no longer materially impaired by military service, it does not extinguish any liabilities or obligations that the servicemember may have.

National Guard

The SSCRA currently applies to any person in military service. Military service is defined as someone who is on active federal duty under Title 10 of the United States Code with any branch of service as well as any member of the reserves on active duty. In response to September 11th, many of those in the National Guard are performing important full-time functions such as airport and installation security pursuant to Section 502(f) of Title 32 of the United States Code. Currently, the SSCRA does not provide protections to such Guardsmen; however, the ABA supports the expansion of such protections because these men and women are performing important functions that warrant such recognition and protection.

Our position is consistent with Section 2 of H.R. 4017 that would extend SSCRA protections to Guardsmen called to active service for a period of more than 30 consecutive days pursuant to Section 502(f) of Title 32 of the United States Code. The ABA also recommends amending H.R. 5111, in order to achieve this same objective.

Rent Ceiling and Eviction

The SSCRA provides that if a servicemember is renting property for $1200 or less per month and those premises are used chiefly for dwelling purposes by the spouse, children, or other dependents of a person in military service, the landlord must obtain a court order to evict them. However, the court can allow the eviction if the court finds that the ability of the tenant to pay the agreed upon rent is not materially affected by reason of military service. In addition, the court may delay eviction proceedings for up to three months.

The $1,200 rent level has remained constant since 1991. Over the past several years, the cost of housing has increased significantly around the country. It is not uncommon for servicemembers to incur difficulty in securing affordable housing. In addition, a servicemember's termination of civilian employment salary and/or delay in receipt of military pay can negatively impact his or her financial situation as well as that

of his or her dependents. As a result, the SSCRA needs to address the reality of increased housing costs for servicemembers and their families, because the current level of $1,200 is inadequate.

The ABA recommends that the rent level in the SSCRA be raised to a realistic amount that takes into account the rising housing costs around the country. Section 301 of H.R. 5111 would provide that a landlord may not evict a servicemember or his or her dependents, absent a court order, during a period of military service for the servicemember from premises that: (1) are occupied or intended to be occupied primarily as a residence, and (2) for which the monthly rent does not exceed $1,700. Although, we support increasing the current rent level to $1,700, we also recognize that the issue is bound to resurface due to rising housing costs. In the meantime, servicemembers and their families are inconvenienced and disadvantaged as they wait for SSCRA's rent level to be amended. In order to resolve this issue, the ABA recommends amending Section 301 of H.R. 5111 to include an escalator provision or index that would reflect cost of living increases.

Stay of Proceedings

Pursuant to the SSCRA, a servicemember may request a stay of civil proceedings if his or her military service materially affects his or her ability to prosecute or defend an action. A stay is not automatic under such circumstances and a request for a stay is required. Unfortunately a request (usually a letter) for a stay by either the servicemember or his attorney may constitute an appearance. If the request constitutes an appearance, the servicemember may be prevented from reopening a default judgment at a later time, if the stay is denied and the member does not appear.

A problem arises when a servicemember receives notice of a pending action but is unable to make an appearance. It is not uncommon for servicemembers to contact the court to request a stay of proceedings pursuant to the SSCRA. Some courts have proceeded to judgment in the absence of the servicemember and have either: (1) concluded that the servicemember's military service did not materially affect his or her ability to participate even though he or she was absent; or (2) considered the absent

servicemember's request for a stay to constitute an appearance that deprived him or her of the right to later challenge the judgment as a de facto default judgment. Both results are contrary to the clear intent of the statute. As a result, when a stay request is sought, servicemembers are advised to ask their commanding officer to make such a request, including a copy of the servicemembers' orders.

The ABA believes that a petition for a stay of proceedings pursuant to the SSCRA should not be construed to be an "appearance" before a court for any purpose. We recommend that the SSCRA be amended to state that an application or petition for a stay of proceedings pursuant to the SCCRA should not constitute an appearance for any purpose.

Administrative Proceedings

Section 102 of H.R. 5111 would expand application of the SSCRA to include administrative agencies. This would be an important protection for servicemembers that is supported by the ABA, because it would suspend or postpone administrative proceedings, when a servicemember or reservist is serving on active duty.

Conclusion

In this time of conflict, Congress needs to take the initiative and enact emergency wartime provisions similar to what occurred in 1991. The revision of the SSCRA is an urgent issue that should be addressed as soon as possible. Congress has an important opportunity to rise to the occasion by modernizing and clarifying SSCRA, which has become outdated through the passage of 84 years and advancements in case law. Major John Wigmore, author of Wigmore on Evidence and original drafter of the 1918 SSCRA, observed before this Committee's predecessor, "You drop everything you have, drop all your relations and all your business affairs, and all the property you have, and we will take you, and maybe your life." Legislative action now will show our servicemembers and their families that this nation values their sacrifice and is behind them 100%.

On behalf of the ABA, I thank you for the opportunity to testify before you today. I look forward to answering any questions that you may have.

Testimony of

EUGENE R. FIDELL

Feldesman, Tucker, Leifer, Fidell & Bank, LLP
Washington, D.C.

Before the
Subcommittee on Benefits
of the
Committee on Veterans' Affairs
House of Representatives

on

H.R. 5111

Servicemembers' Civil Relief Act

July 25, 2002

Mr. Chairman and Members of the Subcommittee:

My name is Eugene R. Fidell. I am a partner in the Washington law firm of Feldesman, Tucker, Leifer, Fidell & Bank LLP, and have long been involved in issues relating to military service. I served on active duty in the United States Coast Guard from 1969 to 1972. I have testified in the past on proposed amendments to the Soldiers' and Sailors' Civil Relief Act of 1940. In addition, I was counsel in *Detweiler v. Peña*, 38 F.3d 591 (D.C. Cir. 1994), an important SSCRA case decided by the United States Court of Appeals for the District of Columbia Circuit.

I have appreciated the opportunity to study H.R. 5111, and I would like to compliment the Subcommittee for undertaking this effort. The Civil Relief Act has never been the kind of legislation that makes a lawyer's pulse quicken, but it remains terrifically important to military personnel. This is increasingly so given the tempo of military operations we are currently seeing and can, unfortunately, expect to see in the foreseeable future. Military personnel—both active duty and reservists called to active duty—have to have assurance that their affairs will not

become hopelessly tangled in their absence while protecting our Nation. In this regard, I hope the Subcommittee will give favorable consideration to another pending proposal, H.R. 4017, which would extend the protections of the Civil Relief Act to National Guard personnel called to active service for periods of 30 consecutive days or more. As we come increasingly to rely on the Guard, and if the Guard is to remain a competitive option for those of our fellow citizens who volunteer to help defend the Nation, this kind of equitable measure has to be put in place.

I hope that H.R. 5111 is reported out and passed in the form in which it was introduced, plus the equity provision to which I just referred. H.R. 5111 does what needs to be done, and it doesn't try to upset the balance that has been established in years past. Beyond this, I would also encourage the Subcommittee to continue to keep an eye on how this legislation works in practice. All too often, Congress launches a measure on the legal sea, and then may put it entirely out of mind until some crisis emerges. I certainly don't think Congress should be taking the Civil Relief Act's temperature every Monday and Thursday, but I hope this Subcommittee, at least, will retain a sense of ownership over the statute and keep an eye on its brainchild at suitable intervals.

Thank you again, Mr. Chairman, for the opportunity to present these remarks. As always, it is a pleasure to appear before a committee of this body. I would be happy to entertain any questions you might have.

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STATEMENT OF

JAMES M. MURPHY
Chairman & CEO

New England Realty Resources, Inc.

on behalf of the

Mortgage Bankers Association of America

before the

Subcommittee on Benefits

of the

Committee on Veterans' Affairs

U.S. House of Representatives

Hearing on
H.R. 5111, the "Servicemembers' Civil Relief Act"
and
H.R. 4017, the "Soldiers' and Sailors' Civil Relief Equity Act"

July 25, 2002

Mr. Chairman and Members of the Subcommittee, my name is James Murphy. I am the Chairman and CEO of New England Realty Resources, Inc. and appearing before you today in my capacity as Chairman of the Mortgage Bankers Association of America (MBA)[1].

MBA appreciates the opportunity to testify at these hearings on H.R. 5111, the "Servicemembers' Civil Relief Act" and H.R. 4017, the "Soldiers' and Sailors' Civil Relief Equity Act." These bills are intended to clarify existing provisions of the Soldiers' and Sailors' Civil Relief Act (SSCRA) and expand the protections offered to our Nation's armed servicemembers. We applaud these laudable objectives, and would like to offer our views on the planned changes, as well as the existing SSCRA framework.

At the outset, let me state that the mortgage banking community is extremely thankful to our country's military for their service and protection of the citizens of the United States and our way of life. There is no question that these brave men and women deserve special consideration and benefits for the risks they take to ensure our safety. The Soldiers' and Sailors' Civil Relief Act provides servicemembers with important protections against financial distress and economic hardships during their call to active duty. From the business side, however, our overarching concern with the current framework of SSCRA is with the disproportionate financial responsibility placed on the private lending sector to provide these benefits. The total size of the subsidy is significant and we believe it would be more aptly and appropriately funded by the federal government.

Summary of H.R. 4017 and H.R. 5111

Before going into specific comments, I would like to summarize the basic provisions of each bill.

H.R. 4017

H.R. 4017 expands the protections offered in SSCRA to members of the National Guard that are called for state duty, but who are paid with federal funds. The intended recipients of these benefits are members of the National Guard called to protect the country's airports as part of Homeland Security. The legislation is not intended to cover incidences where the National Guard is called to assist in a Presidentially declared disaster, such as a flood or hurricane.

We believe this is a fair and equitable bill as some members of the National Guard currently receive SSCRA protections, while others do not. Approximately 1,800 additional members of the National Guard would be assisted today by this change.

[1] MBA is a trade association representing approximately 2,600 members involved in all aspects of real estate finance. Our members include national and regional lenders, mortgage brokers, mortgage conduits, and service providers. MBA encompasses residential mortgage lenders, both single-family and multifamily, and commercial mortgage lenders.

H.R. 4017 or H.R. 5111, however, should assure some equality in the responsibility to absorb the cost of expanding the scope of the law. Fannie Mae and Freddie Mac are currently incurring this cost on loans they purchase or mortgage-backed securities (MBS) they guarantee even though not mandated to do so under SSCRA. We believe Ginnie Mae, as guarantor of its MBS and as a government agency, should bear the cost for VA and FHA loans pooled into MBS.

H.R. 5111 and the Interest Rate Ceiling

The stated goal of the sponsors of H.R. 5111 is threefold:

- to clarify the law by making SSCRA easier to understand by restating it in plain language;
- to improve the law by incorporating generally accepted procedural practices; and
- to adjust its provisions to reflect developments in American life since 1940.

We fully support these goals. We are certainly aware of the significant changes that have occurred in the mortgage markets over the last 60 years. An effort to modernize the Act in recognition of these market changes is a worthwhile endeavor.

As mortgage bankers, we are most profoundly affected by the Act's interest rate ceiling and thus will limit our testimony to Section 207 of H.R. 5111 (and H.R. 4017). As you are aware, SSCRA currently caps the maximum interest on servicemembers' obligations existing prior to entering into military service at 6 percent. The Act provides little guidance on the mechanics of applying the interest rate cap. H.R. 5111 is designed to resolve some of these issues. In particular, Section 207 of H.R. 5111:

1. Restates current law that provides a reduction in interest rates to 6 percent on obligations and liabilities entered into prior to military service;
2. Strengthens the Act by requiring that the interest rate differential between the note rate and the 6 percent cap be forgiven rather than postponed;
3. Requires the lender to adjust the periodic payment to reflect a reduction in the interest rate. Upon a borrower invoking SSCRA protections, a lender could not require the same periodic payment and merely apply more of the payment to principal;
4. Requires written notice to the creditor of the servicemember's call to active duty and a copy of the servicemember's orders; and

H.R. 5111 also restates certain provisions of the Act dealing with stays from eviction and foreclosure. While mortgage lenders are impacted by these stays, they are

affected to a much lesser extent because these events only occur when the borrower is experiencing a hardship and is unable to make his or her payments. The interest rate ceiling, conversely, is not predicated on a hardship. In fact, the only limitation imposed on receiving the subsidy is that the debt must be pre-existing to the servicemember's military service. Theoretically, a servicemember who receives both his or her civilian income and Reservist pay would still be eligible for the 6 percent interest cap despite the lack of financial hardship. While the Act does permit the lender to apply to a court to have the interest rate ceiling removed, such an option is costly, cumbersome and places lenders in an adversarial position with their customers.

Mortgage Lenders' Commitment to Servicemembers

Let me state that the mortgage industry is strongly committed to helping our military men and women. We continue to fully comply with the requirements of SSCRA. In fact, in some instances, our members have gone beyond the current requirements and lowered the interest rates of military personnel not covered by the Act. For example, we are aware that some lenders are currently granting relief to members of the National Guard called to duty by the state, despite the fact that they are not required to do so by law and are not reimbursed for this cost by Ginnie Mae.

As an industry we have made every effort to ensure that our Nation's servicemembers are notified of their rights. In response to Operation Enduring Freedom, MBA ran advertisements in the Washington Post, Navy Times, Air Force Times, Army Times and Marine Times. These advertisements were designed to alert military personnel that they may be eligible for an interest rate reduction and that they should contact their lenders to seek relief. We are committed to our borrowers and to preserving our customer relationships. We believe these extra steps underscore our commitment to assisting eligible servicemembers under SSCRA.

Need for a Federally Funded Program

Because it is the stated goal of the sponsors of H.R. 5111 to ensure that SSCRA reflects modern America, we believe it is appropriate and necessary for the Act to reflect significant developments in our financial markets since1942 and to recognize that as a result of these market changes, the Act has become a large subsidy program funded primarily by the private sector lending community. To the extent that Congress wishes to provide a broad benefits package to our country's military, the responsibility to fund such public policy is more appropriately placed with the federal government and all taxpayers that benefit from the protections offered by our military.

MBA estimates that under current SSCRA obligations, the private sector (mortgage lenders, Fannie Mae and Freddie Mac) and Ginnie Mae are absorbing approximately $2.6 million in interest rate losses a month, or $31 million a year. This is certainly not a small subsidy and could not have been the intention of the original drafters of the legislation.

The Act was originally passed in 1940, and subsequently amended in 1942 after the United States entered World War II. The 1942 Amendment included the interest rate provision that remains basically unchanged today. When the 1942 Amendment was passed, interest rates were lower than they are today. The FHA mortgage rate in 1942, for example, was 4 ½ percent--a rate 33 percent lower than the 6 percent cap. Given these facts, it is reasonable to assume that Congress in 1942 intended to conform the Act to the lending conditions of the time and did not intend to adversely affect the mortgage lending community. By contrast, the average interest rate today on outstanding mortgage obligations is 7 - 7¼ percent.

Implications of the Secondary Market and Securitization

One of the continuing issues of concern for mortgage lenders and servicers is who is responsible for absorbing the interest loss. Both the Act and H.R. 5111 remain silent on this point. However, due to a number of changes in the mortgage market and the birth of the secondary market, the current responsibility flows generally to the mortgage servicer. Since the original passage of SSCRA, there has been a virtual revolution in the mortgage finance system with the birth of the secondary mortgage market. The flow of mortgage capital has been completely altered as a result of securitization. The mortgage servicer, which historically received and retained the interest payments, is not necessarily the beneficial recipient of the interest payments today.

In the 1940s, the vast majority of mortgages were originated by savings and loans, banks and life insurance companies. These institutions held the loans in their portfolios and received monthly principal and interest payments from borrowers until their debts were repaid. The creation of the mortgage-backed security and development of the secondary mortgage market completely and forever altered the mortgage finance system and roles of mortgage lenders.

In the secondary market, mortgages are pooled into mortgage-backed securities and sold into the capital markets. The servicing rights to those mortgages are stripped from the loan as separate assets and can be either retained by the originator or sold to a non-affiliated servicer. Today, the vast majority of mortgage lenders no longer hold whole loans. Approximately 80 percent of all originations are sold into the secondary market. The majority of conventional conforming loans are sold to Fannie Mae and Freddie Mac or pooled for MBS. Loans insured by FHA or guaranteed by VA are pooled into Ginnie Mae securities. Jumbo and non-conforming credit loans are held in portfolio or sold to private investors and securitized as private-label MBS. The largest holders of residential MBS are institutions investors, such as mutual funds, pension funds, depository institutions, and life insurance companies.

The change in beneficial ownership of the loans is significant because mortgage originators and servicers are no longer necessarily the ultimate recipients of interest payments Mortgage companies, who originate the bulk of mortgages today, sell the vast majority of their originations into the secondary market. As a result, they merely

pass through interest received from the borrower to the securityholders. In exchange for performing this and other administrative functions, such as collecting monthly payments, administering escrow accounts, performing loss mitigation and foreclosures, the servicer receives a servicing fee. The normal servicing fee is 25 basis points or ¼ of 1 percent of the loan balance per year for Fannie Mae and Freddie Mac loans and 44 basis points a year for loans guaranteed by Ginnie Mae. On a $100,000 conventional loan, therefore, the mortgage servicer receives $250 a year. That figure does not recognize the expense to administer a loan, which averaged $79 per loan in 2001 according to MBA's Cost of Servicing Study.

The cost of SSCRA's interest rate subsidy on a typical loan far exceeds the servicing revenue earned for that loan. The cost to the servicer is not just a loss of the servicing fee. As a result of securitization arrangements with Fannie Mae, Freddie Mac and Ginnie Mae, servicers are generally required to remit *scheduled* principal and interest regardless of whether it is collected from the borrower. In turn, Fannie Mae, Freddie Mac and Ginnie Mae guarantee the ultimate holders of the securities that they will receive timely interest and principal regardless of whether the servicer remits the funds. These guarantors receive a guaranty fee for providing this credit enhancement. In sum, as a result of investor requirements, when a servicemember invokes the SSCRA interest cap, the mortgage servicer must still pass through the scheduled coupon rate despite receiving only 6 percent interest on the debt. The interest deferral results in a loss to the mortgage servicer if not reimbursed. To advance the scheduled interest to the investor, a servicer often has to borrow the funds.

Secondary Market Investors' Role in Absorbing Interest Losses

The imposition of the 6 percent cap on mortgage lenders and servicers can significantly impact the financial stability of individual companies. However, the risk to lenders today is significantly reduced because of the generosity of the secondary market players. Today, Fannie Mae, Freddie Mac, and Ginnie Mae, as guarantors of MBS, have all agreed to reimburse servicers for most of the interest deferential. We are extremely grateful to these entities for their financial assistance. They should be commended for their proactive efforts.

It is important to point out that even with the tremendous financial assistance of Fannie Mae, Freddie Mac and Ginnie Mae, mortgage servicers and issuers continue to incur significant costs to implement the interest rate cap in SSCRA. Mortgage lenders that retain loans in portfolio absorb the interest loss, as do some issuer/servicers of private-label MBS backed by jumbo loans, subprime loans, home equity loans and other non-conforming products. MBA estimates there are $1.435 trillion in non-conforming debt outstanding. Unfortunately, we are unable to determine what percentage of this number represents SSCRA eligible loans.

Also mortgage servicers incur the cost to carry interest rate advances to the investors as they await reimbursement (usually provided on a quarterly basis). Finally, mortgage servicers continue to absorb interest rate losses on SSCRA eligible loans that are not

approved by Ginnie Mae for reimbursement. Today, Ginnie Mae only reimburses servicers if the servicemember is on one of the following approved operations: Bosnia, Kosovo, S.W. Asia and Enduring Freedom. Servicers also absorb the cost of members of the National Guard protected by SSCRA pursuant to state law. Fannie Mae and Freddie Mac conversely reimburse for all SSCRA eligible loans and have gone beyond the requirements of SSCRA and extended the protections to these state-called members of the National Guard. It is important to state that our comments are not a criticism of Ginnie Mae; rather, they are an explanation of why the mortgage industry, as a whole, needs assistance from Congress.

Recommendations

As this Subcommittee deliberates H.R. 5111 and H.R. 4017, it is imperative that the Subcommittee addresses the issue of the interest rate ceiling. We recommend the following:

- First and foremost, the legislation should provide for the creation of a federal mortgage interest rate subsidy program that is funded by the federal government for use by eligible servicemembers. A government program would more equitably distribute the cost of providing these valuable benefits to all taxpayers who benefit from the activities of our military.

