

Servicemember Financial Protection

Outlook Live Webinar – September 10, 2012

An Interagency Discussion of Recent Servicemember Financial Protection Guidance and Compliance with the Servicemembers Civil Relief Act

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Overview

- **Opening Remarks**
 - *Director of the Division of Consumer and Community Affairs*
 - *Assistant Director of the Office of Servicemember Affairs*
- **Presentations**
 - *Consumer Financial Protection Bureau*
 - *U.S. Department of Treasury*
 - *Federal Housing Finance Agency*
 - *U.S. Department of Justice*
 - *Office of the Comptroller of the Currency*
 - *National Credit Union Administration*
 - *Federal Deposit Insurance Corporation*
 - *Federal Reserve Board*
- **Questions**

Opening Remarks

- **Sandy Braunstein**, *Director of the Division of Consumer and Community Affairs, Federal Reserve Board*
- **Holly Petraeus**, *Assistant Director of the Office of Servicemember Affairs, Consumer Financial Protection Bureau*

Presentations

- **Interagency Permanent Change of Station (PCS) Guidance**
 - Ann Thompson, Analyst, Office of Nonbank Supervision, Consumer Financial Protection Bureau
- **HAMP Program Enhancements**
 - Laurie Maggiano, Director of Policy Homeownership Preservation Office, Department of Treasury
- **Short Sale Guidance**
 - Laura Arce, Policy Analyst, Office of Housing and Regulatory Policy, Federal Housing Finance Agency
- **SCRA Enforcement Actions Related to Financial Institutions**
 - Eric Halperin, Special Counsel for Fair Lending, Department of Justice

Presentations *(continued)*

- **SCRA Compliance Tips**

- Kimberly Hebb, Director of Compliance Policy, Office of the Comptroller of the Currency
- Tonya Sweat, Director of Consumer Compliance and Outreach Office of Consumer Protection, National Credit Union Administration
- Paul Robin, Section Chief of Supervisory Policy, Federal Deposit Insurance Corporation
- Lanette Meister, Senior Consumer Financial Services Analyst, Federal Reserve Board

Interagency PCS Guidance

- Guidance addressing mortgage servicing practices concerning military homeowners with Permanent Change of Station (PCS) orders
- Issued in June 2012 by Board of Governors of the Federal Reserve System, CFPB, FDIC, NCUA and OCC

Elements of Interagency PCS Guidance

- The following practices may pose risks to homeowners with PCS orders:
 - Failing to provide homeowners with PCS orders with accurate, clear and readily understandable information about which options the homeowner may qualify for
 - Asking homeowners with PCS orders to waive rights under SCRA or other laws as a prerequisite to gaining information or being evaluated for assistance
 - Advising homeowners with PCS orders to intentionally miss payments
 - Failing to provide a way for homeowners with PCS orders to get information on the status of their request for assistance
 - Failing to timely communicate a decision about a request for assistance, including an explanation of the reason for denial, if applicable

Making Home Affordable*

- Unemployment Forbearance
- Home Affordable Modification Program (HAMP)
 - Tier 1 – Traditional HAMP mod for owner occupant borrowers
 - Tier 2 – Alternative HAMP mod for non occupant owners of rental properties
- Principal Reduction Alternative
- Second Lien Modification (2MP)
- Home Affordable Foreclosure Alternative (HAFA)
 - Short Sale
 - Deed-in-Lieu of Foreclosure

* *Applies to loans owned or securitized by Freddie Mac, Fannie Mae and all privately owned or securitized loans serviced by any of the 100 MHA participating servicers.*

Servicemember Eligibility

For HAMP Tier 1 – the property is considered owner occupied if:

- The borrower is displaced (e.g., military deployment, permanent change of station orders, out of area job transfer or foreign service assignment) but was occupying the property as his or her principal residence immediately prior to his or her displacement, intends to occupy the property as his or her principal residence in the future and the borrower *does not own any other single family real estate, even if the property is currently vacant or rented.*

For HAMP Tier 2 - a servicer member borrower is eligible if:

- The service member who does not own other residential property is evaluated for HAMP Tier 1 but is not qualified,
- The service member owns other single family property and either has the subject property rented on a year-round basis or intends to do so, or
- The service member owns other single family property but a legal dependent, parent or grandparent is occupying the subject property as a principal residence, with or without rent being paid.

Servicemember Eligibility *(continued)*

HAFA Short Sale or DIL

- Borrower must have a financial hardship including:
 - A permanent change of station order *even if the servicemember's income has not decreased*, so long as her or she does not have sufficient liquid assets to make the monthly mortgage payments.
- No occupancy requirement
- No limit on the number of HAFA short sales a borrower may have.

