

Module 4

The Servicemembers Civil Relief Act

TRAINING NOTES

- This module presents information that is highly relevant even though it is highly legalistic in its nature. Therefore, the trainer has alternatives depending upon the audience.
- If the audience is predominantly caseworkers, it may be most appropriate to present the information through the abbreviated overview of this module and the question and answer format found in **Handout 4-1** of the Appendix. This Handout contains a generic overview of the Servicemembers Civil Relief Act (SCRA).
- If the audience is predominantly attorneys and senior staff, it may be most appropriate to present the more detailed version of this module.

What you need to say/do – Abbreviated overview

1. Display **PowerPoint Slide Module 4-1: Module 4** (title slide).
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to **Module 4**.
3. Ask the participants about their familiarity with the SCRA. Explain that the SCRA is not meant to shield service members from their child support obligations.
4. Explain to the participants the learning goals and objectives of this module.
5. Tell the participants that this is a shortened version of the complete module. Participants seeking more detail can review the more expansive version.

What you need to know

Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

Equipment/Supplies:

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

PowerPoint Slides:

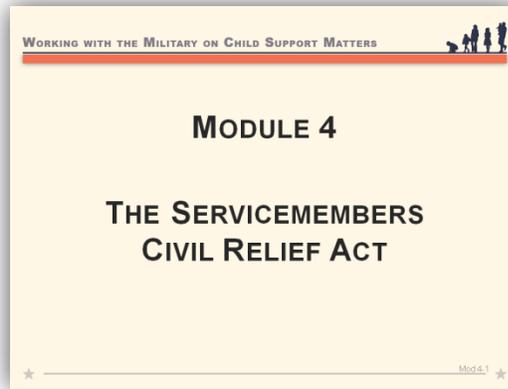
- 4-1: **Module 4** (title slide)
- 4-2: Scope of the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

Handouts:

- 4-1: A Guide to the Servicemembers Civil Relief Act (SCRA)
- 4-2: Review Exercises

MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 30 minutes (abbreviated overview)



4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

4.1.1 Learning Goal

Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.

4.1.2 Learning Objectives

- Given an interactive lecture and small group exercise, participants will identify when, and to whom, the SCRA applies.
- Given a lecture and discussion, participants will identify the circumstances that permit military personnel to invoke or waive the protections and provisions of the SCRA for a stay of civil proceedings, and, if invoked, identify the length of time that proceedings may be stayed.
- Given a lecture and discussion, participants will correctly explain the SCRA provisions regarding entry of a default judgment.
- Given a lecture and discussion, participants will identify when the statutes of limitations for child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly explain how the SCRA provisions regarding the maximum rate of interest apply to child support.

Given a lecture and discussion, participants will correctly explain how the SCRA provisions regarding the maximum rate of interest apply to child support.

TRAINING NOTES

What you need to say/do

Display PowerPoint Slide 4-2: Scope of the SCRA.

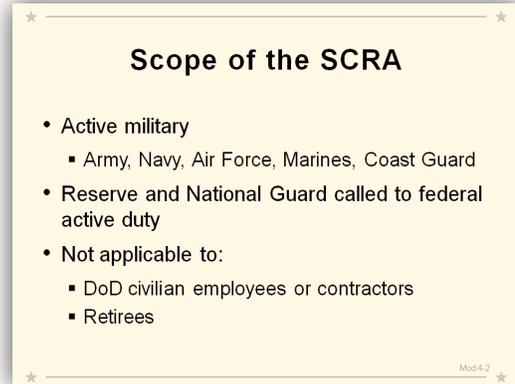
What you need to know

The law updating the Soldiers' and Sailors' Civil Relief Act (SSCRA) is the Servicemembers Civil Relief Act (SCRA), Public Law 108-189, which became law on December 19, 2003. The SCRA has been amended several times since 2003.

4.2 OVERVIEW OF THE SCRA

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918, reenacted in 1940, and updated in 2003 with the enactment of the Servicemembers Civil Relief Act (SCRA). Since 2003, the SCRA has been amended several times. It is found at 50 U.S.C. app. §§ 501 *et seq.* It is not

found in state statutes. The primary purpose of the SCRA is to postpone, suspend, terminate, or reduce the amount of certain civil obligations so that members of the armed forces and certain other individuals can focus their full attention on their military or professional responsibilities without adverse consequences for themselves or their families. The SCRA is not intended to be an answer to all legal problems encountered by a military member.



The SCRA protects all service members on federal active duty, including:

- Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty service, or who are absent from duty as a result of being wounded or being granted leave
- Reserve, National Guard, and Air Guard personnel who have been activated and are on federal active duty
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the president and supported by federal funds
- Commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration in active military service.

Service members on active duty do not have to deploy to qualify for the protections of the SCRA.

