

**MEMO# 17055**

February 5, 2004

## **PLAN LOANS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003**

[17055] February 5, 2004 TO: PENSION MEMBERS No. 9-04 PENSION OPERATIONS  
ADVISORY COMMITTEE No. 10-04 RE: PLAN LOANS UNDER THE SERVICEMEMBERS CIVIL  
RELIEF ACT OF 2003 On December 19, 2003, President Bush signed the Servicemembers  
Civil Relief Act of 2003, which restates, clarifies, and revises the Soldiers' and Sailors' Civil  
Relief Act of 1940.<sup>1</sup> The 2003 Act continues the six percent interest rate limitation on loans  
incurred by servicemembers prior to their military service, which the U.S. Department of  
Labor has interpreted to apply to plan loans.<sup>2</sup> The Act is applicable to members of the  
uniformed services on active duty as well as members of the National Guard that are in  
service under a call to active service authorized by the President or the Secretary of  
Defense for a period of more than 30 consecutive days. Under section 207 of the Act, any  
obligation or liability bearing interest at a rate in excess of six percent per year that is  
incurred before the servicemember enters military service cannot bear an interest rate over  
six percent during the period of military service. In order to trigger this provision, the  
servicemember must provide written notice to the creditor along with a copy of his or her  
military orders not later than 180 days after the date of termination or release from military  
service. Upon receipt of the written notice, the creditor must treat the loan as subject to the  
six percent limitation effective as of the date the member was called to military service.  
Interest in excess of six percent must be forgiven and not merely postponed, and the term  
"interest" includes service charges, renewal charges, fees, or any other charges with  
respect to the loan. A creditor may obtain relief from the provision through a court's finding  
that the ability of the servicemember to pay interest in excess of six percent is "not  
materially affected by reason of the servicemember's military service." Kathy D. Ireland  
Senior Associate Counsel 1 The full text of the legislation can be found at  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h100  
enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h100enr.txt.pdf). 2 The Department of Labor addressed the application of the Soldiers' and  
Sailors' Civil Relief Act of 1940 to plan loans in its "Frequently Asked Questions for  
Reservists Being Called to Active Duty," which can be found at  
[http://www.dol.gov/ebsa/faqs/faq\\_911\\_2.html](http://www.dol.gov/ebsa/faqs/faq_911_2.html).