THE NATIONAL LAW REVIEW

Delaware enacts law providing financial relief to federal employees impacted by shutdowns

Tuesday, January 29, 2019

Article By John L. Culhane, Jr.
Glen P. TrudelBallard Spahr LLP
Consumer Finance Monitor

Administrative & Regulatory
Election Law / Legislative News
Financial Institutions & Banking
Delaware

On January 23, Delaware Governor John Carney signed the "Delaware Federal Employees Civil Relief Act" into law. The Act states that its purpose "is to provide for the temporary suspension of judicial and administrative proceedings in Delaware that may adversely affect the civil rights of Federal workers during a shutdown." The Act provides for enforcement by the Delaware Attorney General and a civil penalty of up to $10,000 per violation, with that amount to be assessed daily for willful violations.

The Act defines a "Federal worker" as "an employee of a Federal government agency who resides in the State of Delaware and includes an employee of a contractor." The term "covered period" is defined as "the period beginning on the date on which a shutdown begins and ending on the date that is 30 days after the date on which that shutdown ends."

Court-ordered stay. The Act provides that a Federal worker who is furloughed or required to work without pay during a shutdown "may apply to a court for a temporary stay, postponement, or suspension regarding any payment of rent, mortgage, tax, fine, penalty, insurance premium, judgment, or other civil obligation or liability that the Federal worker owes or would owe during the duration of the shutdown." A Delaware court is authorized to grant such relief if it finds "that the ability of the Federal worker to pay such obligation has been materially affected by the shutdown." A stay can be ordered for the "covered period and 90 days thereafter, or for any part of that period" and a court "may set the terms and amounts for such installment payments as is considered reasonable by the court."

Protection from eviction, insurance termination. The Act prohibits evictions from residential property during a covered period for nonpayment of rent without a court order. An eviction can be stayed for a period of 30 days if the court finds the Federal worker's ability to comply with the lease has been materially affected by the shutdown and the stay can be extended for reasons of justice and equity. In addition, without a court order, a "covered insurance policy" cannot "lapse, terminate or be forfeited because a Federal worker does not pay a premium or interest or indebtedness on a premium under a policy that is due during a covered period."

6% interest rate limit. The Act provides that "an obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a Federal worker, or a Federal worker and the Federal worker's spouse jointly, before the shutdown shall not bear interest in excess of 6 percent." If the debt is "a mortgage, trust deed, or other security in the nature of a mortgage," the 6% rate limit applies "during the covered period and 90 days thereafter," meaning until 120 days after the shutdown ends. For any other debts, the 6% limit applies only during the covered period, meaning until 30 days after the date the shutdown ends. For purposes of the 6% limit, the Act provides that "interest" includes "service charges, renewal charges, fees, or any other charges, except bona fide insurance, with respect to an obligation or liability."

Any interest in excess of 6% that cannot be charged because of the Act "is forgiven" and the amount of a periodic payment "shall be reduced by the amount of the interest forgiven…that is allocable to the period for which such payment is made." A creditor can obtain court relief from the Act's interest rate limitation if, in the court's opinion, the Federal worker's ability to pay more than 6% interest "is not materially affected by reason of the shutdown."

The Act's 6% interest rate limit is not self-executing. To receive the benefit of the limit, the Federal worker must "provide to the creditor written notice that the Federal worker is furloughed or not getting paid as a result of the shutdown not later than 90 days after the date that the shutdown began."

The most recent federal shutdown began on December 22 and ended on January 25. Since the Act became effective when it was signed by Governor Carney on January 23, a Federal worker would have until approximately mid-March 2019 to provide notice to a creditor to obtain an interest rate reduction. For mortgage debts, a Federal worker would be eligible to have his or her interest rate reduced to 6% for the period of December 22 until 120 days after January 25. For other debts, the period of the reduction would be December 22 until 30 days after January 25.

Issues. We are hopeful that Delaware's Attorney General or Department of Banking will issue guidance on the Act. Among the many concerns and issues it raises are:

- Because it requires creditors to forgive contracted for interest, the Act might be vulnerable to a constitutional challenge as a violation of the U.S. Constitution's provision prohibiting a state from passing any law "impairing the Obligation of Contracts."
- While the Act does not include a private right of action and provides for enforcement only by the Delaware Attorney General, it appears a Federal worker would be entitled to the rights and remedies provided to borrowers under Delaware's general usury law. Under that law, a Federal worker could withhold payment of any "interest" greater than 6% (and assert usury as a defense in an action to collect the excess "interest') or, if the debt has been fully repaid with interest at rate greater than 6%, bring an action to recover the greater of 3 times the excess interest paid or $500. (Since a creditor is likely to assert that the fact that a Federal worker who paid off a debt at the full interest rate has demonstrated that the worker's ability to pay the full amount of interest was not "materially affected by the shutdown," the effectiveness of a private usury action as a remedy is questionable.)
- The Act's 6% interest rate limit is not restricted to consumer purpose debts.
- The Act would appear to be preempted as to out-of-state banks that rely on federal preemption to charge Delaware residents an interest rate permitted by their home states that is greater than 6%.
- Since the Act is modeled on the federal Servicemembers Civil Relief Act (SCRA), we would expect that creditors can comply with the interest rate reduction required by the Act by using the same calculation methods that they are using for SCRA compliance.
- The extent to which the Act's protections extend to Federal workers who are guarantors of debts owed by non-Federal workers is unclear.

Source URL: https://www.natlawreview.com/article/delaware-enacts-law-providing-financial-relief-to-federal-employees-impacted