- To the extent that a government program is not funded, the legislation should increase the interest rate ceiling so that the subsidy offered in today's interest rate environment is comparable to that in 1942. In order to avoid the continuous need to amend the Act through various interest rate cycles, we suggest a margin over 10-year Treasury securities or other appropriate index. Our recommendation is consistent with the sponsors' objective to adjust triggering events to reflect today's economy. In particular, H.R. 5111 recognizes changes in the rental market by providing servicermembers with protections against eviction when monthly rental payments are $1,700 and below. Currently that trigger is set for rents of $1,200 or below. Adjustments to the Act should not be one-sided, but should reflect other relevant changes in the marketplace even if they benefit creditors.

- H.R. 4017 and H.R. 5111 should be amended to provide that Ginnie Mae will reimburse lenders for all eligible SSCRA loans that are pooled into Ginnie Mae MBS, including the additional members of the National Guard brought within the protections of SSCRA by H.R. 4017.

- Legislative safeguards should be enacted to prevent abuse of the protections afforded under SSCRA. For example, the Act should not encourage servicemembers to use SSCRA to avoid paying their debt obligations. Likewise, SSCRA should not encourage individuals to obtain market rate loans in anticipation of entering military service for the purpose of ensuring a below market rate loan for their entire military careers. It is our belief that

SSCRA was intended to provide temporary relief from economic distress while on active duty to fight a war. We do not believe it was designed as a means to fund a mortgage loan subsidy program. Although a lender can bring suit in a court of law to deny the 6 percent interest rate, the process discourages prosecution of abuse.

- The bills should provide for effective dates that are 90-days after the dates of enactment in order to allow sufficient time to communicate the changes to lenders, update systems and processes as necessary, and provide training to ensure compliance with the laws.

- While mortgage lenders and investors are currently forgiving the interest differential, we are concerned with H.R. 5111 codifying what we believe is a voluntary activity unless the federal government is willing to assist in defraying the cost.

Finally on a more technical note, we would like to comment on the more operational aspects of Section 207 of H.R. 5111:

- Section 207(a)(3) requires the lender to adjust the periodic payment to reflect any reduction in the interest rate. Under that provision, a lender would not be able to keep the current periodic payment and merely apply more of the payment to principal. Unfortunately, this provision could also be read to prevent a lender from applying more of the adjusted monthly payment to principal, which would necessarily result from the reamortization of the loan at 6 percent. Moreover, in the event that the servicemember voluntarily remits more than required, the lender should have the ability to apply the funds to principal, as is currently done. We believe this provision should be revisited because prepayment of principal accrues to the benefit of the borrower.

- Section 207(b)(1) requires the servicemember to provide a creditor with written notice and a copy of the military orders. The provision allows the borrower to submit this written request "not later than 180 days after the date of the servicemember's termination or release from military service." Such notice should be provided much earlier in the process so that the servicemember may benefit from the lower monthly payment while on activity duty and potentially faced with reduced pay.

* * * * *

MBA appreciates this opportunity to share our views on H.R. 5111 and H.R. 4017. The mortgage finance industry will continue to comply with the requirements of the Soldiers' and Sailors' Civil Relief Act today and in the future. However, we strongly believe that to the extent the federal government wants to provide an interest rate

subsidy to servicemembers, it should provide the funds to support such a program or improve the military pay to help cover housing expenses while on active duty.

We would be happy to furnish any additional information you may need.

Health Insurance Association of America

Testimony of

HENRY R. DESMARAIS, MD, MPA

Senior Vice President
Of Policy and Information

HEALTH INSURANCE ASSOCIATION OF AMERICA

On

H.R. 5111, the Servicemembers' Civil Relief Act and
H.R. 4017, the Soldiers' and Sailors Civil Relief Equity Act

Before the

Subcommittee on Benefits
House Committee on Veterans' Affairs

July 25, 2002

1201 F Street, NW - Suite 500, Washington, D.C. 20004-1204 202/824-1600

Introduction

Mr. Chairman, distinguished members of the Subcommittee, I am Henry R. Desmarais, Senior Vice President of Policy and Information for the Health Insurance Association of America (HIAA). HIAA is the nation's most prominent trade association representing the private health care system. Its nearly 300 members provide the full array of health insurance products, including medical expense, long-term care, dental, disability, and supplemental coverage to more than 100 million Americans.

We are grateful for your invitation to present our views regarding two pending bills. The first is H.R. 5111, the Servicemembers' Civil Relief Act sponsored by Mr. Smith of New Jersey. The second is H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act sponsored by Mr. Evans. H.R. 5111 is intended to restate, clarify and revise the Soldiers' and Sailors' Civil Relief Act of 1940. Health insurance reinstatement is among the issues addressed by both the existing statute and H.R. 5111. H.R. 4017 would have the effect of applying the provisions of the Soldiers' and Sailors' Relief Act, including health insurance reinstatement rights, to members of the National Guard called to active service for a period of more than 30 consecutive days if such service is prescribed by the Secretary of the Army or Air Force and is supported by federal funds for a contingency operation authorized by the President or Secretary of Defense. Both H.R. 5111 and H.R. 4017 cover a great deal of ground. However, my remarks today will be more narrowly focused on the health insurance-related implications of these bills.

Health Insurance Reinstatement

Section 704 of H.R. 5111 speaks to the issue of health insurance reinstatement. Under this provision, a servicemember, upon termination or release from military service, is entitled to reinstatement of any health insurance that was in effect on the day before such service commenced, and was terminated effective on a date during the period of such service. The same reinstatement rights would also apply to any other person who is covered by the insurance by reason of the coverage of the servicemember (e.g., a spouse, child, or other dependent). Further, such resinstatement of health insurance coverage cannot be subject to any exclusion or waiting period for a health or physical condition as long as all of the following conditions are met:

1. The health or physical condition arose before or during the period of military service.

2. An exclusion or a waiting period would not have been imposed for the condition during the period of coverage.

3. If the condition relates to the servicemember, the condition has not been determined to be a disability incurred or aggravated in the line of duty.

Finally, the reinstatement rights do not apply to a servicemember entitled to participate in employer-offered insurance benefits as a result of re-employment rights provided to returning servicemembers under current law. Except for minor changes in wording, all of these provisions are essentially identical to those now contained in the Soldiers' and Sailors' Civil Relief Act.

HIAA certainly agrees with the basic intent of the current health insurance re-instatement protections and, by extension, the similar provisions contained in section 704 of H.R. 5111. We do have a few technical comments, however.

First, the health insurance reinstatement rights clearly are triggered "upon termination or release" from military service. However, there is no statutory requirement that the servicemember exercise these rights within a prescribed period of time. We recommend amending the provision to limit the reinstatement rights to a defined period of time of no more than 90 days. This should give servicemembers an adequate amount of time to act, provide incentives for them to re-acquire their private health insurance coverage without delay, and help guard against the problem of adverse selection.

Such time-limited rights now apply in the case of other benefits provided upon separation from military service. For example, under the Continued Health Care Benefit Program, eligible individuals must apply within 60 days following the loss of entitlement to the Military Health System. Similarly, the Department of Veterans Affairs provides one-time dental care for veterans if they apply within 90 days after separation. Such time-limited rights also apply under non-military situations. For example, a Medicare beneficiary leaving a Medicare+Choice plan

under certain circumstances and returning to traditional Medicare coverage is given up to 63 days to enroll in a Medicare supplemental insurance policy on a guaranteed issue basis. Further, since the reinstatement rights in section 704 are triggered "upon termination or release" from military service, there will be a natural opportunity to fully inform each servicemember of their rights and any applicable timeframes or conditions for exercising those rights. For example, servicemembers, upon discharge or release, can receive informational brochures by the applicable branch of the military and/or appropriate counseling during exit-type interviews. In fact, as I understand it, this already occurs under the DoD Transition Assistance Program.

Second, the plain reading of current law and section 704 of H.R. 5111 is that any condition arising after separation from military service but before application for reinstatement of health insurance could be subject to an exclusion or waiting period. HIAA supports this. Among other things, it provides yet another incentive for prompt exercise of these reinstatement rights by the terminating servicemember.

Lastly, with specific regard to service-connected conditions, many if not most insurance contracts contain language that excludes coverage for injury or illness resulting from any war or act of war, or from service in the military. HIAA assumes that these clauses would continue to be valid under the provisions of H.R. 5111.

Mr. Chairman, I hope these comments are helpful. HIAA appreciates this opportunity to appear before the subcommittee, and we would be pleased to provide further technical assistance as your continue your consideration of H.R. 5111 and H.R. 4017.

STATEMENT BY

LTC William B. Loper, US Army, Retired

Director of Government Affairs

ASSOCIATION OF THE UNITED STATES ARMY

SUBMITTED TO

COMMITTEE ON VETERANS AFFAIRS

Subcommittee on Benefits

HOUSE OF REPRESENTATIVES

107TH CONGRESS

concerning

HR 5111 and HR 4017

25 July 2002

Biography of Lieutenant Colonel William B. Loper, USA, (Ret)

Director, Government Affairs, Association of the United States Army

Bill Loper assumed duties at Director of Government Affairs at AUSA in June 2001 after having served as the Assistant Director since October 1996. As director, he monitors the activities of Congress and ensures that AUSA has a voice in the deliberations of issues that directly affect the Army and the Association's members.

Bill was born in Washington, DC and is a graduate of Georgetown University's School of Foreign Service. He also has a Master of Arts degree in personnel management from Central Michigan University. His military education includes the Infantry Officer Basic and Advanced Courses and the Command and General Staff College.

He retired from the Army in October 1996 as a lieutenant colonel after 25 years of service. While on active duty he served as an information officer for the US Army Recruiting Command and the US Army Training and Doctrine Command. While assigned to the 25th Infantry Division, he was an adjutant, the assistant secretary of the general staff and chief of the enlisted records branch. He served as a personnel advisor to a reserve command and later, as a personnel management officer and an assignment officer in the Army Personnel Command. Selected as an Army Congressional Fellow, he worked for one year in the office of Senator John Warner (R-VA) and then served as the assistant executive officer and executive officer for the Chief of Army Legislative Liaison. His final position on active duty was as Deputy Chief of the Army's Senate Liaison Division.

His military awards and decorations include the Legion of Merit, Meritorious Service Medal, Joint Service Commendation Medal, and Army Commendation Medal as well as the Parachute Badge and the Army General Staff Identification Badge.

He is married to the former Ann Rendleman of Greensboro, North Carolina and they are the parents of three children Kathryn (6), Meredith (4), and William Preston (1).

Neither LTC Loper nor the Association of the United States Army has received any federal grants or contracts relative to the subject matter of this testimony during the current or previous two fiscal years.

Mr. Chairman and Members of the Subcommittee:

On behalf of the 100,000 members of the Association of the United States Army (AUSA), thank you for the opportunity to present our Association's views concerning HR 4017, The Soldiers' and Sailors' Civil Relief Equity Act and HR 5111, The Servicemembers' Civil Relief Act.

The Association of the United States Army is a diverse organization representing Army personnel on active duty, in the Army National Guard, in the Army Reserve, Department of the Army civilians, retirees and family members. AUSA wishes to commend the Subcommittee for its leadership in keeping the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) relevant to the new realities of our "post-9/11" world. With more than 80,000 National Guard and Reserve personnel on active duty in both homeland security and overseas operations-related missions, and clear indications that Reserve Component personnel will shoulder an ever-increasing share of the defense burden in the future, it is essential that the provisions of the SSCRA be reviewed and made applicable to the type of service required of today's Reserve Component personnel.

HR 4017 is a perfect example of legislation that is needed in the face of today's new realities. The majority of National Guard soldiers and airmen called to active duty to secure airports, nuclear facilities, border crossings and other sites were called under the provisions of Title 32 by their governors at the request of the President. The SSCRA as it is currently written, does not provide coverage to them, but covers personnel called up under Title 10. The result can be that some Guard personnel from the same state performing similar missions have SSCRA protections and some do not. HR 4017 clearly delineates the criteria under which a Title 32-activated Guard member would be covered by SSCRA. AUSA wholeheartedly endorses the enactment of HR 4017.

AUSA is pleased to see that HR 5111 has been introduced to revise the SSCRA. It is important that the SSCRA is seen by servicemembers as being

up-to-date and capable of protecting them from undue economic burdens when they are called to protect our nation.

AUSA is pleased that in Section 301 of the bill the rental rate ceiling is increased from $1200 to $1700. However, AUSA recommends that in lieu of a set amount, the bill provide for an automatic periodic or annual adjustment to the maximum monthly rent for which the coverage applies, based on a Federal standard for tracking average monthly rental rates across the nation.

AUSA suggests that in Title III of the bill, an additional section be added to authorize the termination of motor vehicle leases for personnel who are called to active duty for a period of time not less than 90 days. Authorization of termination would preclude the servicemember from losing the use of the vehicle for an extended period but being liable for lease payments nonetheless.

AUSA further suggests that consideration be given to including in the SSCRA, provisions which would protect servicemembers who are called to active duty while enrolled to attend college or university classes. While there have been many successful efforts to enjoin institutions of higher learning to voluntarily provide tuition credits or refunds, protection under the provisions of SSCRA would remove uncertainty from those servicemembers who wish to pursue higher education while also serving in the Armed Forces.

AUSA is pleased to note the inclusion of Section 703, Professional Liability Protection. The protections afforded by inclusion of this section will help recruit and keep physicians, dentists and attorneys serving in our Armed Forces.

In conclusion, the Association of the United States Army appreciates and supports the work of the Subcommittee and its staff to update, clarify and improve the provisions of the SSCRA and to amend the SSCRA in accordance with HR 4017. Your tireless efforts to ensure protection of the

rights and interests of servicemembers are critical to military morale and readiness.

Thank you for the opportunity to submit testimony on behalf of the members of the Association of the United States Army, their families, and today's soldiers who are tomorrow's veterans.

Non Commissioned Officers Association of the United States of America
610 Madison St. • Alexandria, VA 22314 • Telephone: (703) 549-0311

STATEMENT OF THE

NON COMMISSIONED OFFICERS ASSOCIATION
OF THE UNITED STATES OF AMERICA (NCOA)

BEFORE THE

SUBCOMMITTEE ON BENEFITS

COMMITTEE ON VETERANS AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

PRESENTED BY:

KIMBERLEE D. VOCKEL
Director of Legislative Affairs

JULY 25, 2002

H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT
H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT

Chartered by the United States Congress

BIOGRAPHY FOR
KIMBERLEE D. VOCKEL
DIRECTOR OF LEGISLATIVE AFFAIRS

As Director of Legislative Affairs for the Non Commissioned Officers Association, Mrs. Vockel is responsible for directing and managing the legislative activities of the congressionally chartered and accredited military and veterans' service organization. She is responsible for a wide range of compensation, benefits, and quality-of-life issues pertaining to the active, retired, National Guard, and reserve military communities and their families, as well as veterans, their dependents, and survivors. She is NCOA's representative for legislative issues in The Military Coalition (TMC). She currently serves on the following Coalition committees: Health Care, Veterans Affairs (Co-chair), Personnel/Compensation/Commissaries, and Membership/Nominations. She also represents NCOA on the Virginia Military/Absentee Voting Task Force and the TRICARE for Life (TFL) Working Level Panel.

A summa cum laude graduate from George Mason University, Mrs. Vockel joined the staff of the Non Commissioned Officers Association's National Capital Office in May 2001. She is the first woman, as well as the first military spouse, to hold this position at the NCOA. She received her Bachelor's Degree with highest honors and distinction in Government and International Politics and a minor in Philosophy. Mrs. Vockel is currently working on her Master's Degree in Legislative Affairs from The George Washington University.

Prior to joining the NCOA, Mrs. Vockel worked as a Legislative Correspondent/Press Intern in the United States Senate assisting in the research of various issues.

Mrs. Vockel is married to Air Force MSgt. James P. Vockel of Traverse City, Michigan. They currently reside in Woodbridge, VA.

DISCLOSURE OF FEDERAL GRANTS AND CONTRACTS

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

EXECUTIVE SUMMARY

RECOMMENDATIONS FOR CHANGES TO THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

National Guard Duty

NCOA recommends that this Subcommittee include H.R. 4017 in its final version of H.R. 5111, the Servicemembers' Civil Relief Act.

Residence for Tax Purposes

NCOA recommends that this Subcommittee remove the word "solely" from Sec. 511(a) to prevent the Courts from looking to other factors besides military orders to define a servicemember's residence and domicile, and that this Subcommittee give credence to, in the law, the Servicemember's voluntary filing of a "State of Legal Residence Certificate."

NCOA further recommends that this Subcommittee ensure that home ownership cannot be considered a factor that will count against servicemembers when determining residence and domicile.

The decision on where to maintain domicile and residence should remain under the control of the servicemember, not the states.

NCOA fully supports the revisions to the Soldiers' and Sailors' Civil Relief Act as proposed in H.R. 5111.

INTRODUCTION

Mr. Chairman and distinguished members of this Subcommittee, on behalf of the Non Commissioned Officers Association (NCOA), which represents active duty, reserve component, retired, and veteran enlisted servicemembers and their families, I would like to express our sincere appreciation for the opportunity to present the Association's views on issues surrounding H.R. 5111, the Servicemembers' Civil Relief Act and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act.

H.R. 4017, THE SOLDIERS' AND SAILORS' CIVIL RELIEF EQUITY ACT

Congress' intentions with the Soldiers' and Sailors Civil Relief Act (SSCRA) are clearly stated in the statute:

> In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States...to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation... (50 U.S.C. Appx. §510)

The Reserve Components, composed of the Reserves and National Guard, are currently providing invaluable support for anti-terrorism and homeland security missions as an integral part of their respective branches of military service. National Guard members have dutifully answered the call to "expedite the national defense under the emergent conditions..." but they have not been granted the same protections intended to be provided under the SSCRA.

Because of the nature of the National Guard, members can be called to active duty under either Title 10 or Title 32. Under Title 10, activated Guardsmen receive some protections and benefits, but under Title 32 they have very few federal benefits and are not protected under the SSCRA. There is no doubt that members of the National Guard, just like their active duty counterparts, endure financial hardships as a result of their duty; therefore, they should be afforded the same coverage under the SSCRA as their active duty counterparts. In support and recognition of the Total Force Policy, members of the National Guard should be included in SSCRA protections when fighting next to their active duty comrades.

H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, provides equity for all members of the National Guard, who have been called to active service under Title 32 for more than 30 consecutive days in support of a federally funded contingency operation authorized by the President or Secretary of Defense.

NCOA RECOMMENDS
That this Subcommittee include H.R. 4017 in its final version of H.R. 5111, the Servicemembers' Civil Relief Act.

H.R. 5111, THE SERVICEMEMBERS' CIVIL RELIEF ACT

H.R. 5111, the Servicemembers' Civil Relief Act, is a restatement, clarification, and revision of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). While NCOA supports the proposed revisions SSCRA, the Association has several recommendations for further revisions to the law concerning residence for tax purposes

RESIDENCE FOR TAX PURPOSES

Sec. 511 of H.R. 5111 makes some very significant changes to the "residence" provision of the SSCRA, which will clarify several issues that have arisen as a result of states' past applications of this provision, most namely Sec. 511 (d) which prohibits a tax jurisdiction from computing military compensation of a nonresident servicemember in its calculation of taxes owed by the spouse of the servicemember. NCOA strongly supports maintaining this provision to prevent spouses from being overtaxed because of the servicemembers'

nonresident status in a state. While NCOA supports the other revisions of the "Residence for Tax Purposes" section, the Association would like to address several issues that have arisen in recent years that require further revisions to this section

Several court decisions have brought to light the need for Congress to define what constitutes "residence" and "domicile." In 2000, the Minnesota Federal District Court decided the case of *United States v Minnesota* (97 F. Supp. 2d 973, D. Minn. 2000), which addressed the issue of tax protections for servicemembers as nonresidents in a state. In trying to determine if the income of twelve Public Health Service (PHS) Officers who were stationed in Minnesota but claimed domicile elsewhere, the Court decided that the fact that the SSCRA specifies that residency cannot be presumed solely based on military orders did not preclude them from considering other factors to determine if a servicemember is indeed a resident of the state.

The District Court decided that four factors can be used to determine a servicemember's residence and domicile for tax purposes: (1) location of his home regardless of whether it was owned or rented, (2) the state that issued his driver's license, (3) the state that registered his automobile, and (4) whether or not the servicemember engages in civic clubs. It is common for a servicemember to seek off-base housing when moved to a new duty station. It is also common for servicemembers, as responsible, caring citizens, to engage in civic activities to better their communities. This test, if allowed to be applied to servicemembers, would deter servicemembers from contributing to and improving their temporary communities because civic involvement would count against them. It would also directly damage those servicemembers living off-base during their tour of duty outside of their state of residence. It is commonplace, and recommended, for servicemembers to buy, instead of rent, a home when they transfer to a new location on military orders. Because of the frequent moves servicemembers are required to make, the purchase of a home is typically a better investment than renting. However, the following two court cases have further endangered a servicemember's right to voluntarily choose his/her state of residence.

