

APPENDIX C

DOJ ASSISTANT AG LETTERS



U.S. Department of Justice
Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 12, 1991

Honorable Terrence O'Donnell
General Counsel
Department of Defense
The Pentagon
Room 3E 580
Washington, D.C. 20301

Dear Terry:

The Soldiers' and Sailors' Civil Relief Act provides several important protections for our active and reserve service members defending the nation's interests. One of those protections is a maximum interest cap on the financial obligations of individuals who were subject to an obligation prior to entering on active duty and whose active duty materially affects their ability to pay on the obligation. Persons meeting these requirements are entitled to a 6 per centum cap on the obligation during the period of active duty.

Most reputable financial institutions are aware of this provision and promptly give effect to its protections upon application by the service member. There have, however, been reports that some institutions are not so cooperative. In the event an individual service member is denied this protection it is reasonable to expect that requests may be made for representation of the interests of these individuals by the United States. Although the Act does not provide for such representation, 28 U.S.C. § 517 authorizes the Department to represent individuals when such representation is in the interests of the United States. In appropriate circumstances, a denial of Soldiers' and Sailors' Relief Act benefits would warrant such representation. By the attached memorandum I have informed all United States Attorneys of the procedures which should be used to request representation.

Obviously the Department of Defense shares our commitment to protect all benefits which Congress has provided for our service members. In that spirit, I would appreciate your assistance in disseminating the information and procedures contained in the

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enclosed memorandum to appropriate offices within the Department
of Defense and its military components.

Sincerely,



Stuart M. Gerson
Assistant Attorney General
Civil Division



U.S. Department of Justice
Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 11, 1991

MEMORANDUM

TO: All United States Attorneys

FROM: Stuart M. Garson *SMG*
Assistant Attorney General
Civil Division

SUBJECT: Requests For Representation Concerning the Soldiers'
and Sailors' Civil Relief Act

The deployment of our armed forces to the Arabian Gulf and the extensive reliance upon reservists to meet deployment needs may result in reservists invoking the protections of the Soldiers' and Sailors' Civil Relief Act limiting the rate of interest which they may be charged in certain circumstances. Efforts to realize the benefits of that Act may generate inquiries to your offices concerning the potential availability of representation by the United States in actions to enforce the protections. The purpose of this memorandum is to outline the provisions of the Act and appropriate procedures for processing requests.

The maximum rate of interest provision of 50 USC App. 5 526 states:

No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [October 6, 1942], bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability.

Accordingly, an individual who was subject to an obligation prior to entering on active duty and whose active duty materially affects his or her ability to pay on the obligation, is entitled to a 6 per centum cap on the obligation during the period of active duty.

Most reputable financial institutions are aware of this provision and promptly give effect to its protections upon application by the servicemember. There have, however, been reports that some institutions are not so cooperative. In the event an individual servicemember is denied this protection it is reasonable to expect that either the Civil Division or United States Attorneys will receive inquiries asking whether the United States may represent the individual. The Act does not provide for such representation. Nevertheless, Title 28 U.S.C. § 517 authorizes the Department to represent individuals when such representation is in the interests of the United States. In appropriate circumstances, a denial of Soldiers' and Sailors' Relief Act benefits would warrant such representation. An individual wishing to request Department of Justice representation concerning this provision needs to submit a signed request through the military department with which the individual served to this office for consideration by the representation committee. The request should include information sufficient to determine the precise nature of the underlying obligation, and how military service has materially affected the individual's ability to meet the obligation. The military department concerned should include its recommendation in a forwarding endorsement.

The Department of Justice views the protection of the benefits of the Act as a very serious matter particularly in this time of reliance on our reserve forces.