TRAINING NOTES

What you need to say/do

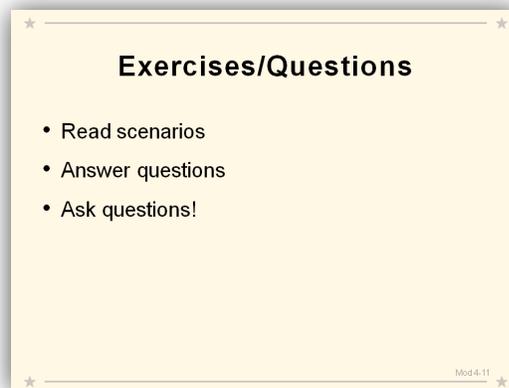
1. Discuss **Handout 4-1** with participants.
 2. Display **PowerPoint Slide 4-11: Exercises/Questions**.
 3. Pass out the two exercise scenarios and questions to the participants. Divide the participants into groups of four or five. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
 4. Facilitate a group discussion of the scenarios and participants' responses to the questions.
 5. Encourage questions about the material in the module.
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What you need to know

The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. As originally enacted, the SSCRA only applied to judicial proceedings. Under the SCRA, these protections now also cover administrative procedures, such as the administrative child support enforcement remedies mandated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Handout 4-1: A Guide to the Servicemembers Civil Relief Act (SCRA), located in the Appendix, summarizes the provisions of the SCRA.

4.3 EXERCISES



Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

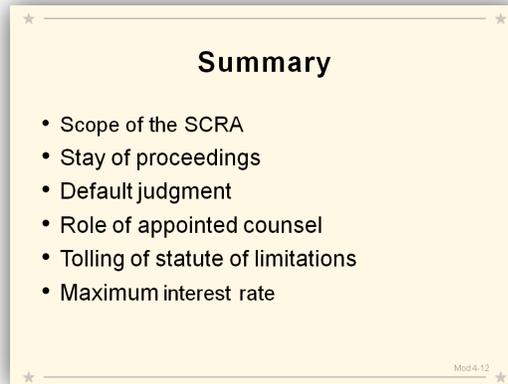
TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-12: Summary**. Review the topics discussed in **Module 4**.
 2. Preview topics that will be discussed in **Module 5**.
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What you need to know

4.4 SUMMARY OF MODULE 4



In this module we discussed:

- when the SCRA applies,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment will be entered,
- the role of appointed counsel,
- the impact of a default judgment entered without an affidavit regarding military service,
- the tolling of statutes of limitations when a party is in the military, and
- the maximum interest rate that applies when a person is in military service and invokes the SCRA protections.

4.5 PREVIEW OF MODULE 5

In the next module, we will discuss the following topics:

- genetic testing of military personnel in paternity cases,
- obtaining financial and medical insurance information from military personnel, and
- collecting information or evidence from service members located outside of the United States or its waters.

TRAINING NOTES

What you need to say/do – detailed overview

1. Display **PowerPoint Slide Module 4-1: Module 4** (title slide).
 2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to **Module 4**.
 3. Query the participants as to their familiarity with the SSCRA/SCRA. Explain that the purpose of the SCRA is to protect the service member from certain civil obligations so that the member can devote his or her time to the defense needs of the Nation. However, the SCRA is not intended to shield a military member from all legal obligations. Ask the participants if they have ever had proceedings stayed under the SSCRA/SCRA or a default judgment reopened under the SSCRA/SCRA.
 4. Go over the learning goals and objectives of this module.
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What you need to know

1. It takes approximately one hour to complete the expanded version of this module.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

Equipment/Supplies:

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

PowerPoint Slides:

- 4-1: **Module 4** (title slide)
- 4-2: Scope of the SCRA
- 4-3: Stay of Civil Proceedings
- 4-4: Stay of Civil Proceedings (cont'd)
- 4-5: Default Judgment under SCRA
- 4-6: Reopening a Default Judgment under the SCRA
- 4-7: Appointed Counsel
- 4-8: Stay or Vacation of Judgments and Attachments
- 4-9: Tolling the Statute of Limitations
- 4-10: Interest under the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

Handouts:

- 4-1: A Guide to the Servicemembers Civil Relief Act (SCRA)
- 4-2: Review Exercises

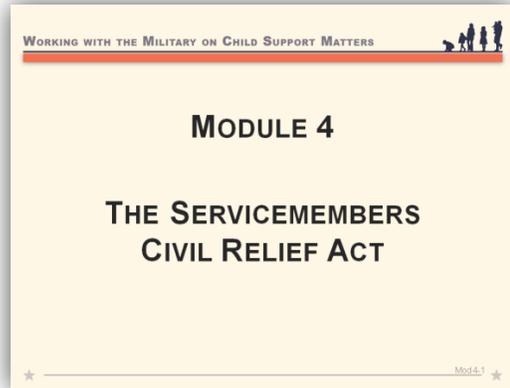
MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 1 hour (expanded overview)

4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

4.1.1 Learning Goal

- Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.



4.1.2 Learning Objectives

- Given an interactive lecture and exercise, participants will identify when and to whom the SCRA applies.
- Given an interactive lecture and exercise, participants will know when military personnel may invoke or waive the SCRA's protections for a stay of civil proceedings, and, if invoked, identify how long the proceedings are stayed.
- Given an interactive lecture and exercise, participants will know when the SCRA provides a service member relief from a default judgment, when it requires the appointment of counsel for military personnel before entry of a default judgment, and what limits it places on the role that an appointed counsel plays.
- Given an interactive lecture, participants will know when the statutes of limitations for child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding the maximum rate of interest apply to child support obligations.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding interest apply to child support.