The first case, *Wolff v Baldwin* (9 N.J. Tax 11, N.J. Tax Ct. 1986), further exemplifies the need for Congress to clarify its intent concerning residence and domicile in the SSCRA. In *Wolff*, the New Jersey Tax Court held that "by executing and filing a homestead rebate form, plaintiff and his wife assert that they are citizens and residents of this state. 'Citizen' and 'resident' has been defined as domicile under [New Jersey law]". The Plaintiff, Mr. Wolff used his parents' Pennsylvania address as "home of record," maintained a Pennsylvania driver's license, voted by absentee ballot in Pennsylvania, and paid local Philadelphia school taxes. Regardless of Mr. Wolff's clear desire to be a resident of Pennsylvania, the Tax Court found his filing of a homestead rebate form sufficient to involuntarily change his residence to New Jersey.

The second case again shows how a servicemember's residency can be damaged by buying a home when on military orders in a state other than the one he/she desires to keep as his/her residence and domicile. The Maryland Tax Court held in *Envall v Comptroller of the Treasury* (No. 1128, 1982 WL 1763, MD T.C. 1982) that the domicile of Mr. Envall, who maintained a driver's license and vehicle registration in Nevada but voted and purchased a home in Maryland, was in Maryland instead of Nevada.

Both of these cases show that clarification of "residence" and "domicile" is needed in the SSCRA for servicemembers to not be punished for making the best of their available finances while on active duty.

The Department of Defense already has a mechanism to identify a servicemember's intended "residence" and "domicile," the State of Legal Residence Certificate. The Department should also have criterion in place to validate a servicemember's declaration. A servicemember's filing of this document is a voluntary and active effort to declare his/her intentions of returning to a particular state upon separation from military service. There are other actions that a servicemember may take, out of convenience or necessity of his/her situation, that could be misconstrued by a state as expressing an intent to declare that state as his/her domicile (i.e., obtaining a driver's license in that state as opposed to renewing by mail his/her license in their "declared" state, which may not have a photograph attached). Congress should make it clear in the SSCRA that a servicemember's filing of a "State of Legal Residence Certificate" in conjunction with at

least one other action to establish a connection with that state should be honored by all other states, regardless of other actions he/she may take. The decision on where to maintain domicile and residence should remain under the control of the servicemember, not the states.

NCOA RECOMMENDS

That this Subcommittee remove the word "solely" from Sec. 511(a) to prevent the Courts from looking to other factors besides military orders to define a servicemember's residence and domicile, and that this Subcommittee give credence to, in the law, the Servicemember's voluntary filing of a "State of Legal Residence Certificate."

NCOA further recommends that this Subcommittee ensure that home ownership cannot be considered a factor that will count against servicemembers when determining residence and domicile.

CONCLUSION

Mr. Chairman, distinguished members of the Subcommittee, thank you for this opportunity to present NCOA's views on H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act, and H.R. 5111, the Servicemembers' Civil Relief Act. This effort to modify the 1940 law is timely and appropriate, and NCOA looks forward to further assisting this Subcommittee, as well as the full Committee, in making this law properly address the needs of the men and women serving in the Armed Services and their families.

STATEMENT
OF THE
NATIONAL GUARD ASSOCIATION OF THE UNITED STATES (NGAUS)

ON THE

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

PROVIDED TO THE
HOUSE VETERANS' AFFAIRS COMMITTEE
SUBCOMMITTEE ON BENEFITS

PRESENTED BY
MR. JAMES P. TIERNEY
DEPUTY DIRECTOR OF LEGISLATIVE PROGRAMS

RECOMMENDATIONS OF THE
NATIONAL GUARD ASSOCIATION OF THE UNITED STATES
to the
House Veterans Affairs' Subcommittee on Benefits

The National Guard Association of the United States (NGAUS) represents the officers of the National Guard throughout the 54 states, territories and the District of Columbia. The NGAUS was created in 1878 for the purpose of providing united National Guard representation before Congress. In the first constructive meeting of officers from the North and South after Reconstruction, the organizational meeting of the NGAUS had the goal of obtaining better equipment, standardized training and a more combat-ready force by petitioning Congress for resources. Today, well over a century later, the NGAUS has the same mission

Our goal is to maintain the freedom and security of this nation by guaranteeing a strong national defense through the provision of a vital dynamic National Guard as a part of the Total Force.

THE NATIONAL GUARD – HEAVILY ENGAGED

The National Guard Association of the United States applauds the efforts of the subcommittee for these hearings to provide input and recommendations for improving protections for the men and women of the armed forces under the Soldiers' and Sailors' Civil Relief Act.

In today's high demand military environment, the integration of the active, National Guard and reserve components has been a success. The National Guard is deeply engaged across the spectrum in support of Operations Noble Eagle and Enduring Freedom. The National Guard is present in Afghanistan, Guantanamo Bay and across the country providing force protection to military installations, and supporting the United States Immigration and Naturalization Service (USINS), Border Patrol (USBP) and the Customs Service (USCS) along the northern and southern border.

In addition to that, however, many thousands more have been called to active duty under the command and control of their governors. Recently, the National Guard completed its mission supporting the Federal Aviation Administration by providing interim security in our nation's airports. This successful mission was created and authorized by the President and was properly executed through the governors. In addition, over 4,000 members of the National Guard from several states bolstered security at the Winter Olympics in Salt Lake City. However, the thousands of volunteer soldiers were not protected by the safety net of the Soldiers' and Sailors' Civil Relief Act.

CALLING UP THE GUARD

Mobilization of the National Guard is dependent upon the mission requirements. The three distinct legal authorities available to mobilize the National Guard provide an important tool for the Governors and the Department of Defense. United States Code (USC) Title 10, often referred to as active duty, is federal active duty under command and control of the President of the United States. USC Title 32 is federally funded active duty "in the service of the United States", but where command and control remains with the Governors and Adjutants General. The third authority, state active duty, allows the Governor to utilize the National Guard with state funding for state specific events. Under the current SSCRA, only those soldiers mobilized under Title 10 are protected under the SSCRA.

Unfortunately, many times, US Code Title 32 and state active duty are confused. Soldiers and airmen called to federal active duty "in the service of the United States" under Title 32 receive federal pay and allowances, federal benefits and other federal protections such as the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Protecting our men and women while they serve defending the nation is the responsibility of the federal government.

Currently, National Guardsmen are performing identical missions across the country, but are not receiving the same protections. The growing sentiment is that those soldiers and airmen who protect our bridges, airports, and even the Olympics, are not as important as those who have been called to perform the same type of functions at federal installations.

STATE AND FEDERAL RELATIONS REGARDING SSCRA

According to a recent informal poll conducted by the Office of the Secretary of Defense, 18 states have enacted state protections for members of the National Guard. While there is a definite need for states to enact legislation that provides civil protections when the governors call up the National Guard in a state active duty status, they are limited by the powers provided to the Congress under Article 1 Section 8 Clause 3, the "commerce clause".

One of the provisions of SSCRA is a 6% cap of interest rates on credit cards, loans and mortgages. The Supreme Court ruled in *Marquette National Bank v. First of Omaha Corp.* (1978), that the interest rate a national bank may charge is governed by federal law, thereby prohibiting the states from regulating those rates across state lines. Under this ruling, any state version of SSCRA would be prohibited from providing one of the most beneficial protections to Guardsmen who utilize national banks.

Additionally, many members of the National Guard travel substantial distances between their duty stations and their home. It is not uncommon for a soldier or airman who reside in one state, and are members of the National Guard in a different state.

Any state version of SSCRA unfortunately would be restricted in its ability to provide civil protections those service members who travel across state lines for duty.

The SSCRA is in need of review and modernization. More than a decade has elapsed since the Congress made enhancements to ensure the protections are relevant.

The National Guard Association strongly urges this committee and the Congress to support changes to the SSCRA to include members of the National Guard called to duty "in the service of the United States" under Title 32.

The NGAUS also supports the efforts to increase the monthly rent eviction protection and urges the committee to adopt a scaled increase approach for the cap.

CONCLUSION

Today, members of the National Guard have been mobilized across the country protecting our skies, airports, nuclear power plants, bridges, the Olympics and the borders of our nation. Never before in American history has the dual mission capability of the National Guard merged so effectively to provide the nation, state and community a cost-effective, highly competent force.

Upon returning from operations where Guardsmen serve alongside the active component, senior members of the Department of Defense, general officers, and members of Congress talk about how impressed they are with the National Guard: Impressed with how well the total force concept is being applied across the services; and how they cannot differentiate between a member of the National Guard or the active component. But there is a difference, however, it is not visible.

This increased reliance upon National Guard units, its members and their families requires that equitable protections and benefits be provided; similar to those we serve alongside.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 23 2002

Honorable Mike Simpson
Chairman
Subcommittee on Benefits
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of the Interior appreciates the opportunity to present its views on H.R. 5111, the "Servicemembers' Civil Relief Act" and H.R. 4017, the "Soldiers' and Sailors' Civil Relief Equity Act." I submit this letter for the official record of the Subcommittee's hearings of July 24 and July 25, 2002.

Although both H.R. 5111, the "Servicemembers' Civil Relief Act," and H.R. 4017, the "Soldiers' and Sailors' Civil Relief Equity Act," would revise or amend the Soldiers' and Sailors' Relief Act of 1940, as amended (1940 law), only those sections of Title V of H.R. 5111 which concern public lands and resources are applicable to the Department of the Interior. Our comments are limited to those sections.

The Soldiers' and Sailors' Relief Act of 1940, as amended, exempts individuals on active-duty military service from compliance with certain laws, generally because the service member's absence from home makes compliance impracticable. As to laws administered by the Department of the Interior, the 1940 law [50 U.S.C. App. sec. 561-565] grants an active-duty service member waivers of certain requirements as to occupancy and improvement of public lands and suspends certain requirements of the mining and mineral leasing laws during the period of active duty and for six months thereafter.

The Department of the Interior supports the public lands provisions in Title V of H.R. 5111. The provisions are substantially similar to the 1940 law, which the Department of the Interior has been implementing for over one-half century. In addition, Title V of H.R. 5111 eliminates obsolete sections of the 1940 law concerning homestead entries (the Homestead Act was repealed by the Federal Land Policy and Management Act of 1976).

The Department of the Interior appreciates the Subcommittee's consideration of its views.

Sincerely,

Tom Fulton for

Rebecca W. Watson
Assistant Secretary for
Land and Minerals Management

STATEMENT FOR THE RECORD OF

ANTHONY J. PRINCIPI

SECRETARY OF VETERANS AFFAIRS

PRESENTED TO THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON BENEFITS

JULY 24-25, 2002

Thank you for the opportunity to present the views of the Department of Veterans Affairs (VA) on H.R. 4017 and H.R. 5111, 107th Congress. Both bills would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). The former bill would expand the coverage of the SSCRA to include additional service personnel, while the latter bill would effect a comprehensive revision and restatement of the Act.

On June 25, 2002, we provided the Committee with VA's views on H.R. 4017. We stated that, because the protections afforded by the SSCRA are based on military service, we were deferring to the Department of Defense (DoD) on this bill. Our decision to defer to DoD concerning H.R. 4017 has not changed.

Similarly, the Government agency with primary interest in H.R. 5111 is DoD. Accordingly, we are deferring to DoD regarding H.R. 5111, except as to those aspects of the bill discussed below.

The one aspect of the SSCRA that VA is charged with administering is the protection of life insurance policies provided by the Act. The original intent of the SSCRA with regard to life insurance was to provide individuals summoned to active duty a guarantee that their commercial life insurance coverage would not

lapse for nonpayment of premiums during service. While this provision, which provides protection for up to $10,000 of coverage under certain types of policies, was of greater significance during the 1940s and 1950s, it has become less of a benefit for those serving in the Armed Forces today and has been little used by service personnel. This is probably because the amounts of insurance and types of coverage, including the availability of coverage up to $250,000 under the Servicemembers' Group Life Insurance (SGLI) program, have expanded over the years, while the protection provided by the SSCRA has not been modified to reflect these changes.

We generally support the proposed revision of the life insurance protections of the SSCRA contemplated by Title IV of H.R. 5111, which would greatly enhance the insurance protection available to active duty personnel. We believe that many servicemembers could benefit from the insurance protection provisions of the bill, particularly the proposed increase in the amount of life insurance that may be guaranteed and the proposed expansion of the types of life insurance policies that are eligible for protection. We also applaud the effort to draft the bill in plain language. We do, however, have several concerns of a technical nature with regard to Title IV of the bill and believe it could be improved in the following areas:

- Section 401(1) This provision refers to an insurance policy under which the insurer may not increase the premium if the insured is in military service. The bill should clarify whether a scheduled increase in a term insurance premium due to age is considered an increase referred to in section 401(1). We also note that VA regulations implementing the SSCRA currently exclude group life insurance from protection under that statute. 38 C.F.R. § 7.3. Congress may wish to clarify whether it intends to include group insurance within the coverage of the insurance protection provisions. The bill should also add some clarification as to the extent of

the premium guaranty provided for a universal life policy. The bill is not clear as to whether the entire premium (which includes an investment portion) is guaranteed or if the protection is limited to only the portion of the premium that provides pure insurance.

- 402(a) Under this provision, the life insurance protection of the SSCRA could be requested by the insured, the insured's designee, or *the insured's beneficiary*. Most other SSCRA provisions require the servicemember to personally request protection. While the SSCRA currently permits life insurance protection to be requested by the servicemember's designee or by the servicemember's beneficiary when the insured is deployed outside the continental United States, H.R. 5111 would also permit an application by a beneficiary when the insured is deployed in the United States. We question whether it is desirable to require VA to provide premium protection based on a beneficiary's request that the servicemember may know nothing about. The servicemember may become obligated to repay any money VA expends to keep the policy in place. Further, as the insured may generally choose to change his or her beneficiary at any time, he or she may end up paying for insurance protection that was requested by someone other than the ultimate beneficiary of the policy. We believe the better course is to require that the protections afforded under Title IV be requested by the servicemember.

- Section 403(c) This provision, which is titled "NOTICE TO THE SECRETARY BY THE INSURED," requires not the insured, but rather the *insurer*, to furnish a report to VA concerning the policy in question upon receipt of the application of the insured. The heading of this provision should be revised to match the text of the provision.

- Section 407(a)(2) This provision would require the United States, upon expiration of insurance protection under the SSCRA, to reimburse the insurer for unpaid premiums in the amount of the difference between the amount of premiums due and the cash surrender value of the policy. The nature of the guarantee is unclear in the case of term insurance, which has no cash surrender value. Further, under section 101 of the bill, the protections of the SSCRA are provided during a period beginning on a servicemember's entry on military service and ending on the date of release from military service. This would appear to encompass a servicemember's entire active duty career and to apply to all servicemembers, not just those called to duty for a particular conflict. This would mean that, for purposes of the insurance protection provisions, VA could be obligated to provide protection for the full military career of every active duty servicemember. We think a more reasonable approach would be for the protections to be afforded for a specified period for which a servicemember has been called to active duty.

- Section 409 Under section 409, VA's decisions regarding life insurance protection would be subject to review by the Board of Veterans' Appeals (BVA) and the Court of Appeals for Veterans Claims (CAVC). Under 38 U.S.C. § 7104(a), the BVA has jurisdiction over any matter "which under section 511(a) of [title 38] is subject to decision by the Secretary." Section 511(a) refers to "questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans." Life insurance protection under the SSCRA does not directly affect the provision of benefits by the Secretary to veterans or their dependents. It affects benefits and protections provided to active members of the Armed Forces. If the contemplated review of life insurance protections is adopted, conforming changes should be made to title 38 to clarify the

scope of the BVA's jurisdiction. Also, the current language of section 409 does not appear to provide exclusive jurisdiction in the BVA and the CAVC over such matters. We recommend that Congress make its intentions clear in this regard.

As concerns the VA housing loan programs, the provisions of the existing SSCRA concerning interest rates, default judgments, termination of mortgages, and similar issues have a marginal impact on VA-guaranteed loan holders, and also on VA with respect to loans held in our portfolio. We are not aware that any loan holders in the VA housing loan programs have encountered significant problems as a result of these important protections granted to persons in military service. We do not anticipate that the amendments proposed by H.R. 5111 would have any significant additional impact on the VA housing loan programs.

H.R. 5111 would provide a mechanism whereby a servicemember could seek a stay of a judicial *or administrative* proceeding due to the servicemember's unavailability by reason of military service. This expansion of SSCRA stay protections to include administrative as well as judicial proceedings could affect persons who return to active duty while they have a claim for benefits pending before VA. We do not contemplate that requests to stay VA proceedings while servicemembers are on active duty will have an appreciable effect on VA operations.

The budgetary impact of the expansion of insurance protection contemplated by H.R. 5111 will depend on the number of servicemembers who are called to active duty in the future, the number who choose to take advantage of the insurance protection provisions, and whether the expanded protection will apply to group life insurance policies. VA estimates that the benefit cost of enactment of H.R. 5111 would be $186,000 annually for every 10,000 personnel

called to active duty. VA estimates that administrative costs of the insurance protection provisions would total $67,000 in fiscal year (FY) 2003, $359,000 over the five-year period FY 2003-2007, and $788,000 over the ten-year period FY 2003-2012.

Statement of

America's Community Bankers

on

H.R. 5111, the Servicemembers' Civil Relief Act

and

H.R 4017, the Soldiers' and Sailors' Civil Relief Equity Act

before the

Subcommittee on Benefits

of the

Committee on Veterans' Affairs

of the

U.S. House of Representatives

Submitted

August 9, 2002

America's Community Bankers
Washington, DC

America's Community Bankers (ACB)[1] is pleased to submit this statement for the record on proposed legislation to amend the Soldiers' and Sailors' Civil Relief Act. ACB strongly supports the purposes of the Act and commends the committee for its efforts to update its provisions.

During the weeks after last September 11, 2002 ACB took several steps to assist our member banks' efforts to comply with the Act. We included a special supplement in our weekly newsletter of September 17, 2001 to reminded them of its key provisions, including the protections against default judgments, foreclosure, and the six percent maximum rate on existing loans. On September 20, ACB's president and CEO issued a statement that emphasized that "America's Community Bankers and its 1,200 members across the country are committed to supporting – and working with – all of the brave men and women defending our nation. Community bankers want to ensure that newly inducted service members and reservists called to active duty understand that assistance is available under the law." In the following weeks, ACB staff responded to numerous inquiries from our members about their responsibilities under the Act. Just three weeks after September 11th, the Act's requirements were a featured topic at our National Compliance Conference. Our national convention, held in November of 2002, also offered a session on compliance with the Act.

The committee is considering two bills to amend the Act, the Servicemembers' Civil Relief Act (H.R. 5111) and the Soldiers' and Sailors' Civil Relief Equity Act (H.R. 4017). H.R. 5111 would completely rewrite the Act to clarify the language; incorporate practices that lenders and others have generally followed; and update it in light of changes in the economy since it was last amended in 1942. H.R. 4017 would extend the benefits of the Act to National Guard personnel who are called up at the behest of the Federal Government.

ACB believes the original Act and these amendments appropriately respond to the needs of those unexpectedly called into active duty in times of national emergency. Like all Americans, we are grateful for their sacrifice and believe that those who bear a disproportionate share of the sacrifice and risk should be granted relief.

However, ACB recommends that the Committee make a more thorough examination of changes in the financial marketplace, recognizing that the Act has not been amended in 60 years. We also question whether individual lenders should bear the cost of the relief that the Act provides. ACB believes that the costs of the Soldiers' and Sailors' Civil Relief Act's interest-rate reductions should be paid by society at large, through the federal government.

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[1] ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

Soldiers' and Sailors' Civil Relief Equity Act (H.R. 4017)

ACB supports H.R. 4017. It would ensure uniform treatment of National Guard personnel who are called up by their states at the request of the federal government. We understand that those called up last year were not covered by the Act because they were not called up directly by the federal government, but by their state governors. However, the federal government has paid the costs of these call ups and determined the duties the Guard would carry out. The procedures used in this case – having the governors make the call ups, but having the federal government pay the costs and direct the activity – were employed to satisfy a legal technicality. It was not done to skirt the Act's protections and should not be used to deny Guard personnel the rights available to others called up last fall.

