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CFPB and Prudential Regulators Issue Joint Guidance on Loan Servicing Practices Affecting Military Servicemembers

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Guidance Highlights Protections for Military Homeowners with Permanent Change of Station Orders

On June 21, 2012 the Consumer Financial Protection Bureau (CFPB) along with the following prudential regulators: the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency have issued joint guidance to address mortgage servicer practices that may pose risks to homeowners who are serving in the military.

The guidance pertains to military homeowners who have received Permanent Change of Station (PCS) orders. Approximately one-third of active duty servicemembers in the United States are

relocated to a new installation each year. The Agencies are concerned about practices which have the potential to mislead or otherwise cause harm to homeowners with PCS orders. Those practices are listed as follows:

1. Failing to provide homeowners with PCS orders who notify their servicers of such orders with accurate, clear, and readily understandable information about available assistance options for which the homeowner may qualify based on the information known to the mortgage servicer. The options should be consistent with the servicer's public representations and agreements with government agencies and others regarding the servicer's intent to offer such assistance to all qualified homeowners. These options include the Making Home Affordable Program and programs offered by or through Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), and the Department of Agriculture-Rural Development (USDA-RD).
2. Asking homeowners with PCS orders to waive their legal rights under the Servicemembers Civil Relief Act (SCRA) or any other law as a prerequisite to the mortgage servicer either providing information to the homeowner about available options or evaluating the homeowner's eligibility for assistance.

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3. Advising homeowners with PCS orders who are current on their loans and able to make the monthly payment to intentionally skip making payments in order to create the appearance that they are having financial difficulties in order to obtain assistance for which they would not otherwise qualify. Providing accurate, factual information to a homeowner about available loss mitigation programs for delinquent homeowners is not a practice that raises this concern.

4. Failing to provide a reasonable means for homeowners with PCS orders to obtain information on the status of their request for assistance.

5. Failing to timely communicate the servicer's decision regarding requests for assistance from homeowners with PCS orders and failing to include an explanation of the reason for the denial, where required, so that the homeowner has an opportunity to address any deficiencies, if applicable. Timeliness will be judged on all of the facts and circumstances.

Mortgage servicers should ensure that their employees are adequately trained about the options available for homeowners with PCS orders. The Agencies expect the institutions they supervise will maintain mortgage servicing policies and procedures appropriate to achieve these objectives, commensurate with the institution's customer base and the size and the complexity of its operations.

If the Agencies determine that a servicer has engaged in any acts or practices that are unfair, deceptive, or abusive, or that otherwise violate Federal consumer financial laws and regulations, the agencies will take appropriate supervisory and enforcement actions to address violations that harm consumers and seek all appropriate corrective actions, including requiring the mortgage servicer to strengthen its programs and processes.

Summary of the Servicemembers Civil Relief Act (SCRA)

The Servicemembers Civil Relief Act (SCRA) updated and replaced the Soldiers and Sailors Civil Relief Act of 1940 (SCCRA) as of December 19, 2003. The purpose of the SCRA is to enhance protections available to servicemembers on active duty by preventing loss of residence, automobile, or similar personal property when the debtor is on active duty and living on a military pay scale. Any member of the Armed Forces on active duty and member of a reserve component (National Guard or Army, Navy, Air Force, Marine, or Coast Guard Reserve) called to active duty are eligible. The protection continues until the servicemember's release from active duty.

Eligible servicemembers include the United States Army, Navy, Air Force and Marine Corps. The period of military service begins on the date a servicemember enters military service and ends when the servicemember is released from military service or dies while in service. Coast Guard members are eligible after serving 30 or more consecutive days after responding to a national emergency declared by the President

Under the SCRA, servicemembers have the right to have default judgments and other legal proceedings, evictions, repossessions, and foreclosures delayed until they are able to defend themselves in court. The law currently sets the maximum interest rate that a service member may pay is 6.00 percent, including the reduction of interest rates on loans taken prior to active duty.