TRAINING NOTES

What you need to say/do

Explain the history behind the SSCRA/SCRA and its original purpose. Inform the participants that the SCRA does not "exempt" military members from their moral and civil obligations with respect to court or administrative proceedings, but does provide them certain protections.

What you need to know

1. The Servicemembers Civil Relief Act is a federal statute found at 50 U.S.C. app. §§ 501 *et seq.* It is not found in state codes. The SCRA allows service members to request and obtain a "stay of proceedings" when their military duties materially affect their ability to appear at a civil proceeding. If the service member is on active military service, or within 90 days after termination of or release from military service, and supports his or her request for a stay with the SCRA's required documents, the tribunal must stay the action for at least 90 days. The service member may apply for additional stays, which are within the tribunal's discretion. The key provisions of the SCRA that apply to cases involving family law are found at 50 U.S.C. app. §§ 521, 522, and 524 - 527.
2. 50 U.S.C. app. § 522 provides for an initial automatic stay of court and administrative proceedings of at least 90 days upon a proper request from the member. The request must be in writing and include specific information. Under the SCRA, this stay is mandatory if the service member provides the required information. If a party, who has been served fails to appear at a proceeding and it appears that the absent party is a service member, 50 U.S.C. app. § 521 requires that the court or administrative tribunal must appoint an attorney on the member's behalf to invoke these SCRA rights before entry of a default judgment (e.g., a judgment entered in the person's absence). 50 U.S.C. app. § 521(g) sets out criteria for when a service member can move to reopen a default judgment. Finally, 50 U.S.C. app. § 524 discusses conditions under which a court or administrative tribunal will stay or vacate a judgment or garnishment entered against a military member.
3. **Handout 4-1: A Guide to the Servicemembers Civil Relief Act (SCRA)**, located in the Appendix, summarizes the provisions of the SCRA.

4.2 THE SCOPE OF THE SERVICEMEMBERS CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918, reenacted in 1940, and updated in 2003 with the enactment of the Servicemembers Civil Relief Act (SCRA). Since 2003, the SCRA has been amended several times. It is found at 50 U.S.C. app. §§ 501 *et seq.* It is not found in state statutes. The primary purpose of the SCRA is to postpone, suspend, terminate, or reduce the amount of certain civil obligations so that members of the armed forces and certain other individuals can focus their full attention on their military or professional responsibilities without adverse consequences for themselves or their families. The SCRA is not intended to be an answer to all legal problems encountered by a military member.

The SCRA provides this purpose statement that serves as a guide to the courts and administrative tribunals in interpreting the intent of the Act:

The purposes of this Act are:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by the Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

It is important to understand that the SCRA is not a shield that exempts military members from the judicial or administrative process. It is a provision for the suspension of certain civil proceedings during times that a military member's service affects his or her civil rights.

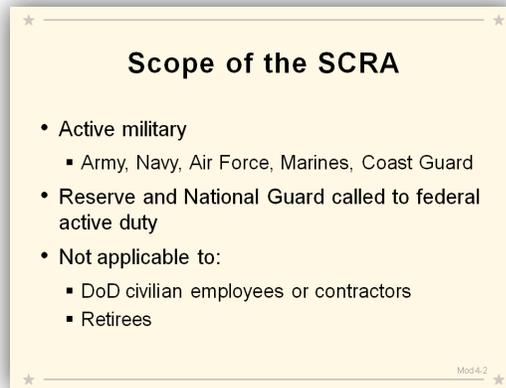
TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-2: Scope of the SCRA.**
2. Inform participants that, although the SSCRA only applied to civil judicial proceedings, the SCRA's stay applies to both judicial and administrative civil proceedings. The SCRA defines the term "court" to mean both a court and an administrative agency.

What you need to know

The SCRA only applies to military personnel, including reservists and National Guard members, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a state governor calls them to active duty under 32 U.S.C. § 502(f) for more than 30 consecutive days for purposes of responding to a presidentially-declared national emergency that is supported by federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. The SCRA applies equally in times of war and in peace, despite the origins of the Act's predecessor (SSCRA) during the first and second World Wars.



The SCRA protects all service members on federal active duty, including:

- Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty service, or who are absent from duty as a result of being wounded or being granted leave
- Reserve, National Guard, and Air Guard personnel who have been activated and are on federal active duty
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the president and supported by federal funds
- Commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration in active military service.

Actual deployment while in active military service is not a prerequisite to qualify for the protections of the SCRA.

The SCRA does not apply to DoD civilians, contract employees, or military retirees, and most of its provisions do not apply to military dependents directly. As originally enacted, the SSCRA only applied to judicial proceedings. Under the SCRA, these protections now also cover administrative procedures, such as the administrative child support enforcement remedies mandated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

TRAINING NOTES

What you need to say/do

1. Review the start and termination of SCRA protections.
 2. Display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
 3. Define what is meant by a stay of civil proceedings.
-

What you need to know

4.3 START AND TERMINATION OF PROTECTIONS

The SCRA's protections begin no later than when a person enters active military service. However, certain provisions expand this coverage. For example, reservists are entitled to most of the Act's rights and protections on the date they receive active duty orders. A service member is also protected during any period in which the member is absent from duty if the absence is due to sickness, wounds, leave, or other lawful cause.