Fannie, Freddie Standard Short Sale

- The Federal Housing Finance Agency (FHFA) recently announced changes to short sale policies for mortgages owned or guaranteed by Fannie Mae or Freddie Mac
- FHFA worked with Fannie Mae and Freddie Mac to merge four programs into one: Standard Short Sale / HAFA II
- New Fannie Mae and Freddie Mac standard short sale guidelines go into effect November 1, 2012
- Goals: Simplify and streamline guidelines and increase efficiency to help more borrowers avoid foreclosure

Fannie, Freddie Standard Short Sale

(continued)

Agenda Topics:

- Provide overview of servicemember benefits under new short sale policies for those with mortgages owned or guaranteed by Fannie Mae or Freddie Mac
- Discuss timeline and borrower communication requirements for servicers on new short sale policies
- Discuss eligibility criteria for servicemembers seeking a short sale
- Discuss recent changes to Servicemember Civil Relief Act
- Provide resources for more information

Fannie, Freddie Standard Short Sale

(continued)

Overview of Servicemember Benefits:

- Benefits to Service Members Issued Permanent Change of Station Order (PCS)
 - Borrower is immediately eligible for a short sale, even when current on mortgage
 - Borrower is exempt from deficiency judgments from Fannie Mae and Freddie Mac
 - Borrower is relieved from cash or promissory contribution toward deficiency for homes purchased on or before June 30, 2012

Fannie, Freddie Standard Short Sale

(continued)

Standard Short Sale Decision Timelines & Borrower Communication Requirements for Servicers:

- Guidelines effective June 2012
- From the date servicer receives Uniform Borrower Assistance Form (UBAF) & Short Sale Purchase Offer servicer is **REQUIRED**:
 - To confirm receipt within 3 business days; notify borrower of missing information within 5 business days
 - To inform borrower of a decision within 30 days
 - If needed, servicer may have an additional 30 days with weekly updates to borrower (60-day maximum)

Fannie, Freddie Standard Short Sale

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Standard Short Sale Eligibility:

- Borrower's Mortgage Must be Owned or Guaranteed by Fannie Mae or Freddie Mac
- Borrower Must Demonstrate Eligible Hardship as Defined in Guidance, Including Permanent Change of Station Orders
- Borrower May be Current (Paying) on their Mortgage
- Must be Primary Residence (for Current Borrowers)

Fannie, Freddie Standard Short Sale

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Active Duty Servicemember Benefits in New Short Sale Policies:

- Servicemembers will not be asked to contribute (either cash or promissory note) toward a shortage if the home was purchased on or before June 30, 2012
- Borrower will receive an affirmative deficiency waiver at closing (applies to all short sales)
- Borrower is not eligible for relocation assistance (servicer must notify Fannie Mae or Freddie Mac if exception is needed)

Fannie, Freddie SCRA Changes

Changes to the Servicemembers Civil Relief Act:

- Fannie Mae or Freddie Mac will not initiate or resume foreclosure proceedings for 12 months from the date the service member is released from active duty
- Fannie Mae or Freddie Mac will extend postponement of foreclosure benefits to surviving spouse if there is a service-related death
- These enhanced protections are effective through December 31, 2014

Fannie, Freddie Standard Short Sale

Recent FHFA Announcements on Standard Short Sales:

(www.fhfa.gov)

- [April 17](#): FHFA Announces New Short Sales Timelines
- [June 21](#): FHFA Announces Short Sales Assistance for Military Homeowners
- [August 21](#): FHFA Announces New Standard Short Sale Guidelines for Fannie Mae & Freddie Mac
- [Monthly](#): FHFA Foreclosure Prevention Report

Questions? – Contact Laura.Arce@FHFA.gov

DOJ Enforcement Authority

- DOJ can bring suit against any person who:
 - Engages in a pattern or practice of violating the SCRA
or
 - Engages in a violation of the SCRA that raises an issue of “significant public importance”

Remedies

- Injunctive relief
- Damages to persons harmed by the illegal conduct
- Civil penalties up to \$55,000 for 1st violation and \$110,000 for subsequent violations

U.S. v. Capital One (2012)

DOJ's first enterprise-wide SCRA case

Allegations include:

- Failure to comply with the 6% interest rate provisions on credit cards, motor vehicle loans, and other accounts
- Unlawful foreclosures without court orders
- Unlawful repossessions of motor vehicles without court orders
- Unlawful default judgments on debts owed on credit cards, mortgages, and motor vehicles

U.S. v. Capital One (2012) *(continued)*

Relief Includes:

- Approximately \$12 million in payments to compensate for SCRA violations between July 2006 and July 2012
 - \$7 million to servicemembers, including:
 - \$125,000 plus any lost equity with interest for each unlawful foreclosure
 - \$10,000 plus any lost equity with interest for each unlawful vehicle repossession
 - \$570 plus forgiveness of amount of judgment and post-judgment interest for each unlawful auto loan judgment or credit card default judgment
 - Minimum of 4X the amount of the overcharge for servicemembers who did not receive proper interest rate protection
 - \$5 million fund for servicemembers who received insufficient 6% benefits for credit cards and motor vehicle finance loans and consumer loans