As a matter of fact, many lenders have voluntarily extended the benefits of the Act to the Guard personnel, while others were protected by comparable state laws. Given the national nature of last year's call ups and the mobile nature of our society, it makes sense to cover all Guard personnel with uniform federal protections when they are called up at the behest of the federal government.

Servicemembers' Civil Relief Act (H.R. 5111)

ACB supports the intent of H.R. 5111, which is to update the Soldiers' and Sailors' Civil Relief Act. Congress has frequently updated the laws governing the nation's financial structure to reflect changes in the marketplace. As recently in 1999 it passed landmark financial modernization legislation, the Gramm-Leach-Bliley Act, to adjust to structural changes in financial firms and consumer needs. This is just one of many significant changes in our nation's financial laws that Congress has enacted in recent decades.

In light of these frequent adjustments to the nation's financial laws, it is remarkable that the SSCRA has not been updated since 1942. ACB strongly urges the Committee to more fully review the effects of the Act in light of changes in the marketplace and to consult more broadly with groups that represent the broad spectrum of financial companies.

The Act was last amended in an era in which consumers and homebuyers had relatively limited access to consumer and mortgage credit. Today, most consumers carry personal debt to finance automobiles and use credit cards extensively. Our nation's homeownership rate is the highest in the world and rising. This means that individuals called into service are likely to have some obligations affected by the Act.

The Act was also enacted in an era of low and stable interest rates. Since that time, we have endured both periods of rapid inflation and high interest rates as well as low inflation and low interest rates. Our current economic volatility should remind us that our current low-interest-rate environment could change.

Finally, the Act was passed before the development of an active secondary market for many types of loans. In 1942, local lenders made loans and kept them on their books, collecting principal and interest as it came due. Today, home lenders especially, but other lenders as well, sell loans to investors. The original lenders may retain the responsibility to collect payments and pass them on to the investors, or they may sell these servicing rights to another party. This process helps local lenders replenish their funds so they can make additional loans to consumers.

For this system to work properly, loan servicers must make timely payments to investors. If a service member takes advantage of the Act to lower the interest rate on a loan, it is the original lender or company that is servicing the loan that must, at least in the first instance, make up the difference between the amount it receives and what it must pay the investor. In the case of home mortgages sold to investors through government-sponsored enterprises (GSEs) like Freddie Mac and Fannie Mae, the GSEs eventually cover the shortfalls. Nevertheless, ultimate investors in mortgage-backed securities are paid in full.

ACB urges the Committee to take these substantial changes in the financial markets into account as it redrafts the Act.

From the lenders' point of view, the key provision of the Act is the six percent cap on interest rates. When Congress set the six percent cap in 1942, the Federal Housing Administration interest rate was 4.5 percent. In 2002, current mortgage rates range from just over six percent to higher levels, depending on various factors, especially the borrower's credit history. Of course, other consumer rates, such as those on auto and credit card loans are higher. All types of lenders have had to absorb costs imposed by the Act.

It is unlikely that Congress anticipated these higher rates, so it is unlikely that it intended the average lender to bear the costs of the six percent cap. Rather, the cap may have been intended more as a sort of usury ceiling, not a general subsidy for service members.

Nevertheless, as the Act was implemented since 1942, the cap has served as a way to accommodate service members' decreased income. This now appears to be an accepted purpose of the Act. The question then becomes, who should bear the cost, individual lenders and loan servicers, or some other entity. ACB believes that lenders, particularly small community banks, should not bear all of the cost of complying with the six percent cap. We recommend that Congress provide for a federal reimbursement to lenders for the costs they bear.

Another key question is what is the best way to administer a reimbursement program. Rather than burden the Defense Department with yet another administrative duty during an emergency call up, ACB recommends that Congress permit lenders to apply for a tax credit to offset their costs. The burden on the banks to calculate their costs would be the same, but they could be folded into their tax preparation process. This

would avoid requiring DoD and the nation's banks to develop costly liaison systems. However, institutions that are not required to pay taxes, such as credit unions, should be consulted to determine how they could participate in a reimbursement program.

If the federal government is to bear the cost of the interest-rate cap, the Act could set the rate at whatever rate it deems appropriate. However, Congress may want to consider alternative approaches suggested by ACB members. One recommended tying the rate to the rate on 10-year Treasury securities. Prime home mortgage rates are generally between 1.5 and 2 percentage points above this rate. Another alternative would be to reduce the borrowers' note rate by a set amount, say one percentage point.

Each of these approaches has advantages and disadvantages, but both recognize that a flat rate set by statute is not realistic. During the hearing, Subcommittee Chairman Simpson indicated that the rent cap should be indexed. ACB believes that this same principle should be adopted for the interest rate cap, regardless of whether lenders or the government subsidizes the decreased rate.

Even if lenders continue to bear the cost, ACB members we contacted agree with the provision in the bill that continues current practice of reducing payments rather than applying now-excess payments to principal. The purpose of the Act is to provide immediate relief, not to provide benefits possibly long after the service member has returned to civilian life. We also agree with the provision in H.R. 5111 that unpaid interest be forgiven after a service member returns to civilian life.

Any benefits under the Act depend on the service member's application. Therefore, ACB supports the provision in H.R. 5111 that requires the Defense Department to notify service members that they may have certain rights under the Act. We are sympathetic with the Department's concern that the provision might require them to overload service members with too much detail. This often happens to our customers under various consumer protection statutes. However, ACB believes that a brief, clearly written, disclosure of rights under the Servicemembers' Civil Relief Act could be useful.

Conclusion

In summary, ACB supports H.R. 4017, extending the benefits of the Soldiers' and Sailors' Civil Relief Act to National Guard personnel called up at the behest of the federal government. That would provide fair and uniform benefits to people called out of civilian life in times of national emergencies.

ACB also supports the Committee's effort to update the Act, as provided in H.R. 5111. All financial regulatory laws do require Congressional review from time to time. We believe that the bill should be amended further to recognize changes in the marketplace, including the increased access to credit, the development of the secondary loan marketplace, and potentially volatile interest rates. Finally, ACB recommends that the Committee amend H.R. 5111 to require that the federal government, rather than individual lenders, bear the costs of any interest rate limitations.

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Daniel A. Mica
President & CEO

August 9, 2002

The Honorable Mike Simpson
Chairman, Benefits Subcommittee
Veterans' Affairs Committee
U.S. House of Representatives
337 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Simpson:

The Credit Union National Association (CUNA) appreciates the opportunity to present its views on H.R. 5111, legislation to amend the Soldiers' and Sailors' Civil Relief Act (SSCRA). With its network of affiliated state credit union leagues, CUNA serves more than 90% of America's 10,200 credit unions, which are owned by more than 80 million consumer members.

Credit unions, as financial cooperatives, are organized, owned and controlled by their members. They are chartered to serve their members' financial needs, and strive to be responsive to the financial concerns of all members, including active duty servicemembers and their dependents. Credit unions have always supported their military servicemembers and strongly believe that those faced with reduced financial circumstances are entitled to protection under the SSCRA.

Nevertheless, credit unions have encountered a number of issues in their efforts to comply with the SSCRA. Whenever many troops are called to active duty, CUNA's regulatory compliance department receives a flood of phone calls from credit unions. Credit unions are always looking for guidance, and have found very little in the way of interpretive materials. It was our hope that a revised SSCRA would provide broad rulemaking authority to either the Treasury Department, or to the Department of Defense, working in concert with the federal financial institution regulators. Less detail in the statute combined with a comprehensive regulation would be far more useful to all who must comply with the Act on an ongoing basis.

AMERICA'S
CREDIT UNIONS

Apart from regulatory guidance, the number one concern credit unions have expressed has to do with the rigidity of the six percent interest rate limitation on debts incurred prior to active military service. Section 207 of the bill retains this limitation, although much has changed since 1940. Credit unions are sympathetic to the financial difficulties faced by active duty servicemembers. However, many credit unions have endured substantial administrative expenses and foregone interest as a result of their compliance with the SSCRA's six percent interest rate cap. As a possible solution, we suggest that the interest rate cap be adjusted according to a market index, such as the one-year Treasury bill rate, plus a differential set by the statute.

This change would allow the adjusted interest rate to reflect the economic conditions at the time the individual is called to active duty.

In addition, many credit unions are concerned that some servicemembers who have the ability to repay their debts are unjustly enriched by the six percent rate cap. Credit unions want to lend a helping hand to servicemembers who are truly "materially affected" by their active duty status. However, credit unions are compelled to apply the rate cap automatically, and can only find relief by taking the servicemember to court, Section 207(c).

Besides avoiding the financial impact of paying court costs, credit unions do not want to appear unsympathetic to their members in the U.S. military. However, as financial cooperatives, credit unions must also serve the needs of their other members. Therefore, it would be helpful if credit unions could use the member's rank as well as other information on file to make a preliminary decision regarding material effect without a court's intervention. If challenged by the servicemember, then the credit union could apply to the court for relief.

Credit unions are also concerned with the way "military service" is defined. Section 101(2)(A) of H.R. 5111 states that "military service" means "active duty, as that term is defined in section 101(d)(1) of title 10 of the United States Code." Section 101(d)(1) of the U.S. Code defines "'active duty" as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance at a military service school. Credit unions have suggested that the term military service be limited to "active duty for a period of more than 30 days," as defined in Section 101(d)(2) of the U.S. Code. For purposes of extending the statute of limitations (Section 206), reducing interest rates (Section 207), and for anticipatory relief (Section 701), credit unions have commented that their cost of administering relief for short term periods undoubtedly greatly exceeds the financial benefits to the servicemember.

Lastly, Section 207(b)(1) of the bill requires the servicemember to notify the creditor and provide a copy of military orders not later than 180 days after the date of the servicemember's termination or release from military service. The new section is helpful in that it requires the servicemember to actually provide his or her orders to the credit union in order for the reduced interest rate to apply. However, the timing will likely create administrative problems for credit unions which will be required to retroactively adjust interest and loan payments several months or even years after the servicemember is released from military service.

In fact, one has to ask why the adjustment needs to be made at all if the member was financially able to pay the debt at the contract rate while on active duty. It would be more logical for credit unions to receive notice within a short time period after the servicemember receives orders to report for duty, and after the servicemember is released from service. That way, creditors will know exactly when to adjust the rate to comply with the SSCRA, and when to return it to the original contract rate.

On behalf of our member credit unions, CUNA appreciates the opportunity to provide our views on this important legislation. Should the Committee require any additional information, please feel free to contact Gary Kohn, Vice President of CUNA Legislative Affairs and Senior Legislative Counsel.

Sincerely,

Daniel A. Mica
President and CEO

Thank you for your consideration!

STATEMENT OF
BRIAN E. LAWRENCE
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 25, 2002

Mr. Chairman and Members of the Subcommittee:

On behalf of the Disabled American Veterans (DAV), I am pleased to testify on the effectiveness of the Transition Assistance Program (TAP) and the Disabled Transition Assistance Program (DTAP).

The transition from military service to civilian life is, for most veterans, a period of stress, excitement, and uncertainty. Years of structured routine and job security end abruptly on the day of discharge from the military and are replaced by an enormous array of decisions regarding career options. The TAP and the DTAP were created to help guide veterans through the labyrinth of job market information and secure meaningful civilian careers.

The DAV is pleased with the overall effectiveness of TAP/DTAP. Since 1990, hundreds of thousands of veterans have benefited from TAP/DTAP counseling and assistance in identifying and obtaining educational and employment opportunities. TAP and DTAP programs provide an obvious benefit to veterans and their families, but they also provide a less tangible benefit to the entire national economy. With shorter time spent in the transitory process, veterans more quickly become contributors to the gross national product and drain fewer resources through utilization of unemployment benefits.

Despite the benefits associated with TAP/DTAP, Department of Veterans Affairs (VA) data indicate that approximately forty percent of veterans leave military service without attending pre-separation counseling. Prior to April of this year, not all military units provided adequate opportunities to attend TAP/DTAP programs. However, section 302 of Public Law 107-103, the "Veterans Education and Benefits Expansion Act of 2001" which was enacted in December 2001, ensures all active duty service members shall have the opportunity to attend TAP/DTAP within a reasonable period preceding their anticipated date of retirement or discharge from active duty. The DAV expects that this provision will increase the percentage of military personnel who attend TAP/DTAP. We wish to express our thanks to the Subcommittee for its foresight and action in including this provision in Public Law 107-103.

The Department of Defense (DOD), the Department of Labor (DOL), and VA must make concerted efforts to ensure military units and discharge facilities adhere to established policy, such as the attendance provision in Public Law 107-103. Standard procedures for the handling of important documents, such as DD-214s and service medical records, should also be established and enforced. Title 10, United States Code, section 1142(c), stipulates that in the case of a member being medically separated or retired under chapter 61, the member's service medical records are transmitted to the Secretary of Veterans Affairs within 60 days of separation or retirement. Though it is not currently required, service medical records should also be transferred to the VA in cases where the member is receiving a regular discharge or retirement, but plans to file a VA claim for service-connected disabilities subsequent to release from active duty. Problems have been encountered where the discharge facility is required to transfer service medical records to the National Records Processing Center, despite the veteran's preference that his or her records be transferred to VA. In such instances, significant delay is added to the already lengthy VA claims process unless the veteran is able to obtain copies of the records prior to discharge.

The simplest solution to both problems concerning VA disability claims delays and military document/record protocol is to expand the Benefits Delivery at Discharge (BDD) program to all discharge facilities. Started as a pilot program in 1994, BDD is a cooperative effort between DOD and VA to provide a physical examination that satisfies both VA and DOD

purposes. Previous procedures required two separate examinations conducted several months apart. The first was a DOD examination prior to discharge, followed by a secondary VA exam for disability compensation claims. BDD improves service for separating service members by eliminating lengthy delays in claims decisions, avoids redundant and unnecessary physical examinations, and improves the quality of exams. BDD takes pressure off overly burdened VA Regional Offices (VAROs) that already face tremendous backlog problems, and reduces frustration among veterans. With BDD, veterans receive disability ratings soon after discharge rather than waiting a year or more for a decision from the VARO. Such expediency also allows them to begin potential vocational rehabilitative training without delay. Rating decisions adjudicated via the BDD program are more accurate and appealed much less frequently than those processed via regular claims procedures.

The greatest problem with BDD is that it is not available at all military facilities. Sailors separating from active duty at 32nd Street Naval Station in San Diego, California, have no access to BDD. They must wait months for determinations on disability claims, while only 32 miles to the north, Marines at Camp Pendleton receive benefits at discharge. No viable reason exists for such disparity in service. The final report on the BDD (then called Separation Examination Test) was published in 1997 and distributed to all field stations. The report concluded that BDD should be expanded to all military services. The DAV strongly recommends that BDD funding be sufficient so that it is available to every person retiring or separating from active duty, and that veterans service organizations (VSOs) be permitted to participate at all BDD facilities.

In 2001, the DAV created the Transition Service Program (TSP) solely for the purpose of providing service and counseling to members separating from BDD facilities. Transition Service Officers provide information regarding VA benefits, review service medical records, and assist with the filing of VA claims for disability and education benefits. Services provided by Transition Service Officers relieve responsibility from VA and DOD personnel and increase their workforce capabilities. Still, VSO participation at certain facilities has been discouraged and, in some cases, denied completely. Along with expanding BDD to all military facilities, VSO participation should be allowed and encouraged.

As previously stated, no disparity should exist between discharge facilities concerning the level of service and information provided. However, because TAP/DTAP is conducted at such a large number of facilities, variations in the length and scope of the programs abound. Some facilities host weeklong TAP/DTAP programs with mock employment interviews and extensive counseling, while other programs are only one-day general information seminars. TAP/DTAP should be standard at all facilities. Several bases have excellent programs, such as Camp Pendleton, that should be used as a model for other facilities hosting TAP/DTAP.

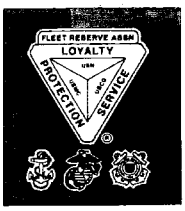
In addition to bolstering and lengthening inadequate programs, all TAP/DTAP programs should be enhanced to include information regarding certification and licensing requirements in civilian occupations, and information identifying military occupations that have civilian counterparts. TAP/DTAP seminars are perhaps the best opportunity to inform members of the credentialing barriers they may face, and provide information that can help them overcome such barriers such as Federal programs to assist military personnel in acquiring licenses required for civilian employment.

TAP/DTAP is also an ideal opportunity to recruit individuals for Federal employment. The DAV is pleased to learn that the Office of Personnel Management (OPM) is taking steps in this direction. OPM officials have begun attending TAP/DTAP programs on a limited basis. We encourage OPM to expand their role in TAP/DTAP. Their participation is beneficial to separating members as well as to Federal agencies that require dependable personnel who have established favorable work traits, and who can easily pass security background checks.

Continuation of the TAP and DTAP programs is essential to easing some of the problems associated with transition from military to civilian life. Thousands of DAV clients have expressed satisfaction with transition assistance; however, more extensive information regarding the effectiveness of the program should be obtained. Service members who have attended TAP/DTAP should be contacted after they have had the opportunity to evaluate its effectiveness in acquiring employment.

The DAV sincerely appreciates the Subcommittee's interest in improving the TAP/DTAP. On behalf of our 1.2 million members, I thank you for the opportunity to present our views on this important topic. Clearly, the DAV's mission to improve the lives of disabled veterans is shared by the Subcommittee. We appreciate your efforts and look forward to working together on future issues.

This concludes my testimony. I will be glad to answer any questions.



FLEET RESERVE ASSOCIATION

Representing All Enlisted Personnel of the
U.S. NAVY ☆ MARINE CORPS ☆ U.S. COAST GUARD

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22 July 2002

The Honorable Mike Simpson
Chairman, Veterans Affairs Benefits Subcommittee
United States House of Representatives
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Washington, D.C. 20510-2403
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Dear Mr. Chairman:

The 140,000 members of the Fleet Reserve Association (FRA), appreciate the opportunity to comment on The Service Members' Civil Relief Act (H.R. 5111).

The Association traditionally endorses legislation that enhances the legal and financial protections of service members and salutes the distinguished Subcommittee for amending the Soldiers' and Sailors' Relief Act of 1940. The objective of making the SSCRA easier to understand and more reflective of American life today is admirable.

The Association believes that any legislation to improve the SSCRA must be cognizant of the current needs facing Active Duty and Reserve forces. The need for enhanced Homeland Security has significantly increased the use of the Reserves and certain protections must be established to ensure that these forces are afforded lease and mortgage protections when they are activated for limited contingency operations.

In addition, changes must include revisions of rental property and personal lease programs that are reflective of current market values. An increase in rent levels to qualify for eviction protection from $1,200 per month to $1,700 is a step in the right direction. The Committee may want to consider an automatic mechanism that adjusts to increases in average costs for rental properties, preventing the need to periodically revise these protection levels.

The FRA also acknowledges the need for professional liability protection. Individuals who are self employed and maintain private practices incur serious financial consequences as a result of long or extended military mobilization. The ability to ensure the continuation of these businesses after such deployments, guarantees the livelihood of the Reservists who sacrifice civilian interests to serve our Nation.

Your consideration of the Associations' views is appreciated.

Sincerely,

JOE BARNES
DIRECTOR, LEGISLATIVE PROGRAMS

JB:ggc:teg

NMVA

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July 19, 2002

The Honorable Mike Simpson
Subcommittee on Benefits
Committee on Veterans Affairs
United States House of Representatives
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Simpson

The National Military Veterans Alliance [NMVA], a group of 25 military and veterans associations with a combined membership of over 3 and a half million members, strongly support the enactment into law of bills HR 4017, the "Soldiers' and Sailors' Civil Relief Act" and HR 5111, the "Servicemembers' Civil Relief Act."

We support HR 4017 because it will ensure that all categories of National Guard personnel called to **federally funded**, active duty will be afforded the complete protection of the Soldiers' and Sailors' Civil Relief Act of 1940 [SSCRA]. Presently only those Guard persons called to active duty under the provisions of title 10, United States Code, receive this benefit. Bill 4017 will extend the same full coverage of protection to those Guard members called to active duty for a contingency operation authorized by the President or the Secretary of Defense, under the provisions of title 32,United States Code. The MNVA views this action as a matter of equity and is very timely given the many new military missions the reserve components are now participating in.