The SCRA's coverage usually terminates "on the date on which the service member is released from military service or dies while in military service." Other sections of the Act qualify this period of military service. For example, the SCRA protection calling for the stay of a civil proceeding extends for 90 days after termination of or release from military service. Similarly, an application to set aside a default judgment must be filed no later than 90 days after the date of termination of or release from military service.

4.4 STAY OF CIVIL PROCEEDINGS UNDER THE SCRA

Stay of Civil Proceedings

- Applies to judicial and administrative proceedings
- Is person active military?
- Did member provide required documents?
 - Letter re: how current military duties materially affect member's ability to appear; date when available
 - Letter from commanding officer stating military duties prevent member's appearance and leave not authorized

• DoD Directive 1327.06

Mod 4.3

A "stay" means that proceedings are put on hold for a certain time period. The stay provisions of the SCRA apply to both court and administrative hearings or proceedings. A request for a stay of proceedings may be made at any point of the proceeding, provided it is made during the service member's service or within 90 days after the member's termination of or release from military service.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
 2. Explain the stay requirements of the SCRA.
 3. Explain the procedural requirements for obtaining a stay of proceedings.
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What you need to know

1. 50 U.S.C. app. § 522(b) (Section 202(b) of the SCRA) states:
 - (1) Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.
 - (2) Conditions for stay. An application for a stay under paragraph (1) shall include the following:
 - (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
 - (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.
2. If an active duty service member presents the required documents in support of his or her application, the tribunal must grant the stay.

In determining whether a service member is entitled to a stay under the SCRA, the court or administrative tribunal must ask two questions. First, is the service member in active military service? As noted, to be eligible for a stay under the SCRA, a service member must be in military service, or it must be within 90 days after the member's termination of or release from military service. Second, in support of the motion for a stay, did the member provide the required documents to the court or agency? If the member makes an application for a stay and presents the required documents, the court or administrative tribunal must stay the action for a period not less than 90 days.

Any stay under 50 U.S.C. app. § 522(b) applies to proceedings filed during the member's military service even if they relate to obligations that arose before the member joined the service. For example, it would apply to a paternity proceeding that was initiated during the member's service, for a child conceived prior to the member's entry into military service.

4.4.1 Procedural Requirements

The SCRA requires that the service member provide a letter or other communication setting forth facts stating the manner in which the member's current military duties materially affect the service member's ability to appear and stating a date when the service member will be available to appear. The service member must also provide a letter or other communication from the service member's commanding officer stating that the member's current military duties prevent the member's appearance and that military leave is not authorized for the service member at the time of the letter.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
 2. Explain DoD Directive 1327.06 and its impact on a commander's determination of availability when a military member requests a stay of proceedings.
 3. Explain the circumstances that permit denial of a leave request, as determined by a military member's commander, who is the approving authority for military leave.
 4. Display **PowerPoint Slide 4-4: Stay of Civil Proceedings (cont'd)**.
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What you need to know

DoD Directive 1327.06 (Sept. 30, 2011):

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, ordinary leave shall be granted, unless

- (a) The member is serving in or with a unit deployed in a contingency operation; or
- (b) Exigencies of military service require a denial of such request.

4.4.2 DoD Directive 1327.06

The fact that a service member is on active duty does not automatically mean that the member’s current military duties “materially affect” his or her ability to appear in a civil proceeding. DoD Directive 1327.06 (September 30, 2011) states:

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, ordinary leave shall be granted, unless:

- (a) The member is serving in or with a unit deployed in a contingency operation; or
- (b) Exigencies of military service require a denial of such request.

4.4.3 Duration of Stay

Stay of Civil Proceedings (cont'd)

- If required documents are presented, tribunal must grant initial stay of at least 90 days
- If member requests an additional stay, with required documents, tribunal has discretion re: granting stay

Mod 4.4

The tribunal may on its own motion and **shall**, upon application by the service member—which includes the required letters or communications to the tribunal demonstrating material effect—stay the action for a period not less than 90 days. A service member who is granted a stay of a civil action or proceeding may apply for an additional stay based on continuing material effect of military duty on the service member’s ability to appear. The request for an additional stay may be made at the time of the initial application or any other time where the service member is unavailable to defend the action.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-4: Stay of Civil Proceedings (cont'd)**.
2. The SCRA's stay provision is of obvious benefit to members of the National Guard and Reserves who are in the middle of litigation but called to rapidly deploy. It also benefits members of the active Armed Forces when they face civil legal action while deployed or when, in other situations, they are a significant distance from the courtroom.
3. Discuss the implications of a tribunal's denying a service member's request for an additional stay.

What you need to know

Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) provides for parties to "testify by telephone, through audiovisual means or by any other electronic means." Under the 1996 version of UIFSA, the tribunal has discretion in allowing such testimony. Under the 2001 and 2008 versions of UIFSA, the tribunal must allow such testimony upon request.

The documents required for an initial stay request must also be provided in the subsequent application:

- a letter or other communication from the member setting forth facts stating how current military duty requirements materially affect the member's ability to appear and stating a date when the service member will be available to appear, and
- a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents his or her appearance and that military leave is not authorized for the service member at the time of the letter.