U.S. v. Capital One (2012) *(continued)*

Relief includes *(continued):*

- Review of recently acquired accounts from HSBC and ING Direct USA with additional compensation of any new victims found
- Remedying negative credit reporting resulting from the violations
- Adopting policies to ensure future compliance, including DMDC checks and review of files
- Treating requests for 6% interest rate relief in one line of business as a request for relief on any loan at Capital One or its affiliates

National Servicer Settlement (2012)

- Settlement agreements with Bank of America Corporation; Citigroup, Inc.; JP Morgan Chase & Co.; Ally Financial (formerly GMAC) ; and Wells Fargo & Co
- Resolves allegations that the servicers violated the judicial foreclosure, non- judicial foreclosure and interest rate provisions of the SCRA

National Servicer Settlement (2012)

(continued)

Relief includes:

- Full review of judicial and non-judicial foreclosures back to January 1, 2006
- Minimum of \$116,785 + lost equity

National Servicer Settlement (2012)

(continued)

Relief includes *(continued)*:

- Review of mortgages for interest rate violations back to January 1, 2008
- Minimum of 4 times the amount wrongfully charged
- All payments in addition to \$25B settlement

National Servicer Settlement (2012)

(continued)

Relief includes *(continued)*:

- Remediating negative credit reporting resulting from SCRA violations
- Adopting policies to ensure future compliance, including DMDC checks and compliance monitoring

U.S. v. BAC Home Loans/Countrywide and U.S. v. Saxon (2011)

Allegations include:

- Foreclosures without court orders servicemembers with pre-service mortgages
- Failed to consistently check for military status prior to foreclosure
- Actual or constructive notice of the military service of many of the victims

U.S. v. BAC Home Loans/Countrywide and U.S. v. Saxon (2011) (continued)

Relief Includes:

- More than \$20 million for the approximately 160 servicemembers improperly foreclosed on between 2006 and mid-2009
- Review of all non-judicial foreclosures from mid 2009 – December 2010
- Additional compensation for any new victims found, including victims identified from the mid 2009 – December 2010 review

U.S. v. BAC Home Loans/Countrywide and U.S. v. Saxon (2011) (continued)

Relief includes *(continued):*

- Remediating negative credit reporting resulting from the foreclosures
- Adopting policies to ensure future compliance, including DMDC checks and review of files

SCRA Risk Management

- Establish internal controls to determine if a borrower is protected under SCRA
 - Determine borrower military status prior to initiating civil action
 - Research military status periodically
 - Document the file
 - Employee Training
 - QA process

SCRA Foreclosure Protections

- Prohibits the sale, foreclosure or seizure of real or personal property for the breach of an obligation that is—(1) incurred by a service member **prior** to the service member's military service, and (2) secured by a mortgage, deed of trust, or similar security interest.
- Prohibition applies during the period of military service or within 9 months after the end of military service, without a court order or written agreement.
- Law amended to extend coverage from 9 months to **12** months after the end of military service (effective February 2, 2013).

SCRA Foreclosure Protections *(continued)*

Lender Responsibilities:

- Lender seeking to foreclose is obligated to determine if mortgagor is a service member entitled to SCRA protections

Information Sources:

- Department of Defense Manpower Data Center
<https://www.dmdc.osd.mil/appj/scra/scraHome.do>
- Contact the borrower

Reduced Rate on Pre-Service Debt

- Reduce interest rate to 6 percent per year on debt incurred before military service for the period of active duty.
- For mortgage loans, the 6 percent rate reduction continues for one year following the end of military service for mortgage loans.
- To qualify, servicemember must provide written notice and a copy of military orders.
- A court may grant a creditor relief from this obligation if, in the court's opinion, the servicemember's ability to pay interest at the contract rate is not materially affected by active duty.

Reduced Rate on Pre-Service Debt

(continued)

- Applies to debt for a servicemember or for a servicemember and spouse jointly.
- Applies to loans and mortgages
 - No distinction between personal and business credit
 - In the 9/10/2012 presentation, we indicated the rate reduction does not apply to student loans – the following updates that info:
 - **Rate reduction applies to some student loans**
 - **Higher Education Opportunity Act implemented reduced rate for Federal Family Education Loan (FFEL) and Direct Loan Programs**

Accurate Adjustment to Six Percent

- “Interest” includes service charges, renewal charges, fees, or any other charges (except bona fide insurance).
- Six percent interest must be effective as of the date of the order to active duty.
- SCRA requires not only the forgiveness of interest in excess of 6 percent, but also prohibits acceleration of principal.

Accurate Adjustment to Six Percent

(continued)

- Full compliance requires both reduction of interest rate **and** re-amortization of periodic loan payments.
- Procedures and training should emphasize the importance of executing **both** of these adjustments when responding to a servicemember's military orders.

Questions