Bill HR 5111 is a very detailed, welcome effort to clarify and revise the basic 62 year old Soldiers' and Sailors' Civil Relief Act of 1940. The MNVA very much appreciates all the long hours and all the technical staff work required to make bill HR 5111 so much easier to understand. We also concur in the several changes that clearly reflect today's military society and culture.

Sincerely,

Charles C. Partridge
Legislative Counsel
National Association for Uniformed Services

Marshall Hanson
Director of Legislation
Naval Reserve Association

"Representing the Total Force"

NMVE

American Military Retirees Association
American Military Society
American Retiree Association
American World War II Orphans Network
AMVETS National Headquarters
Catholic War Veterans
Class Act Group
Gold Star Wives of America
Korean War Veterans Foundation
Legion of Valor
Military Order of the Purple Heart
Military Order of the World Wars
National Association for Uniformed Services
National Gulf War Resource Center
Naval Enlisted Reserve Association
Naval Reserve Association
Society of Medical Consultants to the Armed Forces
Society of Military Widows
The Retired Enlisted Association
TREA Senior Citizens League
Tragedy Assistance Program for Survivors
Uniformed Services Disabled Retirees
Veterans of Foreign Wars
Vietnam Veterans of America
Women in Search of Equity

THE RETIRED OFFICERS ASSOCIATION

STATEMENT FOR THE RECORD

On

H.R. 5111, the Servicemembers' Civil Relief Act
H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act

Submitted to the

SUBCOMMITTEE ON BENEFITS
HOUSE VETERANS' AFFAIRS COMMITTEE

July 25, 2002

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The Retired Officers Association

The Retired Officers Association (TROA) is pleased to submit its views on H.R. 5111, the Servicemembers' Civil Relief Act and H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act. Representing 386,000 members, TROA is the nation's largest military officers association and the fourth-largest veterans organization.

In one way or another, the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, affects every single member of the uniformed services. TROA commends the Subcommittee for its leadership in modernizing and making improvements to this vital public law, which for decades has protected the interests of military personnel during times and under circumstances when they could not protect themselves. In this "post-September 11" world, it is essential to our military readiness that servicemembers and their families have the confidence that the SSCRA will shield them from undue economic burdens as they protect and defend all of our citizens.

TROA's specific recommendations on the proposed legislation are informed by two realities of service in today's armed forces. First, in contrast to the population for which the original SSCRA was enacted in 1940, today's force has a substantial number of married servicemembers, all of whom are volunteers. Second, the nation relies more than ever on the capabilities and dedication of the National Guard and Reserve forces under the total force policy.

Because many servicemembers are married and many have dependents, certain provisions of H.R. 5111 should be modified to extend appropriate coverage to these family members. Further, Guard and Reserve servicemembers "cycle" back and forth between reserve status and active duty during their careers. Legislation to improve the SSCRA must be responsive to the needs of these servicemembers during these vulnerable periods of transition. Continuity of coverage, especially with regard to health insurance and economic relief, is most desirable.

H.R. 5111, The Servicemembers' Civil Relief Act.

Section 101. Definitions.

Subsection 101 (2) Military Service. TROA recommends inserting "or section 101 (d) (2)" after "section 101 (d) (1)" in Subsection (A). The language in "section 101 (d) (2)" of Title 10 defines the "Duty Status" of National Guard and Reserve servicemembers called to active duty for a period of more than 30 days. Since most active duty benefits and protections for reservists are triggered by orders specifying a period of at least 30 consecutive days, the Definitions section of H.R. 5111 should include the proposed change.

Section 107(a). Waiver of Rights Pursuant to Written Agreement

The written agreement required by this section to exercise the waiver of rights should be a separate document. This would afford the servicemember yet another opportunity to consider the gravity of the pending waiver, as well as an opportunity to seek legal counsel on the consequences of signing such a waiver.

Section 108. Exercise of Rights Under Act Not To Affect Certain Future Financial Transactions

The financial transaction protections enumerated in Section 108 should be extended to the dependents of the servicemember, but each such extension of credit or insurance protection should apply only in circumstances wherein (a) the servicemember has already formed a direct relationship with the creditor or insurer (that is, some financial insurance nexus must already exist) and (b) only in circumstances directly attributable to the conduct of family life.

For example, a dependent seeking to start an independent "for profit" enterprise should not be afforded these protections, as such an activity does not necessarily fall within the ambit of family life sought to be protected.

Section 203 (b)(1). Fines and Penalties Under Contract

If a servicemember's failure to perform a contractual obligation occurs within a period of active service (to include within 90 days of separation), the fine or penalty should be waived or reduced. To do otherwise would leave the precise meaning of the section open to judicial interpretation, thus risking inconsistent results. The clear and unambiguous language of the section, when read in conjunction with section (b)(2), affords a court ample flexibility to reduce or waive a fine or penalty whenever appropriate.

Section 207. Maximum Rate of Interest on Debts Incurred Before Military Service

The protections regarding credit or insurance activities should also extend to a servicemember's dependents. We also believe that interest-rate protection for obligations incurred prior to active duty should also extend to the servicemember's dependents, but with the proviso that in cases wherein a dependent incurred an obligation for other than family needs (e.g., a "for profit" enterprise), these protections should not apply.

We further believe that if a dependent seeks to avail himself or herself of the Section 207 protections, the burden of proof should rest with the dependent to establish that the obligation is materially related to family needs.

Section 301. Evictions and Distress

In Subsection 301 (a) (1) (B), TROA recommends in place of the $1700 rental rate ceiling, language authorizing an automatic periodic or annual adjustment to the maximum monthly rent for which the coverage applies based on a recognized and accepted Federal standard for tracking average monthly rental rates across the nation. This would over time provide greater flexibility for servicemembers and preclude the need to periodically change the monthly rental rate ceiling as proposed ($1700).

Section 305. Termination of Leases by Lessees

In Subsection 305 (a) (1), TROA recommends striking the word "enters" and inserting in lieu thereof, "is ordered to report for". These terms are not synonymous. If a servicemember were required to wait until he or she has actually entered into active duty to terminate a lease, time constraints might not allow this to be done in a timely manner or without great financial penalty. This change of language would allow a hastily recalled servicemenber the additional time and flexibility needed to terminate the lease amicably and with minimum turmoil for both lessor and lessee.

In Subsection 305(a)(2), the phrase "receives military orders for a permanent change of station or to deploy" is too restrictive in today's operating environment. Activated servicemembers are often ordered away from their leased premises on orders of not less than 90 days that do not require a permanent change of station or deployment. For example, a reserve servicemember could be assigned a great distance from a leased residence to perform a Homeland Defense mission on extended active duty orders, but not receive permanent change of station orders. The rules should permit reasonable accommodation to this reality.

Section 402. Insurance Rights and Protections

We recommend that this section be amended to specify Servicemen's Group Life Insurance rights and protections for SGLI policies held by spouses and eligible dependents of servicemembers, as recently authorized in public law.

Section 501. Taxes Respecting Personal Property, Money, Credits, and Real Property

Subsection 501 (a)(2). TROA recommends that Section 501(a)(2) be amended to read, "real property owned and intended to be occupied." If the intent of this section is to extend to the servicemember the protection against the potential loss by forced sale of real property for unpaid taxes, that protection should be extended to property "intended to be occupied." To leave the wording unchanged precludes the extension of the protection to a homestead or other real property, to which the servicemember may someday wish to return. Conversely, included in the proposed amendment would be protection against forced tax sales for those home(s) that the servicemember may have temporarily rented to others because of his or her relocation, but which the servicemember may wish to reoccupy upon completion of a term of active service.

Subsection 501 (d). This provision should be amended by inserting "a maximum" before "6 percent per year". This would reflect a greater degree of certainty and protection than would the original language, and would remove from consideration any possibility of later increases.

Section 701 (a). Anticipatory Relief

Consistent with our recommendations regarding Sections 108 and 207, TROA believes the anticipatory relief from pre-service obligations provided by this section should extend to the dependents. Because of joint relationships and co-ownership of jointly held property, to do otherwise would essentially negate these protections for the servicemember.

Section 703. Professional Liability Protection

The need for this new protection became very evident during the mobilization of more than 260,000 National Guard and Reserve servicemembers during the Gulf War. Many activated physicians, dentists, attorneys, and other professionals – especially those in small or private practices – were ruined economically during that wartime period due in part to the continuation of very costly liability insurance payments during their active duty service. We strongly support inclusion of this new section.

Section 704. Health Insurance Reinstatement

We note that the National Defense Authorization Act for FY2002 amended 10 U.S.C. § 1145, Health Benefits, by (a) making permanent the TRICARE transition health benefits available to separating servicemembers and (b) extending such coverage to reservists separating after active duty service of more than 30 days. Separating servicemembers with fewer than six years active service have 60 days of transitional health care coverage, while those with six or more years active service have 120 days of coverage. We recommend that the health insurance reinstatement provision in § 704 extend at least another 60 or 120 days, as applicable, beyond the termination of military transitional health care coverage. This will afford servicemember families sufficient time to weigh their health care coverage options.

H.R. 4017, the Soldiers' and Sailors' Civil Relief Equity Act

TROA supports H.R. 4017. There are presently more than 83,000 members of the National Guard and Reserve forces serving on federal (Title 10) or state (Title 32) active duty of more than 30 days, supporting the war on terrorism at home and abroad.

At one point following the September 11 attacks, some 7,000 Guard servicemembers were in Title 32 status, having been called to duty by their governors at the request of

the Commander in Chief. Their duties included guarding airports, nuclear facilities, and other key infrastructure.

The use of Title 32 (as opposed to federal duty under title 10) orders is based on the operational requirement to perform certain security and police-related missions that regular troops may not normally perform, per the Posse Comitatus Act. If National Guard troops were directly called to federal active duty by the President, they would not have been permitted to perform all required mission tasks in the post-September 11 environment. The issuance of title 32 orders, however, has unfairly denied these servicemembers the same protections available to their fellow Guard servicemembers, activated under Title 10 orders, who perform very similar missions, such as supporting the Border Patrol and the Immigration and Naturalization Service. The unfortunate result is that some members from the same state, though performing similar missions, are denied SSCRA protection.

H.R. 4017 provides SSCRA coverage only for Guard servicemembers whose activations under Title 32 meet the following criteria:

- the activation was requested by the President;
- the orders specify a period of more than 30 consecutive days;
- Federal funds are used for the pay and allowances of those activated; and
- they are on a contingency mission authorized by the President or Secretary of Defense.

These criteria are reasonable and fair. They properly limit the use of SSCRA coverage and give due deference to the unique role of the organized militia under the Constitution.

State legislatures with no SSCRA-like laws should be encouraged to enact SSCRA-like protections for traditional state Guard missions, such as reactions to natural disasters and civil disturbances, undertaken at the call of the governor.

TROA recommends that H.R. 4017 be incorporated as an amendment into H.R.5111.

The Retired Officers Association is most appreciative of the work of the Subcommittee and staff to update, clarify, and improve the SSCRA. Many SSCRA protections enumerated in the bills have come to be recognized as commonplace today. As is often the case, however, these protections need to modernized, updated, and reemphasized so that servicemembers and their families may be assured that, when their country needs them, their rights and interests will be protected. To this end, the enactment of both H.R. 5111 and H.R. 4017 are critical to morale and, ultimately, to military readiness.

CHAIRMAN SIMPSON TO DEPARTMENT OF DEFENSE

House Veterans Affairs Committee
Hearing on Soldiers and Sailors Civil Relief Act (SSCRA)
July 24, 2002
Witness: Mr. Duehring

Question 1: The Enlisted Association of the National Guard of the United States (EANGUS) makes a recommendation in their hearing testimony on July 24, 2002, before the Subcommittee that a new section be added which would allow the termination of a motor vehicle lease when called to active duty. Unlike the purchase or a contract to purchase a motor vehicle, which eventually becomes personal property, vehicle leases rent the use of that vehicle. If called to active duty, the lessee may not have the use of the vehicle for a long period of time and will still be required to make the payments of the lease. EANGUS believes that the Service member should have the option to terminate a vehicle lease if called to active duty for a long period of time. Several other organizations made similar recommendations in their written testimony. Is the Department aware of Service members having significant problems with this issue and would the Department support this change in the bill?

Answer: The Department strongly opposes adding a provision to H.R. 5111 that would allow individuals entering a period of active duty to terminate a motor vehicle lease. The Department is aware that the inability to enjoy the use of personal property, whether leased or owned, is often a hardship of military service. However, we are concerned that such a termination provision is inconsistent with the SSCRA's skillfully crafted balance among the needs of our nation for a strong national defense, the needs of Service members and their families for security in their personal affairs, and the needs of those who have dealt with and depend upon Service members for fulfillment of their obligations. Additionally, we believe such a provision has the potential to create morale problems within the force because it would selectively benefit only some of the many Service members who experience this same or very similar hardship. Finally, we think such a provision may be detrimental to military personnel, particularly reservists, if automobile dealers and leasing companies protect against the risk of early termination by charging more for leases that would be covered by this proposed provision.

A key to the SSCRA's success and widespread acceptance within the civilian community throughout its long history is the temporary nature of the protections it provides to Service members. The Act skillfully balances the needs of Service members with the needs of those in the civilian community they have dealt with by suspending civil obligations actions until a Service member's ability to fulfill them is no longer materially impaired by military service; it does not extinguish a Service member's obligations. The proposed lease termination provision would extinguish an existing obligation and represent a fundamental change in the longstanding way in which Congress has addressed civil relief for active duty military personnel. The Department believes that a motor vehicle lease termination provision would engender vigorous opposition to H.R. 5111 from the business community, and if it becomes law, also undermine overall support for the SSCRA within that community.

As introduced, H.R. 5111 strikes a much better balance between the needs of the military lessee and the lessor than would be the case if a motor vehicle lease termination provision is added. The bill improves upon the SSCRA by adding personal property lease protection to section 302, which precludes lessors from rescinding or terminating a pre-service lease for a breach of its terms occurring before or during a Service member's active duty service, and requires a court order before the property may be repossessed for such breach. These protections give Service members significant leverage in working out more favorable terms with the lessor. This protection is in addition to the protection of section 207 of the bill, which would require the lessor to reduce the lease's imputed interest rate to 6% for the period of active duty service.

Without adequate justification for doing so, the proposed motor vehicle lease termination provision would favor Service members who lease vehicles over those who purchase them. Both groups of Service members may experience the hardship of foregoing the use of a motor vehicle for which they are making monthly payments. Whether purchased or leased, motor vehicles have a limited period of use. The fact that lessees have contracted for a shorter period of use than purchasers is an inadequate reason to protect lessees from this hardship by allowing them to terminate their contracts while only providing purchasers with protections such as those in sections 207 and 302 of H.R. 5111. The Department believes that this disparate treatment may create morale problems within military units and may also change behavior of military consumers, particularly reservists, in a way Congress did not intend by encouraging them to lease rather than purchase their motor vehicles.

Another way in which the proposed termination provision would treat similarly situated Service members differently is that it would favor Service members who are deprived of the use of their leased vehicles by being called to active duty over other Service members experiencing the same deprivation. It is hard to see the difference between a Service member with a leased car who is called to active duty and deployed overseas for a year and a Service member who leases a car while on active duty shortly before being deployed overseas for the same period of time. Under H.R. 5111 as introduced, the difference in treatment of these two individuals is not near as great as it would be if the proposed termination provision were added. While the Service member leasing a vehicle after beginning active service would not be able to take advantage of sections 207 and 302, protections such as those in sections 201-204 would be available. These sections protect against default judgments and accrual of fines and penalties and provide for stays of proceedings and execution of judgments, attachments, and garnishments. The relative treatment of pre-service and post-service obligations in H.R. 5111 is essentially the same as it is in the SSCRA, a law that has passed the test of time. The Department believes there is inadequate justification for drastically altering this relative treatment in the case of motor vehicle leases by allowing Service members with pre-service leases to terminate them. Such a disparity in treatment may also result in morale problems.

Another detrimental consequence of adding the proposed lease termination provision may be a reluctance by some automobile dealers to enter into motor vehicle

leases with individuals who may be called to active military service. Even if dealers are prevented from refusing to lease to these individuals, it is reasonable to predict that they will be less willing to negotiate the sticker price of a vehicle downward. This termination provision has the potential to be very expensive for dealers and their leasing companies, and they will likely look for a way of minimizing its effect on their bottom line by maximizing the price of the lease. This would hurt military personnel, who are often attracted to the leasing option because of its generally lower monthly payments relative to the purchase option.

House Veterans Affairs Committee
Hearing on Soldiers and Sailors Civil Relief Act (SSCRA)
July 24, 2002
Witness: Mr. Duehring

Question 2: The Non Commissioned Officer Association of the United States of America (NCOA) recommends the word "solely" be removed from in Section 511(a) from H.R. 5111 to prevent the courts from looking to other factors besides military orders to define a Service member's residence and domicile, and that home ownership not be considered a factor that will count against Service members when determining residence and domicile. NCOA sites two cases in their written testimony, Wolff v. Baldwin (9 N.J. Tax 11, N.J. Tax Ct. 1986) and Envall v. Comptroller of the Treasury (No. 1128, 1982 WL 1763) MD T.C. 1982), to support their argument. Would the Department support this change to the bill?

Answer: The Department opposes removing the word "solely" from section 511(a) of H.R. 5111, which states that "a Service member shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the Service member by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." This section is essentially the same as section 574(1) of the SSCRA, which also includes the word "solely." Throughout its long history, this section has been extremely successful in protecting Service members from double taxation as a result of their military service, and no other SSCRA provision affects as many Service members. This protection is so well established that it is very rare for a state or other tax jurisdiction to assert that a Service member stationed in that jurisdiction, but claiming a residency in another state, is subject to personal property and income taxation to the same extent as other residents of that jurisdiction. This is true even when the Service member has acquired a few of the indicators of residency in that jurisdiction, such as home ownership and vehicle registration.

Not only has the word "solely" not caused a problem for the vast majority of the millions of Service members who have been protected from double taxation by section 574(1) of the SSCRA, the Department believes that its use is consistent with the fundamental approach that Congress adopted in attempting to balance the needs of our nation for a strong national defense, the needs of Service members and their families for security in their personal affairs, and the needs of those who have dealt with and depend upon Service members for fulfillment of their obligations. That approach was to protect Service members from being unduly harmed in their financial and other personal affairs by their military service; there was no intent to relieve Service members of the obligations of citizenship or provide them with benefits not available to other citizens. Use of the word "solely" in this section is a clear indication that Congress wanted to protect Service members from double taxation without depriving states and other tax jurisdictions of the ability to tax the income and personal property of Service members who legally reside there, regardless of whether military orders have placed them inside or outside the jurisdiction. Congress did not intend to change the generally accepted rules

for establishing residency (i.e., physical presence in a jurisdiction, an intent to remain there or return there, and abandonment of the former legal residence) or the need to evince the intent to establish a new legal residence by taking certain actions, such as registering to vote there, preparing a new last will or testament indicating the new residence.

House Veterans Affairs Committee
Hearing on Soldiers and Sailors Civil Relief Act (SSCRA)
July 24, 2002
Witness: Mr. Duehring

Question 3: In H.R. 5111, the total amount of life insurance coverage may not exceed $250,000 or an amount equal to the Servicemembers' Group Life Insurance maximum limit, whichever is greater.

Would the Department support life insurance more tailored to the needs of the individual Service member, with a "graduated" system of coverage based on the Service member's, military or, if a member is of a Reserve Component, civilian salary?

Would increments of coverage, such as $10,000, $25,000, or $50,000 be appropriate?

Should there be a "ceiling" on such coverage, for example, a maximum of 10 times the Service member's regular earnings (from military or civilian salary), or $1 million whichever is less?

Answer: The Department of Defense recognizes that the Department of Veterans' Affairs is charged with administering the protection of life insurance policies provided by this Act. Notwithstanding, the Department of Defense would oppose any graduated increments of private life insurance protection based upon civilian salary or any other criteria. All active duty military members are currently provided with the same maximum coverage under Service members' Group Life Insurance-$250,000. This "ceiling" suggests a common value of life. A similar view should be taken with life insurance protections for reservists called to active duty. This proposal would suggest that greater value is placed on the lives of the reserve force, which is not constructive in our efforts to bond a cohesive, total force.

House Veterans Affairs Committee
Hearing on Soldiers and Sailors Civil Relief Act (SSCRA)
July 24, 2002
Witness: Mr. Duehring

Question 4: Does the Department believe the $1,700 maximum monthly rent coverage of section 301 is sufficient? The amount of $1,700 is based on information provided by the Consumer Price Index of the Bureau of Labor Statistics.