Granting of the additional stay is within the discretion of the tribunal.

4.4.4 Denial of Additional Stay Request

Some of the situations in which a child support agency may decide to oppose an additional stay and argue that military duty does not materially affect the member's ability to appear, include the following:

- The location of the hearing is in close proximity to the member's base or post and the member has a reasonable amount of annual leave accrued that can be used in trial preparation and attendance.
- The child support agency is willing to coordinate telephonic testimony or the member's participation via SKYPE. Note that Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) provides for parties to "testify by telephone, through audiovisual means or by any other electronic means."

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-5: Default Judgment under SCRA**.
 2. Explain that an affidavit regarding military service is required before entry of a default judgment against a defendant.
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What you need to know

1. 50 U.S.C. app. § 521(b) (Section 201(b) of the SCRA) states, in part:
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. **Module 2** discusses locate resources that are available to child support workers. These resources are useful in determining whether the noncustodial parent or alleged father is a military member.

If a tribunal, in its discretion, denies an additional stay, it must appoint counsel to represent the service member in the action or proceeding. The member may appeal the denial, but review is limited to determining whether the trial tribunal abused its discretion and arbitrarily denied the stay; the reviewing tribunal cannot simply substitute its own judgment.

4.5 DEFAULT JUDGMENTS UNDER THE SCRA

Scenarios	Status	Outcome
Agency files affidavit	Not in service	Court can enter a default judgment
Agency fails to file affidavit	Unknown	Any default judgment is voidable
Agency files affidavit	Is in service	Court must appoint attorney to represent member

A default judgment is a judgment entered when a defendant fails to make an appearance at a proceeding, after service of process. 50 U.S.C. app. § 521(b) (Section 201(b) of the SCRA) provides that, prior to the entry of a default judgment in a case where the defendant does not make an appearance, the plaintiff must file an affidavit with the tribunal:

- Setting forth facts to support either the statement that the defendant is in military service or the statement that the defendant is not in military service; or
- Stating that the plaintiff is unable to determine whether the defendant is in military service.

The affidavit may take any form so long as it is signed and certified, or declared to be true under penalty of perjury.

TRAINING NOTES

What you need to say/do

1. Inform the participants of the effects of a failure to provide the affidavit of military service.
2. Stress the penalties for filing a false affidavit (or failing to file an affidavit) when it is known that the defendant is in the military.

What you need to know

The Defense Manpower Data Center (DMDC) maintains a website (<https://www.dmdc.osd.mil/appj/scra/scraHome.do>) that provides verification of whether an individual is in the military service.

If the agency files an affidavit showing that the defendant is not in the service, the tribunal can enter a default judgment. If the child support agency fails to file the required affidavit, the tribunal should not enter a default judgment. Despite this prohibition, entry of a default judgment sometimes occurs. If a default judgment is improperly entered, the judgment is voidable and can be reopened by the defendant at a later time if certain conditions are met. It is important to know that section 521 applies to any civil action or proceeding in which the defendant does not make an appearance. Unfortunately, in areas without a military population, child support agencies frequently do not include the required affidavit, and voidable default judgments are routinely entered.

When an affidavit indicates that the defendant is in military service, the tribunal may not enter a judgment until after the tribunal appoints an attorney to represent the member. If the appointed attorney is unable to locate the defendant, actions by this attorney are not binding on the service member and do not waive any of the service member's defenses.

Regardless of whether an affidavit is filed, the default judgment is valid and binding once it is entered. A military member is entitled to reopen the default judgment, but, until such time, the judgment is enforceable and entitled to full faith and credit.

The filing of a false affidavit is a crime under 50 U.S.C. app. § 521(c) (Section 201(c) of the SCRA). Also, the failure to file an affidavit can subject an attorney to disciplinary action if it can be shown that the attorney had knowledge of the service member's military status. Evidence of knowledge includes previous letters to the service member's commander or other correspondence that clearly shows the attorney knew the status of the service member.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-6: Reopening a Default Judgment under the SCRA.**
2. Remind the participants that an application to reopen a default judgment does not necessarily mean that the judgment will be overturned. The judgment remains valid until decided otherwise by a tribunal.
3. Explain the reopening of a default judgment by a military member under 50 U.S.C. app. § 521(g) (Section 201 of the SCRA). These five criteria must be met: 1) A default judgment is entered during military service or 60 days after termination of or release from military service; 2) No appearance was made by the defendant service member; 3) The service member makes a timely application to reopen; 4) The service member was materially affected by reason of his/her military service; and 5) The service member has a meritorious or legal defense to the action, or to some part of it.
4. Explain to participants that, unlike the old SSCRA, the SCRA expressly provides that a request for a stay does not constitute an appearance for jurisdiction purposes, or a waiver of any defense. See Section 202(c) of the SCRA, codified at 50 U.S.C. app. § 522(c).

What you need to know

1. Understanding the five threshold criteria for reopening a default judgment is important. The first and third criteria are straightforward. With regard to the second criteria, the SCRA makes it clear that an application for a stay does NOT constitute an appearance for jurisdictional purposes and does NOT constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction). The last two criteria require specific supporting facts.
2. For more information on the SCRA, including the provisions regarding default judgments, review material developed by the JAG schools for each Military Department.