Answer: In my testimony on H.R. 3173 before this subcommittee on June 11 of this year, I stated that the Department would support increasing the maximum monthly rent coverage to $1,950. This higher figure would extend the eviction protections of the SSCRA to many Service members living in high cost areas who have rents higher than $1,700. We would also support tying the maximum rent coverage to a Service member's basic allowance for housing. This would take inflation into account and avoid the need for frequent amendments to the law because housing allowances are changed each year based on housing costs in the area where the Service member is assigned. The advantage of this approach is that at any given time more Service members will be protected by the Act's eviction and distress provision.

Chairman Simpson to Department of Veterans Affairs

THE UNDER SECRETARY OF VETERANS AFFAIRS FOR BENEFITS
WASHINGTON, D.C. 20420

OCT 9 2002

The Honorable Michael K. Simpson
Chairman
Subcommittee on Benefits
Committee on Veterans' Affairs
U. S. House of Representatives
Washington, DC 20515

Dear Chairman Simpson:

At the Subcommittee for Benefits Hearing on July 24, 2002, you requested that VA provide information regarding H.R. 5111, the Servicemembers' Civil Relief Act. Among other things, H.R. 5111 would provide that the total amount of life insurance coverage for which the premium is guaranteed may not exceed $250,000 or an amount equal to the Servicemembers' Group Life Insurance maximum limit, whichever is greater. The information you requested is provided in the enclosed fact sheet.

I appreciate the opportunity to provide this additional information for the record.

Sincerely yours,

Daniel L. Cooper

Enclosure

Department of Veterans Affairs
Veterans Benefits Administration

Information for the Record
Subcommittee for Benefits' July 24, 2002 Legislative Hearing

Chairman Mike Simpson asked that VA respond to the following:

In H.R. 5111, the total amount of life insurance coverage may not exceed $250,000 or an amount equal to the Servicemembers' Group Life Insurance maximum limit, whichever is greater.

1. Would the Department support life insurance more tailored to the needs of the individual servicemember, with a "graduated" system of coverage based on the servicemember's, military or, if a member is of a Reserve Component, civilian salary?

Response: No. VA does not support a graduated system of coverage guarantees nor do we believe that it is necessary. We believe it would be more appropriate to guarantee premiums on insurance coverage up to a fixed ceiling for all individuals. When issuing life insurance, commercial insurers have already assumed the risk of insuring these individuals and have completed the financial underwriting. Such companies have made educated business decisions as to the insurability of these individuals and issued their policies, based on factors that include the income of the individual. For VA to monitor coverage guarantees based on salary multiples would be extremely difficult from an administrative standpoint and inherently redundant to the underwriting performed by the commercial insurance company.

2. Would increments of coverage, such as $10,000, $25,000, or $50,000 be appropriate?

Response: No. The premiums should be guaranteed on policies underwritten by legitimately licensed commercial companies for any amount of coverage up to a given ceiling.

3. Should there be a "ceiling" on such coverage, for example, a maximum of 10 times the servicemember's regular earnings (from military or civilian salary), or $1 million, whichever is less?

Response: The idea of a larger ceiling for total coverage guaranteed than that proposed in H.R. 5111 is a question with possible wide-ranging policy and design repercussions on other programs and the Administration is not in a position to address the issue at this time.

CHAIRMAN SIMPSON TO MORTGAGE BANKERS ASSOCIATION OF AMERICA

The Premier Association of Real Estate Finance

1919 Pennsylvania Avenue, NW
Washington, DC 20006
www.mbaa.org

August 7, 2002

The Honorable Mike Simpson
Chairman, Subcommittee on Benefits
Veterans Affairs' Committee
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Mortgage Bankers Association of America (MBA), thank you for the opportunity to testify at the recent hearings on H.R. 5111 and H.R. 4017. This letter is a follow-up to a question asked of our witness James Murphy, Chairman of MBA and President & CEO of New England Realty Resources, Inc.

The question concerned Section 207(a)(3) of H.R. 5111, which provides that a lender may not increase the portion of any periodic payment that is allocated to principal above that specified in the original contract. This provision is intended to ensure that our servicemen and women have smaller periodic payments on their mortgages while they are on active duty. Under SSCRA and H.R. 5111, lenders are required to reduce the interest rate on all loans and obligations made to qualifying military personnel to 6 percent. Section 207(a)(3) is intended to prohibit lenders from continuing to collect the same periodic payment despite reducing the interest rate on a loan. The Subcommittee's apparent concern is that, without this section, a lender would be complying with the law if it collected the same periodic payment and simply decided to unilaterally apply more of the payment to principal (known as a principal curtailment or prepayment).

First, you should know that the mortgage industry does not follow this practice when interest rates are reduced. We reduce the periodic payment to reflect the lower interest rate.

Second, we are concerned that the current language could be interpreted to prohibit the proper amortization of a loan, which has been reduced to 6 percent. Different interest rates change the monthly allocation to principal and interest. In fact, as you asked at the hearing, depending on the age of the loan, a reduced interest rate could indeed increase the amount of the payment that is allocated to principal. This is simply because at a lower interest rate, principal is paid down more quickly in the early years.

Kurt Pfotenhauer, Senior Vice President, Government Affairs Phone (202) 557-2857 Fax (202) 721-0251 email: kurt_pfotenhauer@mbaa.org

The Honorable Mike Simpson
August 7, 2002
Page Two

The attached amortization charts compare two otherwise identical loans with 6 percent and 9 percent interest rates. They are both $100,000, 30-year fixed-rate loans. With a 9 percent interest rate, the borrower's monthly payment is $804.62, of which **$54.62 or 7 percent** is allocated to principal in the first month. With a 6 percent interest rate, the reduced monthly payment is $599.55 of which **$99.50 or 16 percent** is allocated to principal in the first month. The bottom line is that in the early years of the loan, the amount attributed to principal is higher on the 6 percent loan than on the same loan with a 9 percent interest rate.

As a result, we recommend that Section 207(a)(3) be amended to clarify that the lender must adjust the periodic payment downward to reflect the 6 percent interest rate. We do not suggest that the Subcommittee prohibit principal prepayments or "curtailments" as this would interfere with the borrower's right to prepay principal in an effort to shorten the term of the loan and reduce total interest payments over the life of the loan.

We appreciate your interest in our recommendations Please let me know if I can be of further assistance.

Sincerely,

Kurt Pfotenhauer
Senior Vice President
Government Affairs

Attachment(s)

ATTACHMENT 1

	Initial loan amount	100,000.00				
	Annual interest rate	6.00%			Curtailment	0
	Payment	($599.55)				
	Beginning Balance	Payment	Principal	Interest	Curtailment	Ending Balance
1	100,000.00	599.55	99.55	500.00	0	99,900.45
2	99,900.45	599.55	100.05	499.50	0	99,800.40
3	99,800.40	599.55	100.55	499.00	0	99,699.85
4	99,699.85	599.55	101.05	498.50	0	99,598.80
5	99,598.80	599.55	101.56	497.99	0	99,497.24
6	99,497.24	599.55	102.06	497.49	0	99,395.18
7	99,395.18	599.55	102.57	496.98	0	99,292.61
8	99,292.61	599.55	103.09	496.46	0	99,189.52
9	99,189.52	599.55	103.60	495.95	0	99,085.92
10	99,085.92	599.55	104.12	495.43	0	98,981.79
11	98,981.79	599.55	104.64	494.91	0	98,877.15
12	98,877.15	599.55	105.16	494.39	0	98,771.99
13	98,771.99	599.55	105.69	493.86	0	98,666.30
14	98,666.30	599.55	106.22	493.33	0	98,560.08
15	98,560.08	599.55	106.75	492.80	0	98,453.33
16	98,453.33	599.55	107.28	492.27	0	98,346.04
17	98,346.04	599.55	107.82	491.73	0	98,238.22
18	98,238.22	599.55	108.36	491.19	0	98,129.86
19	98,129.86	599.55	108.90	490.65	0	98,020.96
20	98,020.96	599.55	109.45	490.10	0	97,911.52
21	97,911.52	599.55	109.99	489.56	0	97,801.53
22	97,801.53	599.55	110.54	489.01	0	97,690.98
23	97,690.98	599.55	111.10	488.45	0	97,579.89
24	97,579.89	599.55	111.65	487.90	0	97,468.24
25	97,468.24	599.55	112.21	487.34	0	97,356.03
26	97,356.03	599.55	112.77	486.78	0	97,243.26
27	97,243.26	599.55	113.33	486.22	0	97,129.92
28	97,129.92	599.55	113.90	485.65	0	97,016.02
29	97,016.02	599.55	114.47	485.08	0	96,901.55
30	96,901.55	599.55	115.04	484.51	0	96,786.51
31	96,786.51	599.55	115.62	483.93	0	96,670.89
32	96,670.89	599.55	116.20	483.35	0	96,554.69
33	96,554.69	599.55	116.78	482.77	0	96,437.92
34	96,437.92	599.55	117.36	482.19	0	96,320.56
35	96,320.56	599.55	117.95	481.60	0	96,202.61
36	96,202.61	599.55	118.54	481.01	0	96,084.07
37	96,084.07	599.55	119.13	480.42	0	95,964.94
38	95,964.94	599.55	119.73	479.82	0	95,845.21
39	95,845.21	599.55	120.32	479.23	0	95,724.89
40	95,724.89	599.55	120.93	478.62	0	95,603.96

ATTACHMENT I

41	95,603.96	599.55	121.53	478.02	0	95,482.43
42	95,482.43	599.55	122.14	477.41	0	95,360.29
43	95,360.29	599.55	122.75	476.80	0	95,237.55
44	95,237.55	599.55	123.36	476.19	0	95,114.18
45	95,114.18	599.55	123.98	475.57	0	94,990.20
46	94,990.20	599.55	124.60	474.95	0	94,865.60
47	94,865.60	599.55	125.22	474.33	0	94,740.38
48	94,740.38	599.55	125.85	473.70	0	94,614.53
49	94,614.53	599.55	126.48	473.07	0	94,488.05
50	94,488.05	599.55	127.11	472.44	0	94,360.94
51	94,360.94	599.55	127.75	471.80	0	94,233.20
52	94,233.20	599.55	128.38	471.17	0	94,104.81
53	94,104.81	599.55	129.03	470.52	0	93,975.79
54	93,975.79	599.55	129.67	469.88	0	93,846.12
55	93,846.12	599.55	130.32	469.23	0	93,715.80
56	93,715.80	599.55	130.97	468.58	0	93,584.82
57	93,584.82	599.55	131.63	467.92	0	93,453.20
58	93,453.20	599.55	132.28	467.27	0	93,320.91
59	93,320.91	599.55	132.95	466.60	0	93,187.97
60	93,187.97	599.55	133.61	465.94	0	93,054.36
61	93,054.36	599.55	134.28	465.27	0	92,920.08
62	92,920.08	599.55	134.95	464.60	0	92,785.13
63	92,785.13	599.55	135.62	463.93	0	92,649.50
64	92,649.50	599.55	136.30	463.25	0	92,513.20
65	92,513.20	599.55	136.98	462.57	0	92,376.22
66	92,376.22	599.55	137.67	461.88	0	92,238.55
67	92,238.55	599.55	138.36	461.19	0	92,100.19
68	92,100.19	599.55	139.05	460.50	0	91,961.14
69	91,961.14	599.55	139.74	459.81	0	91,821.39
70	91,821.39	599.55	140.44	459.11	0	91,680.95
71	91,680.95	599.55	141.15	458.40	0	91,539.80
72	91,539.80	599.55	141.85	457.70	0	91,397.95
73	91,397.95	599.55	142.56	456.99	0	91,255.39
74	91,255.39	599.55	143.27	456.28	0	91,112.12
75	91,112.12	599.55	143.99	455.56	0	90,968.13
76	90,968.13	599.55	144.71	454.84	0	90,823.42
77	90,823.42	599.55	145.43	454.12	0	90,677.99
78	90,677.99	599.55	146.16	453.39	0	90,531.82
79	90,531.82	599.55	146.89	452.66	0	90,384.93
80	90,384.93	599.55	147.63	451.92	0	90,237.31
81	90,237.31	599.55	148.36	451.19	0	90,088.94
82	90,088.94	599.55	149.11	450.44	0	89,939.84
83	89,939.84	599.55	149.85	449.70	0	89,789.99
84	89,789.99	599.55	150.60	448.95	0	89,639.39
85	89,639.39	599.55	151.35	448.20	0	89,488.03
86	89,488.03	599.55	152.11	447.44	0	89,335.92
87	89,335.92	599.55	152.87	446.68	0	89,183.05

ATTACHMENT I

88	89,183.05	599.55	153.64	445.92	0	89,029.42
89	89,029.42	599.55	154.40	445.15	0	88,875.01
90	88,875.01	599.55	155.18	444.38	0	88,719.84
91	88,719.84	599.55	155.95	443.60	0	88,563.89
92	88,563.89	599.55	156.73	442.82	0	88,407.15
93	88,407.15	599.55	157.51	442.04	0	88,249.64
94	88,249.64	599.55	158.30	441.25	0	88,091.34
95	88,091.34	599.55	159.09	440.46	0	87,932.24
96	87,932.24	599.55	159.89	439.66	0	87,772.35
97	87,772.35	599.55	160.69	438.86	0	87,611.67
98	87,611.67	599.55	161.49	438.06	0	87,450.17
99	87,450.17	599.55	162.30	437.25	0	87,287.87
100	87,287.87	599.55	163.11	436.44	0	87,124.76
101	87,124.76	599.55	163.93	435.62	0	86,960.84
102	86,960.84	599.55	164.75	434.80	0	86,796.09
103	86,796.09	599.55	165.57	433.98	0	86,630.52
104	86,630.52	599.55	166.40	433.15	0	86,464.12
105	86,464.12	599.55	167.23	432.32	0	86,296.89
106	86,296.89	599.55	168.07	431.48	0	86,128.83
107	86,128.83	599.55	168.91	430.64	0	85,959.92
108	85,959.92	599.55	169.75	429.80	0	85,790.17
109	85,790.17	599.55	170.60	428.95	0	85,619.57
110	85,619.57	599.55	171.45	428.10	0	85,448.12
111	85,448.12	599.55	172.31	427.24	0	85,275.81
112	85,275.81	599.55	173.17	426.38	0	85,102.63
113	85,102.63	599.55	174.04	425.51	0	84,928.60
114	84,928.60	599.55	174.91	424.64	0	84,753.69
115	84,753.69	599.55	175.78	423.77	0	84,577.91
116	84,577.91	599.55	176.66	422.89	0	84,401.25
117	84,401.25	599.55	177.54	422.01	0	84,223.70
118	84,223.70	599.55	178.43	421.12	0	84,045.27
119	84,045.27	599.55	179.32	420.23	0	83,865.95
120	83,865.95	599.55	180.22	419.33	0	83,685.72
121	83,685.72	599.55	181.12	418.43	0	83,504.60
122	83,504.60	599.55	182.03	417.52	0	83,322.58
123	83,322.58	599.55	182.94	416.61	0	83,139.64
124	83,139.64	599.55	183.85	415.70	0	82,955.79
125	82,955.79	599.55	184.77	414.78	0	82,771.01
126	82,771.01	599.55	185.70	413.86	0	82,585.32
127	82,585.32	599.55	186.62	412.93	0	82,398.69
128	82,398.69	599.55	187.56	411.99	0	82,211.14
129	82,211.14	599.55	188.49	411.06	0	82,022.64
130	82,022.64	599.55	189.44	410.11	0	81,833.21
131	81,833.21	599.55	190.38	409.17	0	81,642.82
132	81,642.82	599.55	191.34	408.21	0	81,451.48
133	81,451.48	599.55	192.29	407.26	0	81,259.19
134	81,259.19	599.55	193.25	406.30	0	81,065.94

ATTACHMENT I

135	81,065.94	599.55	194.22	405.33	0	80,871.72
136	80,871.72	599.55	195.19	404.36	0	80,676.52
137	80,676.52	599.55	196.17	403.38	0	80,480.36
138	80,480.36	599.55	197.15	402.40	0	80,283.21
139	80,283.21	599.55	198.13	401.42	0	80,085.07
140	80,085.07	599.55	199.13	400.43	0	79,885.95
141	79,885.95	599.55	200.12	399.43	0	79,685.83
142	79,685.83	599.55	201.12	398.43	0	79,484.71
143	79,484.71	599.55	202.13	397.42	0	79,282.58
144	79,282.58	599.55	203.14	396.41	0	79,079.44
145	79,079.44	599.55	204.15	395.40	0	78,875.29
146	78,875.29	599.55	205.17	394.38	0	78,670.11
147	78,670.11	599.55	206.20	393.35	0	78,463.91
148	78,463.91	599.55	207.23	392.32	0	78,256.68
149	78,256.68	599.55	208.27	391.28	0	78,048.42
150	78,048.42	599.55	209.31	390.24	0	77,839.11
151	77,839.11	599.55	210.35	389.20	0	77,628.75
152	77,628.75	599.55	211.41	388.14	0	77,417.35
153	77,417.35	599.55	212.46	387.09	0	77,204.88
154	77,204.88	599.55	213.53	386.02	0	76,991.36
155	76,991.36	599.55	214.59	384.96	0	76,776.76
156	76,776.76	599.55	215.67	383.88	0	76,561.09
157	76,561.09	599.55	216.75	382.81	0	76,344.35
158	76,344.35	599.55	217.83	381.72	0	76,126.52
159	76,126.52	599.55	218.92	380.63	0	75,907.60
160	75,907.60	599.55	220.01	379.54	0	75,687.59
161	75,687.59	599.55	221.11	378.44	0	75,466.48
162	75,466.48	599.55	222.22	377.33	0	75,244.26
163	75,244.26	599.55	223.33	376.22	0	75,020.93
164	75,020.93	599.55	224.45	375.10	0	74,796.48
165	74,796.48	599.55	225.57	373.98	0	74,570.92
166	74,570.92	599.55	226.70	372.85	0	74,344.22
167	74,344.22	599.55	227.83	371.72	0	74,116.39
168	74,116.39	599.55	228.97	370.58	0	73,887.42
169	73,887.42	599.55	230.11	369.44	0	73,657.31
170	73,657.31	599.55	231.26	368.29	0	73,426.05
171	73,426.05	599.55	232.42	367.13	0	73,193.63
172	73,193.63	599.55	233.58	365.97	0	72,960.04
173	72,960.04	599.55	234.75	364.80	0	72,725.29
174	72,725.29	599.55	235.92	363.63	0	72,489.37
175	72,489.37	599.55	237.10	362.45	0	72,252.26
176	72,252.26	599.55	238.29	361.26	0	72,013.98
177	72,013.98	599.55	239.48	360.07	0	71,774.49
178	71,774.49	599.55	240.68	358.87	0	71,533.82
179	71,533.82	599.55	241.88	357.67	0	71,291.94
180	71,291.94	599.55	243.09	356.46	0	71,048.84
181	71,048.84	599.55	244.31	355.24	0	70,804.54

ATTACHMENT I

182	70,804.54	599.55	245.53	354.02	0	70,559.01
183	70,559.01	599.55	246.76	352.80	0	70,312.25
184	70,312.25	599.55	247.99	351.56	0	70,064.27
185	70,064.27	599.55	249.23	350.32	0	69,815.04
186	69,815.04	599.55	250.48	349.08	0	69,564.56
187	69,564.56	599.55	251.73	347.82	0	69,312.83
188	69,312.83	599.55	252.99	346.56	0	69,059.85
189	69,059.85	599.55	254.25	345.30	0	68,805.60
190	68,805.60	599.55	255.52	344.03	0	68,550.07
191	68,550.07	599.55	256.80	342.75	0	68,293.27
192	68,293.27	599.55	258.08	341.47	0	68,035.19
193	68,035.19	599.55	259.37	340.18	0	67,775.81
194	67,775.81	599.55	260.67	338.88	0	67,515.14
195	67,515.14	599.55	261.97	337.58	0	67,253.17
196	67,253.17	599.55	263.28	336.27	0	66,989.88
197	66,989.88	599.55	264.60	334.95	0	66,725.28
198	66,725.28	599.55	265.92	333.63	0	66,459.36
199	66,459.36	599.55	267.25	332.30	0	66,192.10
200	66,192.10	599.55	268.59	330.96	0	65,923.51
201	65,923.51	599.55	269.93	329.62	0	65,653.58
202	65,653.58	599.55	271.28	328.27	0	65,382.30
203	65,382.30	599.55	272.64	326.91	0	65,109.66
204	65,109.66	599.55	274.00	325.55	0	64,835.66
205	64,835.66	599.55	275.37	324.18	0	64,560.29
206	64,560.29	599.55	276.75	322.80	0	64,283.54
207	64,283.54	599.55	278.13	321.42	0	64,005.40
208	64,005.40	599.55	279.52	320.03	0	63,725.88
209	63,725.88	599.55	280.92	318.63	0	63,444.96
210	63,444.96	599.55	282.33	317.22	0	63,162.63
211	63,162.63	599.55	283.74	315.81	0	62,878.90
212	62,878.90	599.55	285.16	314.39	0	62,593.74
213	62,593.74	599.55	286.58	312.97	0	62,307.16
214	62,307.16	599.55	288.01	311.54	0	62,019.14
215	62,019.14	599.55	289.45	310.10	0	61,729.69
216	61,729.69	599.55	290.90	308.65	0	61,438.79
217	61,438.79	599.55	292.36	307.19	0	61,146.43
218	61,146.43	599.55	293.82	305.73	0	60,852.61
219	60,852.61	599.55	295.29	304.26	0	60,557.32
220	60,557.32	599.55	296.76	302.79	0	60,260.56
221	60,260.56	599.55	298.25	301.30	0	59,962.31
222	59,962.31	599.55	299.74	299.81	0	59,662.57
223	59,662.57	599.55	301.24	298.31	0	59,361.34
224	59,361.34	599.55	302.74	296.81	0	59,058.59
225	59,058.59	599.55	304.26	295.29	0	58,754.33
226	58,754.33	599.55	305.78	293.77	0	58,448.56
227	58,448.56	599.55	307.31	292.24	0	58,141.25
228	58,141.25	599.55	308.84	290.71	0	57,832.40

ATTACHMENT I

229	57,832.40	599.55	310.39	289.16	0	57,522.01
230	57,522.01	599.55	311.94	287.61	0	57,210.07
231	57,210.07	599.55	313.50	286.05	0	56,896.57
232	56,896.57	599.55	315.07	284.48	0	56,581.51
233	56,581.51	599.55	316.64	282.91	0	56,264.86
234	56,264.86	599.55	318.23	281.32	0	55,946.64
235	55,946.64	599.55	319.82	279.73	0	55,626.82
236	55,626.82	599.55	321.42	278.13	0	55,305.40
237	55,305.40	599.55	323.02	276.53	0	54,982.38
238	54,982.38	599.55	324.64	274.91	0	54,657.74
239	54,657.74	599.55	326.26	273.29	0	54,331.48
240	54,331.48	599.55	327.89	271.66	0	54,003.59
241	54,003.59	599.55	329.53	270.02	0	53,674.05
242	53,674.05	599.55	331.18	268.37	0	53,342.87
243	53,342.87	599.55	332.84	266.71	0	53,010.04
244	53,010.04	599.55	334.50	265.05	0	52,675.54
245	52,675.54	599.55	336.17	263.38	0	52,339.36
246	52,339.36	599.55	337.85	261.70	0	52,001.51
247	52,001.51	599.55	339.54	260.01	0	51,661.97
248	51,661.97	599.55	341.24	258.31	0	51,320.73
249	51,320.73	599.55	342.95	256.60	0	50,977.78
250	50,977.78	599.55	344.66	254.89	0	50,633.12
251	50,633.12	599.55	346.38	253.17	0	50,286.73
252	50,286.73	599.55	348.12	251.43	0	49,938.62
253	49,938.62	599.55	349.86	249.69	0	49,588.76
254	49,588.76	599.55	351.61	247.94	0	49,237.15
255	49,237.15	599.55	353.36	246.19	0	48,883.79
256	48,883.79	599.55	355.13	244.42	0	48,528.66
257	48,528.66	599.55	356.91	242.64	0	48,171.75
258	48,171.75	599.55	358.69	240.86	0	47,813.06
259	47,813.06	599.55	360.49	239.07	0	47,452.57
260	47,452.57	599.55	362.29	237.26	0	47,090.28
261	47,090.28	599.55	364.10	235.45	0	46,726.18
262	46,726.18	599.55	365.92	233.63	0	46,360.27
263	46,360.27	599.55	367.75	231.80	0	45,992.52
264	45,992.52	599.55	369.59	229.96	0	45,622.93
265	45,622.93	599.55	371.44	228.11	0	45,251.49
266	45,251.49	599.55	373.29	226.26	0	44,878.20
267	44,878.20	599.55	375.16	224.39	0	44,503.04
268	44,503.04	599.55	377.04	222.52	0	44,126.00
269	44,126.00	599.55	378.92	220.63	0	43,747.08
270	43,747.08	599.55	380.82	218.74	0	43,366.27
271	43,366.27	599.55	382.72	216.83	0	42,983.55
272	42,983.55	599.55	384.63	214.92	0	42,598.92
273	42,598.92	599.55	386.56	212.99	0	42,212.36
274	42,212.36	599.55	388.49	211.06	0	41,823.87
275	41,823.87	599.55	390.43	209.12	0	41,433.44

ATTACHMENT I

276	41,433.44	599.55	392.38	207.17	0	41,041.06
277	41,041.06	599.55	394.35	205.21	0	40,646.71
278	40,646.71	599.55	396.32	203.23	0	40,250.40
279	40,250.40	599.55	398.30	201.25	0	39,852.10
280	39,852.10	599.55	400.29	199.26	0	39,451.81
281	39,451.81	599.55	402.29	197.26	0	39,049.52
282	39,049.52	599.55	404.30	195.25	0	38,645.21
283	38,645.21	599.55	406.32	193.23	0	38,238.89
284	38,238.89	599.55	408.36	191.19	0	37,830.53
285	37,830.53	599.55	410.40	189.15	0	37,420.13
286	37,420.13	599.55	412.45	187.10	0	37,007.68
287	37,007.68	599.55	414.51	185.04	0	36,593.17
288	36,593.17	599.55	416.58	182.97	0	36,176.59
289	36,176.59	599.55	418.67	180.88	0	35,757.92
290	35,757.92	599.55	420.76	178.79	0	35,337.16
291	35,337.16	599.55	422.86	176.69	0	34,914.29
292	34,914.29	599.55	424.98	174.57	0	34,489.31
293	34,489.31	599.55	427.10	172.45	0	34,062.21
294	34,062.21	599.55	429.24	170.31	0	33,632.97
295	33,632.97	599.55	431.39	168.16	0	33,201.59
296	33,201.59	599.55	433.54	166.01	0	32,768.04
297	32,768.04	599.55	435.71	163.84	0	32,332.33
298	32,332.33	599.55	437.89	161.66	0	31,894.44
299	31,894.44	599.55	440.08	159.47	0	31,454.37
300	31,454.37	599.55	442.28	157.27	0	31,012.09
301	31,012.09	599.55	444.49	155.06	0	30,567.60
302	30,567.60	599.55	446.71	152.84	0	30,120.88
303	30,120.88	599.55	448.95	150.60	0	29,671.94
304	29,671.94	599.55	451.19	148.36	0	29,220.75
305	29,220.75	599.55	453.45	146.10	0	28,767.30
306	28,767.30	599.55	455.71	143.84	0	28,311.59
307	28,311.59	599.55	457.99	141.56	0	27,853.59
308	27,853.59	599.55	460.28	139.27	0	27,393.31
309	27,393.31	599.55	462.58	136.97	0	26,930.73
310	26,930.73	599.55	464.90	134.65	0	26,465.83
311	26,465.83	599.55	467.22	132.33	0	25,998.61
312	25,998.61	599.55	469.56	129.99	0	25,529.05
313	25,529.05	599.55	471.91	127.65	0	25,057.15
314	25,057.15	599.55	474.26	125.29	0	24,582.88
315	24,582.88	599.55	476.64	122.91	0	24,106.25
316	24,106.25	599.55	479.02	120.53	0	23,627.23
317	23,627.23	599.55	481.41	118.14	0	23,145.81
318	23,145.81	599.55	483.82	115.73	0	22,661.99
319	22,661.99	599.55	486.24	113.31	0	22,175.75
320	22,175.75	599.55	488.67	110.88	0	21,687.08
321	21,687.08	599.55	491.12	108.44	0	21,195.96
322	21,195.96	599.55	493.57	105.98	0	20,702.39

ATTACHMENT I

323	20,702.39	599.55	496.04	103.51	0	20,206.35
324	20,206.35	599.55	498.52	101.03	0	19,707.84
325	19,707.84	599.55	501.01	98.54	0	19,206.82
326	19,206.82	599.55	503.52	96.03	0	18,703.31
327	18,703.31	599.55	506.03	93.52	0	18,197.27
328	18,197.27	599.55	508.56	90.99	0	17,688.71
329	17,688.71	599.55	511.11	88.44	0	17,177.60
330	17,177.60	599.55	513.66	85.89	0	16,663.94
331	16,663.94	599.55	516.23	83.32	0	16,147.71
332	16,147.71	599.55	518.81	80.74	0	15,628.90
333	15,628.90	599.55	521.41	78.14	0	15,107.49
334	15,107.49	599.55	524.01	75.54	0	14,583.48
335	14,583.48	599.55	526.63	72.92	0	14,056.84
336	14,056.84	599.55	529.27	70.28	0	13,527.58
337	13,527.58	599.55	531.91	67.64	0	12,995.67
338	12,995.67	599.55	534.57	64.98	0	12,461.09
339	12,461.09	599.55	537.25	62.31	0	11,923.85
340	11,923.85	599.55	539.93	59.62	0	11,383.92
341	11,383.92	599.55	542.63	56.92	0	10,841.29
342	10,841.29	599.55	545.34	54.21	0	10,295.94
343	10,295.94	599.55	548.07	51.48	0	9,747.87
344	9,747.87	599.55	550.81	48.74	0	9,197.06
345	9,197.06	599.55	553.57	45.99	0	8,643.49
346	8,643.49	599.55	556.33	43.22	0	8,087.16
347	8,087.16	599.55	559.11	40.44	0	7,528.05
348	7,528.05	599.55	561.91	37.64	0	6,966.14
349	6,966.14	599.55	564.72	34.83	0	6,401.42
350	6,401.42	599.55	567.54	32.01	0	5,833.87
351	5,833.87	599.55	570.38	29.17	0	5,263.49
352	5,263.49	599.55	573.23	26.32	0	4,690.26
353	4,690.26	599.55	576.10	23.45	0	4,114.16
354	4,114.16	599.55	578.98	20.57	0	3,535.18
355	3,535.18	599.55	581.87	17.68	0	2,953.31
356	2,953.31	599.55	584.78	14.77	0	2,368.52
357	2,368.52	599.55	587.71	11.84	0	1,780.81
358	1,780.81	599.55	590.65	8.90	0	1,190.17
359	1,190.17	599.55	593.60	5.95	0	596.57
360	596.57	599.55	596.57	2.98	0	(0.00)

ATTACHMENT 2

Initial loan amount	100,000.00					
Annual interest rate	9.00%				Curtailment	0
Payment	($804.62)					

	Beginning Balance	Payment	Principal	Interest	Curtailment	Ending Balance
1	100,000.00	804.62	54.62	750.00	0	99,945.38
2	99,945.38	804.62	55.03	749.59	0	99,890.35
3	99,890.35	804.62	55.45	749.18	0	99,834.90
4	99,834.90	804.62	55.86	748.76	0	99,779.04
5	99,779.04	804.62	56.28	748.34	0	99,722.76
6	99,722.76	804.62	56.70	747.92	0	99,666.06
7	99,666.06	804.62	57.13	747.50	0	99,608.93
8	99,608.93	804.62	57.56	747.07	0	99,551.37
9	99,551.37	804.62	57.99	746.64	0	99,493.39
10	99,493.39	804.62	58.42	746.20	0	99,434.97
11	99,434.97	804.62	58.86	745.76	0	99,376.10
12	99,376.10	804.62	59.30	745.32	0	99,316.80
13	99,316.80	804.62	59.75	744.88	0	99,257.06
14	99,257.06	804.62	60.19	744.43	0	99,196.86
15	99,196.86	804.62	60.65	743.98	0	99,136.22
16	99,136.22	804.62	61.10	743.52	0	99,075.11
17	99,075.11	804.62	61.56	743.06	0	99,013.56
18	99,013.56	804.62	62.02	742.60	0	98,951.53
19	98,951.53	804.62	62.49	742.14	0	98,889.05
20	98,889.05	804.62	62.95	741.67	0	98,826.09
21	98,826.09	804.62	63.43	741.20	0	98,762.67
22	98,762.67	804.62	63.90	740.72	0	98,698.76
23	98,698.76	804.62	64.38	740.24	0	98,634.38
24	98,634.38	804.62	64.86	739.76	0	98,569.52
25	98,569.52	804.62	65.35	739.27	0	98,504.17
26	98,504.17	804.62	65.84	738.78	0	98,438.32
27	98,438.32	804.62	66.34	738.29	0	98,371.99
28	98,371.99	804.62	66.83	737.79	0	98,305.16
29	98,305.16	804.62	67.33	737.29	0	98,237.82
30	98,237.82	804.62	67.84	736.78	0	98,169.98
31	98,169.98	804.62	68.35	736.27	0	98,101.64
32	98,101.64	804.62	68.86	735.76	0	98,032.78
33	98,032.78	804.62	69.38	735.25	0	97,963.40
34	97,963.40	804.62	69.90	734.73	0	97,893.50
35	97,893.50	804.62	70.42	734.20	0	97,823.08
36	97,823.08	804.62	70.95	733.67	0	97,752.13
37	97,752.13	804.62	71.48	733.14	0	97,680.65
38	97,680.65	804.62	72.02	732.60	0	97,608.63
39	97,608.63	804.62	72.56	732.06	0	97,536.07
40	97,536.07	804.62	73.10	731.52	0	97,462.97

ATTACHMENT 2

41	97,462.97	804.62	73.65	730.97	0	97,389.32
42	97,389.32	804.62	74.20	730.42	0	97,315.12
43	97,315.12	804.62	74.76	729.86	0	97,240.36
44	97,240.36	804.62	75.32	729.30	0	97,165.04
45	97,165.04	804.62	75.88	728.74	0	97,089.15
46	97,089.15	804.62	76.45	728.17	0	97,012.70
47	97,012.70	804.62	77.03	727.60	0	96,935.67
48	96,935.67	804.62	77.61	727.02	0	96,858.07
49	96,858.07	804.62	78.19	726.44	0	96,779.88
50	96,779.88	804.62	78.77	725.85	0	96,701.11
51	96,701.11	804.62	79.36	725.26	0	96,621.74
52	96,621.74	804.62	79.96	724.66	0	96,541.78
53	96,541.78	804.62	80.56	724.06	0	96,461.22
54	96,461.22	804.62	81.16	723.46	0	96,380.06
55	96,380.06	804.62	81.77	722.85	0	96,298.29
56	96,298.29	804.62	82.39	722.24	0	96,215.90
57	96,215.90	804.62	83.00	721.62	0	96,132.90
58	96,132.90	804.62	83.63	721.00	0	96,049.27
59	96,049.27	804.62	84.25	720.37	0	95,965.02
60	95,965.02	804.62	84.88	719.74	0	95,880.14
61	95,880.14	804.62	85.52	719.10	0	95,794.61
62	95,794.61	804.62	86.16	718.46	0	95,708.45
63	95,708.45	804.62	86.81	717.81	0	95,621.64
64	95,621.64	804.62	87.46	717.16	0	95,534.18
65	95,534.18	804.62	88.12	716.51	0	95,446.07
66	95,446.07	804.62	88.78	715.85	0	95,357.29
67	95,357.29	804.62	89.44	715.18	0	95,267.85
68	95,267.85	804.62	90.11	714.51	0	95,177.73
69	95,177.73	804.62	90.79	713.83	0	95,086.94
70	95,086.94	804.62	91.47	713.15	0	94,995.47
71	94,995.47	804.62	92.16	712.47	0	94,903.32
72	94,903.32	804.62	92.85	711.77	0	94,810.47
73	94,810.47	804.62	93.54	711.08	0	94,716.92
74	94,716.92	804.62	94.25	710.38	0	94,622.68
75	94,622.68	804.62	94.95	709.67	0	94,527.73
76	94,527.73	804.62	95.66	708.96	0	94,432.06
77	94,432.06	804.62	96.38	708.24	0	94,335.68
78	94,335.68	804.62	97.11	707.52	0	94,238.57
79	94,238.57	804.62	97.83	706.79	0	94,140.74
80	94,140.74	804.62	98.57	706.06	0	94,042.17
81	94,042.17	804.62	99.31	705.32	0	93,942.87
82	93,942.87	804.62	100.05	704.57	0	93,842.82
83	93,842.82	804.62	100.80	703.82	0	93,742.01
84	93,742.01	804.62	101.56	703.07	0	93,640.46
85	93,640.46	804.62	102.32	702.30	0	93,538.14
86	93,538.14	804.62	103.09	701.54	0	93,435.05
87	93,435.05	804.62	103.86	700.76	0	93,331.19

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ATTACHMENT 2

88	93,331.19	804.62	104.64	699.98	0	93,226.55
89	93,226.55	804.62	105.42	699.20	0	93,121.13
90	93,121.13	804.62	106.21	698.41	0	93,014.91
91	93,014.91	804.62	107.01	697.61	0	92,907.90
92	92,907.90	804.62	107.81	696.81	0	92,800.09
93	92,800.09	804.62	108.62	696.00	0	92,691.47
94	92,691.47	804.62	109.44	695.19	0	92,582.03
95	92,582.03	804.62	110.26	694.37	0	92,471.77
96	92,471.77	804.62	111.08	693.54	0	92,360.69
97	92,360.69	804.62	111.92	692.71	0	92,248.77
98	92,248.77	804.62	112.76	691.87	0	92,136.02
99	92,136.02	804.62	113.60	691.02	0	92,022.41
100	92,022.41	804.62	114.45	690.17	0	91,907.96
101	91,907.96	804.62	115.31	689.31	0	91,792.65
102	91,792.65	804.62	116.18	688.44	0	91,676.47
103	91,676.47	804.62	117.05	687.57	0	91,559.42
104	91,559.42	804.62	117.93	686.70	0	91,441.49
105	91,441.49	804.62	118.81	685.81	0	91,322.68
106	91,322.68	804.62	119.70	684.92	0	91,202.98
107	91,202.98	804.62	120.60	684.02	0	91,082.38
108	91,082.38	804.62	121.50	683.12	0	90,960.87
109	90,960.87	804.62	122.42	682.21	0	90,838.46
110	90,838.46	804.62	123.33	681.29	0	90,715.12
111	90,715.12	804.62	124.26	680.36	0	90,590.86
112	90,590.86	804.62	125.19	679.43	0	90,465.67
113	90,465.67	804.62	126.13	678.49	0	90,339.54
114	90,339.54	804.62	127.08	677.55	0	90,212.47
115	90,212.47	804.62	128.03	676.59	0	90,084.44
116	90,084.44	804.62	128.99	675.63	0	89,955.45
117	89,955.45	804.62	129.96	674.67	0	89,825.49
118	89,825.49	804.62	130.93	673.69	0	89,694.56
119	89,694.56	804.62	131.91	672.71	0	89,562.65
120	89,562.65	804.62	132.90	671.72	0	89,429.74
121	89,429.74	804.62	133.90	670.72	0	89,295.84
122	89,295.84	804.62	134.90	669.72	0	89,160.94
123	89,160.94	804.62	135.92	668.71	0	89,025.02
124	89,025.02	804.62	136.93	667.69	0	88,888.09
125	88,888.09	804.62	137.96	666.66	0	88,750.13
126	88,750.13	804.62	139.00	665.63	0	88,611.13
127	88,611.13	804.62	140.04	664.58	0	88,471.09
128	88,471.09	804.62	141.09	663.53	0	88,330.00
129	88,330.00	804.62	142.15	662.48	0	88,187.86
130	88,187.86	804.62	143.21	661.41	0	88,044.64
131	88,044.64	804.62	144.29	660.33	0	87,900.35
132	87,900.35	804.62	145.37	659.25	0	87,754.98
133	87,754.98	804.62	146.46	658.16	0	87,608.52
134	87,608.52	804.62	147.56	657.06	0	87,460.96