Remember, a default judgment obtained in violation of the SCRA is voidable; that means it remains valid and binding until the service member takes affirmative steps to reopen the judgment. Section 201(g) of the SCRA (codified at 50 U.S.C. app. § 521(g)) permits a defendant to ask the tribunal to reopen its default judgment. Five conditions must exist in order for a service member to reopen a default judgment:

Reopening a Default Judgment Under the SCRA

- Judgment during member's military service or within 60 days
- Application to reopen filed within 90 days of service termination OR during service
- No appearance in proceeding
- Member materially affected by service in defending action
- Member has meritorious or legal defense

Mod 4-6

- The tribunal must have entered the default judgment during the member's military service or within 60 days after termination of or release from military service;
- The service member made no appearance;
- The service member or his/her legal representative filed an application to reopen the judgment during military service or no later than 90 days after the date of termination of or release from military service;
- The service member was materially affected by reason of his/her military service in defending the action; and
- The service member has a meritorious or legal defense to the action, or some part of it.

The SCRA makes it clear that an application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any defenses. See 50 U.S.C. app. § 522(c). What would constitute an appearance? That is a factual question, about which courts may differ. Where the member has filed a response, requested genetic testing, and/or filed a financial affidavit with the tribunal, the tribunal will likely rule that the member has made an appearance, and will not consider his or her later failure to appear at the hearing a "default" under the SCRA. The tribunal may also consider a member's participation in a telephone hearing related to the matter to constitute an appearance.

TRAINING NOTES

What you need to say/do

1. After completing the discussion of Section 4.5, display **PowerPoint Slide 4-7: Appointed Counsel**.
2. Explain a tribunal's obligation to appoint an attorney for a service member who is absent from the proceeding, despite service, and has not made an appearance in the proceeding.
3. Explain that no federal financial participation (FFP) funds are available to pay for appointed counsel.

What you need to know

Section 201(b)(2) of the SCRA, codified at 50 U.S.C. app. § 521(b)(2)) states:

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 attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

In deciding whether the military member has made an appearance, the tribunal will also look at actions by an attorney appointed by the tribunal to represent the defendant under 50 U.S.C. app. § 521(b) (Section 201(b)(2) of the SCRA). Note: tribunal-appointed attorneys are discussed in section 4.5.1 of this module.

Actions by an appointed counsel will not bind the member, unless they are authorized by the member. Not only can an attorney's actions constitute an appearance by the member if they are authorized, but actions by a spouse or other individual pursuant to a power of attorney (POA), either general or specific, may also constitute an appearance if similar action taken by an attorney would constitute an appearance. See Section 109 of the SCRA, codified at 50 U.S.C. app. § 519,

It is important to remember that the right to reopen a default judgment does not mean that the judgment will ultimately be reversed. Only upon a showing that all five threshold criteria have been met will the tribunal reopen a default judgment and consider whether to set it aside.

4.5.1 Appointed Counsel

Appointed Counsel

- If unknown or it appears that defendant is in military, court must appoint prior to default judgment
- Appointed attorney:
 - Attempts to locate member
 - Obtains stay until member can be present
- If unable to locate member, can't waive rights or bind member

Mod4-7

Before a tribunal can enter a default judgment in a case where it appears that the defendant is in military service, the tribunal must appoint an attorney to represent the defendant. See 50 U.S.C. app. § 521(b) (Section 201(b)(2) of the SCRA).

TRAINING NOTES

What you need to say/do

1. After completing the discussion of Section 4.5.1, display **PowerPoint Slide 4-8: Stay or Vacation of Judgments and Attachments**.
2. Inform participants of the role of the appointed attorney:
 - can request a stay of proceedings, if appropriate
 - can protect the service member's rights
 - cannot perform acts that bind the service member without the member's approval

What you need to know

Section 204 of the SCRA, codified at 50 U.S.C. app. § 524, states:

(a) Court action upon material effect determination.

If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember

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

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability

This section applies to an action or proceeding commenced in a tribunal against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

The SCRA provides little guidance with respect to the actual responsibilities of the court-appointed attorney. Previously under the SSCRA, some courts charged the attorney with determining the status of the military member and whether military service had materially affected the ability of the military member to defend himself or herself. Under the current SCRA, if the defendant is a service member, the appointed attorney is primarily responsible for attempting to locate the service member and obtaining a stay of the proceedings until the service member can be present. It is important to note that if the appointed attorney cannot locate the service member, the acts of the appointed attorney are not binding on the service member and the attorney cannot waive any of the member's legal rights. A service member will be bound only to the acts of an appointed attorney that the service member has authorized. If the service member authorizes the appointed attorney to perform some act before the tribunal, the tribunal may construe those actions as an appearance by the member.

4.6 STAY OR VACATION OF EXECUTION OF JUDGMENTS AND ATTACHMENTS UNDER THE SCRA

Section 204 of the SCRA, codified at 50 U.S.C. app. § 524, authorizes a tribunal to stay the execution (the carrying out) of a judgment, attachment, or garnishment order entered against a service member. Additionally, the section authorizes a tribunal to vacate (set aside) an attachment or garnishment against a service

member's property. The stay provisions of this section are similar to those for a stay of proceedings under sections 201 and 202 of the SCRA, codified at 50 U.S.C. app. §§ 521 and 522.

Stay or Vacation of Judgments and Attachments

- Material effect
- With regard to member's service, the action must have arisen:
 - Prior to that service;
 - During the period of service; or
 - Within 90 days after termination of service
- Reservists and downward modification

Mod 4-8

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-8: Stay or Vacation of Judgments and Attachments**.
2. Discuss the similarities between a stay/vacation of judgment and the stay of legal proceedings that was previously discussed. Explain the difficulty of a service member's obtaining a stay of judgment if the tribunal already considered his or her military service in the proceeding that established the judgment.
3. Identify two circumstances in which a member may be most successful in seeking a stay of judgment:
 - a reservist who has been called to active duty
 - a reduction in income or an increase in expenses due to entry into military service.

What you need to know

For a stay or vacation under section 204: 1) military service must materially affect the ability of the military member to comply with the judgment, attachment, or garnishment action; and 2) the action or proceeding must have begun before or during military service, or within 90 days after military service terminates.

A tribunal may grant the stay on its own motion if it finds material effect. However, the tribunal must grant the stay on the motion of the military member unless it finds that military service has no material effect on his or her compliance with the judgment. If the member's military service existed, and was considered, at the time the tribunal initially entered the judgment, it is unlikely that a stay of judgment enforcement will be granted, assuming compliance with all of the requirements of the SCRA. The stay provisions of section 204 can be used by a military member to stop an enforcement action or to seek a downward modification of his or her child support obligation, where military service has caused a reduction in income. An example is a reservist who is called to active duty and experiences a reduction in income. In such a circumstance, a stay of enforcement of the original child support order may be appropriate. It is important to note, however, that section 204 does NOT permit retroactive modification of a support obligation.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-9: Tolling the Statute of Limitations.**
2. Explain that tolling means to suspend or hold in abeyance. Explain the circumstances in which the statute of limitations may be tolled.
3. Ask participants to provide examples of child support matters where the statute of limitations could be tolled under the SCRA.

What you need to know

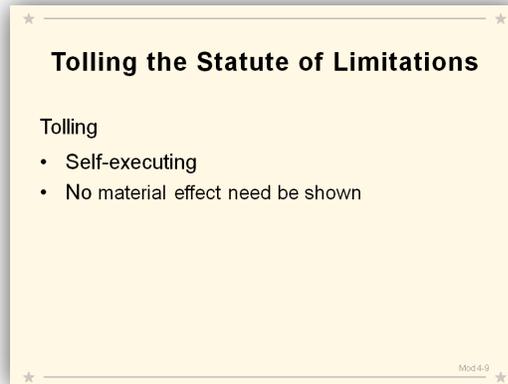
Section 206 of the SCRA, codified at 50 U.S.C. app. § 526, states:

(a) Tolling of statutes of limitations during military service
The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property
A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws
This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

4.7 TOLLING THE STATUTE OF LIMITATIONS



The legally required time limit in which an action or lawsuit must be filed is called a statute of limitations. Statutes of limitation differ depending on the type of legal claim. In some instances, states have different statute of limitations for the same legal claim. For example, states have varying statutes of limitations requirements for enforcement of child support arrears. Statutes of limitation apply to actions filed in all tribunals, including federal court. Tolling means to suspend or hold in abeyance.

Section 206 of the SCRA, codified at 50 U.S.C. app. § 526, provides for the tolling of statutes of limitation during the time that a person is in military service. The tolling applies regardless of whether the military member is a defendant or a plaintiff in the proceeding. The cause of action can have accrued either prior to, or during, military service. The one exception is that Section 206 does not apply to federal internal revenue laws.

The tolling provisions of section 206 are automatic once military service is shown. They are self-executing, which means no action is required by the service member. Unlike the stay provisions, there is no requirement for a service member to show that military service materially affected his or her ability to participate in the proceedings.

TRAINING NOTES

What you need to say/do

Upon completion of a discussion on the tolling of statutes of limitation, display **PowerPoint Slide 4-10: Interest under the SCRA.**

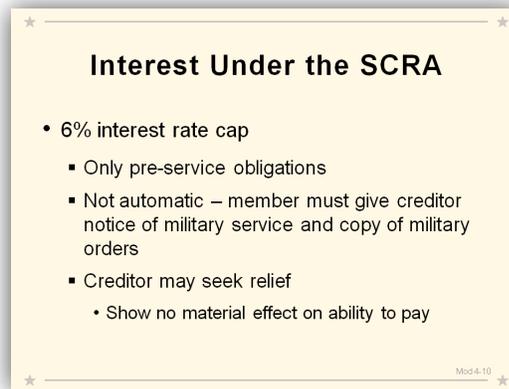
What you need to know

Section 207 of the SCRA, codified at 50 U.S.C. app. § 527, states:

- (a) Interest rate limitation
 - (1) Limitation to 6 percent
An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent –
 - (A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or
 - (B) during the period of military service, in the case of any other obligation or liability.
 - (2) Forgiveness of interest in excess of 6 percent
Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.
 - (3) Prevention of acceleration of principal
The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.
- (b) Implementation of limitation
 - (1) Written notice to creditor
In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.
 - (2) Limitation effective as of date of order to active duty
Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

The tolling of the statute of limitations is double-edged. It applies to service members automatically, whether they are the plaintiffs or defendants. Therefore, any issues concerning the statutes of limitations in a paternity or child support action will fall under the tolling provisions of section 206.