PAGE 3

ATTACHMENT 2

135	87,460.96	804.62	148.67	655.96	0	87,312.30
136	87,312.30	804.62	149.78	654.84	0	87,162.52
137	87,162.52	804.62	150.90	653.72	0	87,011.62
138	87,011.62	804.62	152.04	652.59	0	86,859.58
139	86,859.58	804.62	153.18	651.45	0	86,706.40
140	86,706.40	804.62	154.32	650.30	0	86,552.08
141	86,552.08	804.62	155.48	649.14	0	86,396.60
142	86,396.60	804.62	156.65	647.97	0	86,239.95
143	86,239.95	804.62	157.82	646.80	0	86,082.13
144	86,082.13	804.62	159.01	645.62	0	85,923.12
145	85,923.12	804.62	160.20	644.42	0	85,762.92
146	85,762.92	804.62	161.40	643.22	0	85,601.52
147	85,601.52	804.62	162.61	642.01	0	85,438.91
148	85,438.91	804.62	163.83	640.79	0	85,275.08
149	85,275.08	804.62	165.06	639.56	0	85,110.02
150	85,110.02	804.62	166.30	638.33	0	84,943.72
151	84,943.72	804.62	167.54	637.08	0	84,776.18
152	84,776.18	804.62	168.80	635.82	0	84,607.37
153	84,607.37	804.62	170.07	634.56	0	84,437.31
154	84,437.31	804.62	171.34	633.28	0	84,265.96
155	84,265.96	804.62	172.63	631.99	0	84,093.34
156	84,093.34	804.62	173.92	630.70	0	83,919.41
157	83,919.41	804.62	175.23	629.40	0	83,744.19
158	83,744.19	804.62	176.54	628.08	0	83,567.65
159	83,567.65	804.62	177.87	626.76	0	83,389.78
160	83,389.78	804.62	179.20	625.42	0	83,210.58
161	83,210.58	804.62	180.54	624.08	0	83,030.04
162	83,030.04	804.62	181.90	622.73	0	82,848.14
163	82,848.14	804.62	183.26	621.36	0	82,664.88
164	82,664.88	804.62	184.64	619.99	0	82,480.24
165	82,480.24	804.62	186.02	618.60	0	82,294.22
166	82,294.22	804.62	187.42	617.21	0	82,106.81
167	82,106.81	804.62	188.82	615.80	0	81,917.98
168	81,917.98	804.62	190.24	614.38	0	81,727.75
169	81,727.75	804.62	191.66	612.96	0	81,536.08
170	81,536.08	804.62	193.10	611.52	0	81,342.98
171	81,342.98	804.62	194.55	610.07	0	81,148.43
172	81,148.43	804.62	196.01	608.61	0	80,952.42
173	80,952.42	804.62	197.48	607.14	0	80,754.94
174	80,754.94	804.62	198.96	605.66	0	80,555.98
175	80,555.98	804.62	200.45	604.17	0	80,355.53
176	80,355.53	804.62	201.96	602.67	0	80,153.57
177	80,153.57	804.62	203.47	601.15	0	79,950.10
178	79,950.10	804.62	205.00	599.63	0	79,745.10
179	79,745.10	804.62	206.53	598.09	0	79,538.57
180	79,538.57	804.62	208.08	596.54	0	79,330.49
181	79,330.49	804.62	209.64	594.98	0	79,120.84

ATTACHMENT H

182	79,120.84	804.62	211.22	593.41	0	78,909.63
183	78,909.63	804.62	212.80	591.82	0	78,696.83
184	78,696.83	804.62	214.40	590.23	0	78,482.43
185	78,482.43	804.62	216.00	588.62	0	78,266.43
186	78,266.43	804.62	217.62	587.00	0	78,048.80
187	78,048.80	804.62	219.26	585.37	0	77,829.54
188	77,829.54	804.62	220.90	583.72	0	77,608.64
189	77,608.64	804.62	222.56	582.06	0	77,386.09
190	77,386.09	804.62	224.23	580.40	0	77,161.86
191	77,161.86	804.62	225.91	578.71	0	76,935.95
192	76,935.95	804.62	227.60	577.02	0	76,708.35
193	76,708.35	804.62	229.31	575.31	0	76,479.04
194	76,479.04	804.62	231.03	573.59	0	76,248.01
195	76,248.01	804.62	232.76	571.86	0	76,015.24
196	76,015.24	804.62	234.51	570.11	0	75,780.74
197	75,780.74	804.62	236.27	568.36	0	75,544.47
198	75,544.47	804.62	238.04	566.58	0	75,306.43
199	75,306.43	804.62	239.82	564.80	0	75,066.61
200	75,066.61	804.62	241.62	563.00	0	74,824.98
201	74,824.98	804.62	243.44	561.19	0	74,581.55
202	74,581.55	804.62	245.26	559.36	0	74,336.29
203	74,336.29	804.62	247.10	557.52	0	74,089.19
204	74,089.19	804.62	248.95	555.67	0	73,840.23
205	73,840.23	804.62	250.82	553.80	0	73,589.41
206	73,589.41	804.62	252.70	551.92	0	73,336.71
207	73,336.71	804.62	254.60	550.03	0	73,082.11
208	73,082.11	804.62	256.51	548.12	0	72,825.60
209	72,825.60	804.62	258.43	546.19	0	72,567.17
210	72,567.17	804.62	260.37	544.25	0	72,306.81
211	72,306.81	804.62	262.32	542.30	0	72,044.48
212	72,044.48	804.62	264.29	540.33	0	71,780.19
213	71,780.19	804.62	266.27	538.35	0	71,513.92
214	71,513.92	804.62	268.27	536.35	0	71,245.66
215	71,245.66	804.62	270.28	534.34	0	70,975.38
216	70,975.38	804.62	272.31	532.32	0	70,703.07
217	70,703.07	804.62	274.35	530.27	0	70,428.72
218	70,428.72	804.62	276.41	528.22	0	70,152.31
219	70,152.31	804.62	278.48	526.14	0	69,873.83
220	69,873.83	804.62	280.57	524.05	0	69,593.26
221	69,593.26	804.62	282.67	521.95	0	69,310.59
222	69,310.59	804.62	284.79	519.83	0	69,025.80
223	69,025.80	804.62	286.93	517.69	0	68,738.87
224	68,738.87	804.62	289.08	515.54	0	68,449.79
225	68,449.79	804.62	291.25	513.37	0	68,158.54
226	68,158.54	804.62	293.43	511.19	0	67,865.10
227	67,865.10	804.62	295.63	508.99	0	67,569.47
228	67,569.47	804.62	297.85	506.77	0	67,271.62

ATTACHMENT 2

229	67,271.62	804.62	300.09	504.54	0	66,971.53
230	66,971.53	804.62	302.34	502.29	0	66,669.19
231	66,669.19	804.62	304.60	500.02	0	66,364.59
232	66,364.59	804.62	306.89	497.73	0	66,057.70
233	66,057.70	804.62	309.19	495.43	0	65,748.51
234	65,748.51	804.62	311.51	493.11	0	65,437.00
235	65,437.00	804.62	313.85	490.78	0	65,123.16
236	65,123.16	804.62	316.20	488.42	0	64,806.96
237	64,806.96	804.62	318.57	486.05	0	64,488.39
238	64,488.39	804.62	320.96	483.66	0	64,167.43
239	64,167.43	804.62	323.37	481.26	0	63,844.06
240	63,844.06	804.62	325.79	478.83	0	63,518.27
241	63,518.27	804.62	328.24	476.39	0	63,190.04
242	63,190.04	804.62	330.70	473.93	0	62,859.34
243	62,859.34	804.62	333.18	471.45	0	62,526.16
244	62,526.16	804.62	335.68	468.95	0	62,190.48
245	62,190.48	804.62	338.19	466.43	0	61,852.29
246	61,852.29	804.62	340.73	463.89	0	61,511.56
247	61,511.56	804.62	343.29	461.34	0	61,168.27
248	61,168.27	804.62	345.86	458.76	0	60,822.41
249	60,822.41	804.62	348.45	456.17	0	60,473.96
250	60,473.96	804.62	351.07	453.55	0	60,122.89
251	60,122.89	804.62	353.70	450.92	0	59,769.19
252	59,769.19	804.62	356.35	448.27	0	59,412.84
253	59,412.84	804.62	359.03	445.60	0	59,053.81
254	59,053.81	804.62	361.72	442.90	0	58,692.09
255	58,692.09	804.62	364.43	440.19	0	58,327.66
256	58,327.66	804.62	367.17	437.46	0	57,960.49
257	57,960.49	804.62	369.92	434.70	0	57,590.58
258	57,590.58	804.62	372.69	431.93	0	57,217.88
259	57,217.88	804.62	375.49	429.13	0	56,842.39
260	56,842.39	804.62	378.30	426.32	0	56,464.09
261	56,464.09	804.62	381.14	423.48	0	56,082.95
262	56,082.95	804.62	384.00	420.62	0	55,698.95
263	55,698.95	804.62	386.88	417.74	0	55,312.07
264	55,312.07	804.62	389.78	414.84	0	54,922.28
265	54,922.28	804.62	392.71	411.92	0	54,529.58
266	54,529.58	804.62	395.65	408.97	0	54,133.93
267	54,133.93	804.62	398.62	406.00	0	53,735.31
268	53,735.31	804.62	401.61	403.01	0	53,333.70
269	53,333.70	804.62	404.62	400.00	0	52,929.08
270	52,929.08	804.62	407.65	396.97	0	52,521.43
271	52,521.43	804.62	410.71	393.91	0	52,110.71
272	52,110.71	804.62	413.79	390.83	0	51,696.92
273	51,696.92	804.62	416.90	387.73	0	51,280.03
274	51,280.03	804.62	420.02	384.60	0	50,860.00
275	50,860.00	804.62	423.17	381.45	0	50,436.83

ATTACHMEN 2

276	50,436.83	804.62	426.35	378.28	0	50,010.49
277	50,010.49	804.62	429.54	375.08	0	49,580.94
278	49,580.94	804.62	432.77	371.86	0	49,148.18
279	49,148.18	804.62	436.01	368.61	0	48,712.16
280	48,712.16	804.62	439.28	365.34	0	48,272.88
281	48,272.88	804.62	442.58	362.05	0	47,830.31
282	47,830.31	804.62	445.90	358.73	0	47,384.41
283	47,384.41	804.62	449.24	355.38	0	46,935.17
284	46,935.17	804.62	452.61	352.01	0	46,482.56
285	46,482.56	804.62	456.00	348.62	0	46,026.56
286	46,026.56	804.62	459.42	345.20	0	45,567.14
287	45,567.14	804.62	462.87	341.75	0	45,104.27
288	45,104.27	804.62	466.34	338.28	0	44,637.93
289	44,637.93	804.62	469.84	334.78	0	44,168.09
290	44,168.09	804.62	473.36	331.26	0	43,694.73
291	43,694.73	804.62	476.91	327.71	0	43,217.81
292	43,217.81	804.62	480.49	324.13	0	42,737.33
293	42,737.33	804.62	484.09	320.53	0	42,253.23
294	42,253.23	804.62	487.72	316.90	0	41,765.51
295	41,765.51	804.62	491.38	313.24	0	41,274.13
296	41,274.13	804.62	495.07	309.56	0	40,779.06
297	40,779.06	804.62	498.78	305.84	0	40,280.28
298	40,280.28	804.62	502.52	302.10	0	39,777.76
299	39,777.76	804.62	506.29	298.33	0	39,271.47
300	39,271.47	804.62	510.09	294.54	0	38,761.39
301	38,761.39	804.62	513.91	290.71	0	38,247.47
302	38,247.47	804.62	517.77	286.86	0	37,729.71
303	37,729.71	804.62	521.65	282.97	0	37,208.06
304	37,208.06	804.62	525.56	279.06	0	36,682.50
305	36,682.50	804.62	529.50	275.12	0	36,152.99
306	36,152.99	804.62	533.48	271.15	0	35,619.52
307	35,619.52	804.62	537.48	267.15	0	35,082.04
308	35,082.04	804.62	541.51	263.12	0	34,540.53
309	34,540.53	804.62	545.57	259.05	0	33,994.96
310	33,994.96	804.62	549.66	254.96	0	33,445.30
311	33,445.30	804.62	553.78	250.84	0	32,891.52
312	32,891.52	804.62	557.94	246.69	0	32,333.58
313	32,333.58	804.62	562.12	242.50	0	31,771.46
314	31,771.46	804.62	566.34	238.29	0	31,205.13
315	31,205.13	804.62	570.58	234.04	0	30,634.54
316	30,634.54	804.62	574.86	229.76	0	30,059.68
317	30,059.68	804.62	579.18	225.45	0	29,480.50
318	29,480.50	804.62	583.52	221.10	0	28,896.99
319	28,896.99	804.62	587.90	216.73	0	28,309.09
320	28,309.09	804.62	592.30	212.32	0	27,716.79
321	27,716.79	804.62	596.75	207.88	0	27,120.04
322	27,120.04	804.62	601.22	203.40	0	26,518.82

ATTACHMENT L

323	26,518.82	804.62	605.73	198.89	0	25,913.09
324	25,913.09	804.62	610.27	194.35	0	25,302.81
325	25,302.81	804.62	614.85	189.77	0	24,687.96
326	24,687.96	804.62	619.46	185.16	0	24,068.50
327	24,068.50	804.62	624.11	180.51	0	23,444.39
328	23,444.39	804.62	628.79	175.83	0	22,815.60
329	22,815.60	804.62	633.51	171.12	0	22,182.09
330	22,182.09	804.62	638.26	166.37	0	21,543.84
331	21,543.84	804.62	643.04	161.58	0	20,900.79
332	20,900.79	804.62	647.87	156.76	0	20,252.92
333	20,252.92	804.62	652.73	151.90	0	19,600.20
334	19,600.20	804.62	657.62	147.00	0	18,942.58
335	18,942.58	804.62	662.55	142.07	0	18,280.02
336	18,280.02	804.62	667.52	137.10	0	17,612.50
337	17,612.50	804.62	672.53	132.09	0	16,939.97
338	16,939.97	804.62	677.57	127.05	0	16,262.40
339	16,262.40	804.62	682.65	121.97	0	15,579.75
340	15,579.75	804.62	687.77	116.85	0	14,891.97
341	14,891.97	804.62	692.93	111.69	0	14,199.04
342	14,199.04	804.62	698.13	106.49	0	13,500.91
343	13,500.91	804.62	703.37	101.26	0	12,797.54
344	12,797.54	804.62	708.64	95.98	0	12,088.90
345	12,088.90	804.62	713.96	90.67	0	11,374.95
346	11,374.95	804.62	719.31	85.31	0	10,655.64
347	10,655.64	804.62	724.71	79.92	0	9,930.93
348	9,930.93	804.62	730.14	74.48	0	9,200.79
349	9,200.79	804.62	735.62	69.01	0	8,465.17
350	8,465.17	804.62	741.13	63.49	0	7,724.04
351	7,724.04	804.62	746.69	57.93	0	6,977.35
352	6,977.35	804.62	752.29	52.33	0	6,225.05
353	6,225.05	804.62	757.93	46.69	0	5,467.12
354	5,467.12	804.62	763.62	41.00	0	4,703.50
355	4,703.50	804.62	769.35	35.28	0	3,934.15
356	3,934.15	804.62	775.12	29.51	0	3,159.04
357	3,159.04	804.62	780.93	23.69	0	2,378.11
358	2,378.11	804.62	786.79	17.84	0	1,591.32
359	1,591.32	804.62	792.69	11.93	0	798.63
360	798.63	804.62	798.63	5.99	0	0.00

CONGRESSMAN REYES TO MORTGAGE BANKERS ASSOCIATION OF AMERICA

The Premier Association of Real Estate Finance

August 30, 2002

The Honorable Mike Simpson
Chairman, Subcommittee on Benefits
Veterans Affairs' Committee
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter is a follow up to the hearings held by the Subcommittee on Benefits regarding H.R. 5111 and H.R. 4017, bills to update and amend the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). During the hearings, the Mortgage Bankers Association of America (MBA) recommended indexing the interest rate cap to a margin over the 10-year Treasury bill. Congressman Reyes asked what margin MBA would suggest and to explain the impact on the interest rate cap if applied in today's interest rate environment. This letter is in response this question.

The existing 6 percent interest rate cap was enacted in 1942, when mortgage interest rates were extremely low and relatively stable. Between 1941-1945, for example, the FHA contract rate was 4.5 percent and the VA rate was 4.25 percent. Non-government mortgage rates ranged from approximately 4.6 percent to 5.0 percent. The 10-year Treasury rate was in the range of 2.5 percent with very little fluctuation. Given these facts, it is reasonable to assume that the 6 percent cap was not intended to be a subsidy but an "insurance policy" against rate increases while the servicemember fought during World War II. By imposing the 6 percent maximum, we believe Congress did not intend to adversely affecting those institutions extending mortgage credit.

Our economy has changed dramatically since the 1940s and we, therefore, believe it is appropriate to reexamine the interest rate cap. Over the last 60 years, we have experienced more volatile interest rates, including double-digit inflation in the 1970s and 1980s that pushed mortgage rates as high as 19 percent. Widespread implementation of the 6 percent cap during this period would have resulted in a subsidy from the financial community far beyond the original intent of the legislation. Today we are fortunate to be in a low interest rate environment. Contract rates for the week ending August 15, 2002, averaged 6.5 percent. The weekly average rate on 10-year Treasury bills was 4.18 percent for the same period. Despite the low interest rate environment,

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mortgage lenders are stilled faced with having to reduce the interest rates of eligible borrower to comply with the interest rate cap.

When originally enacted in 1942, the 6 percent rate cap was 33 percent higher than the prevailing FHA rate and approximately 20 percent higher than prevailing non-government mortgage rates. Were Congress to apply today the mathematical relationship that existed then, the SSCRA cap would be adjusted to be 20 percent higher than today's average note rate resulting in a cap of around 7.30 percent.

Raising the cap would eliminate unintended consequences of SSCRA on the mortgage industry. However, a one-time adjustment would not take into consideration future market volatility. Tying the cap to an appropriate index would allow for adjustment over time based on changes in the economy and, thus, provide the mortgage community with some protection against uncontrolled losses. Applying the logic that was in place 60 years ago, and assuming a constant spread (margin) rather than a constant proportional spread, we would recommend the interest rate cap be set 350 basis points (or 3.5 percent) above the 10-year Treasury rate. This translates into an interest rate cap of 7.68 percent. Given that 60 years ago Congress did not intend to specify a particular basis point spread, it probably makes sense to round this number to the nearest half percentage point. MBA does not suggest a daily change to the interest rate cap. Rather we believe an annual adjustment would be appropriate and operationally manageable. Congress could use an annualized average of the 10-year Treasury rate as the index.

Unfortunately we are unable to determine at this time how many military personnel would be affected by this change because we lack loan level information and do not have access to proprietary data collected by Fannie Mae, Freddie Mac and Ginnie Mae. These entities would be helpful sources of information as they represent more than half of the outstanding first mortgage debt.

We hope this information has been helpful. Please contact me if we can be of more assistance.

Sincerely,

Kurt Pfotenhauer

Kurt Pfotenhauer
Senior Vice President, Government Affairs

CONGRESSMAN REYES TO NON COMMISSIONED OFFICERS ASSOCIATION

Non Commissioned Officers Association of the United States of America

610 Madison St. • Alexandria, Va. 22314 • Telephone (703) 549-0311

August 5, 2002

The Honorable Mike Simpson
House Veterans Affairs Committee
Chairman, Subcommittee on Benefits
337 Cannon House Office Building
Washington, DC 20515

Dear Chairman Simpson:

At the July 25, 2002 hearing on H.R. 5111 and H.R. 4017, Congressman Reyes asked NCOA to provide its perspective on the issue of indexing the interest rate. At the hearing, I responded that NCOA would support indexing the interest rate as long as it is fair to the servicemember. While the Association still stands by this answer, I would like to expand on my answer.

NCOA's opinion is that the complexity of the interest rate formula would deter servicemembers from seeking protection under the law, and it would be difficult to establish a fair formula for all involved. While NCOA does not have an economic expert on staff, the Association believes that the six percent interest cap has been and will continue to be sufficient to protect the servicemembers without overburdening the economy. This provision is designed to protect the servicemember, and any change to the interest rate cap or any other provision of the Soldiers' and Sailors' Civil Relief Act should be done with that in mind.

NCOA recommends that the Subcommittee keep the current six percent interest rate cap that is in H.R. 5111 and that the rate should be reviewed when the economy dictates an adjustment.

I hope that our response is helpful. NCOA stands ready to answer any further questions you may have.

Regards,

Kimberlee D. Vockel

Kimberlee D. Vockel
Director of Legislative Affairs

Chartered by the United States Congress

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