4.8 MAXIMUM RATE OF INTEREST UNDER THE SCRA



Section 207 of the SCRA limits a servicemember's obligations or liabilities incurred prior to entry into military service to an interest rate that is not to exceed six percent per year. The six percent interest cap is applicable during the time the service member is in military service.

The six percent interest ceiling is available only if:

- The debt or obligation was incurred prior to entry into military service; and
- The service member provides the creditor with written notice of military service and a copy of the military orders calling the service member to military service or extending service.

The interest rate ceiling is not available for debts and obligations incurred while in military service.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-10: Interest under the SCRA.**
2. Discuss material effect. Ask participants for examples of interest that may be subject to the six percent ceiling. Remind participants that the six percent ceiling is only for pre-service obligations and does not affect obligations, debts, etc. that the member incurred after entry into military service. Ask participants to give an example of when the six percent ceiling would be applicable.

What you need to know

1. Section 207 of the SCRA, codified at 50 U.S.C. app. § 527, continues as follows:
 - (c) Creditor protection
A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.
 - (d) Definition
In this section:
 - (1) Interest
The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.
2. If the support obligation was entered prior to a recall to active duty, e.g., in the case of a reservist, the six percent ceiling on interest will apply if the member provides written notice of military service and a copy of the military orders. A tribunal may grant a creditor relief from the six percent ceiling if the tribunal finds that the member's ability to pay interest above the six percent ceiling is not materially affected by his/her military service.

A creditor, such as a child support agency, may seek relief from the limitations of Section 207 if, in the opinion of the court, the ability of the service member to pay interest in excess of the six percent ceiling is not materially affected by the service member's military service. Material effect is determined on a case-by-case basis. As a general rule, material effect is present if there is a reduction in income due to military service. This is more applicable to reservists in higher paying civilian jobs. A reservist called to active duty may suffer a drop in income that could materially affect the service member's ability to meet an obligation.

Child support workers need to be aware of Section 207 because it can have an impact on interest that has been ordered on an obligation for unpaid child support, if the obligation was incurred prior to the member's entry into military service. However, Section 207 does not require a child support agency to initiate anything. It is the service member's responsibility to contact the agency or tribunal and affirmatively invoke its provisions.

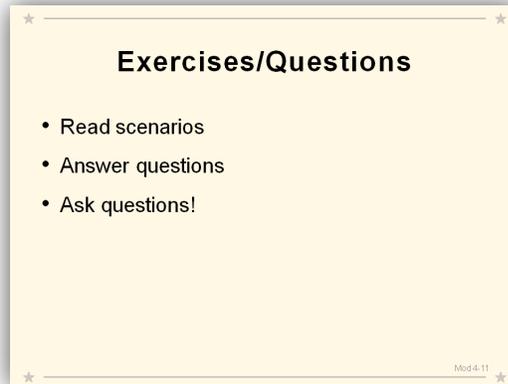
TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 4-11: Exercises/Questions**.
 2. Refer participants to **Handout 4-2: Review Exercises**. Divide the participants into groups of four or five. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
 3. Facilitate a group discussion of the scenarios and participants' responses to the questions.
 4. Encourage questions about the material in the module.
 5. Display **PowerPoint Slide 4-12: Summary**.
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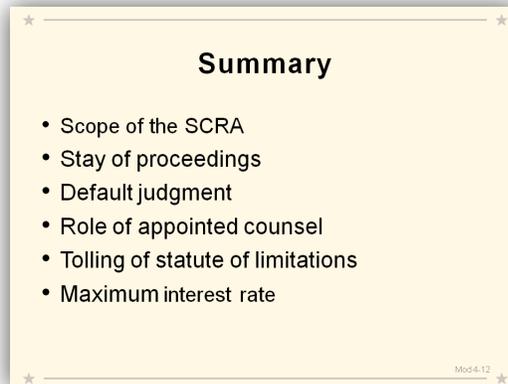
What you need to know

4.9 EXERCISES



Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

4.10 SUMMARY OF MODULE 4



In this module we discussed:

- the scope of the SCRA,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment can be entered,

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 4-12: Summary**.
 2. Refer participants to **Handout 4-1: A Guide to the SCRA** for a summary of the Act.
 3. Preview topics that will be discussed in **Module 5**.
-

What you need to know

- the impact of a default judgment entered without an affidavit regarding military service,
- the role of appointed counsel under the SCRA,
- the tolling of statutes of limitations when a party is in the military, and
- the maximum interest rate that applies to pre-service debt when a person is in military service and invokes the SCRA protections.

Handout 4-1: A Guide to the SCRA, located in the appendix, contains a summary of key elements of the SCRA.

4.11 PREVIEW OF MODULE 5

In the next module, we will discuss the following topics:

- genetic testing of military personnel in paternity cases,
- obtaining financial and medical insurance information from military personnel, and
- collecting information or evidence from service members located outside of the United States or its waters.