



Department of Justice

STATEMENT

OF

**THOMAS E. PEREZ
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE**

**BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
UNITED STATES HOUSE OF REPRESENTATIVES**

**ENTITLED:
"LEGISLATIVE HEARING ON H.R. 4115, H.R. 4740, H.R. 3860, H.R. 5747"**

JUNE 21, 2012

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Chairman Stutzman, Ranking Member Braley, and Members of the Subcommittee, thank you for holding this hearing on legislation that will impact the rights of servicemembers. It is a privilege to present our views about our shared priority of protecting the civil rights of our men and women in uniform.

The Department of Justice has made enforcement of the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) a top priority. I am pleased to share with you today some of the recent successes we have had in working with the Department of Defense to ensure that servicemembers' homes and credit are protected while they serve our Nation, and with the Department of Labor to ensure that servicemembers' jobs are here for them when they return. Lessons from our enforcement efforts over recent years suggest ways these laws could be amended to better protect the rights of servicemembers, and the bills the Subcommittee is considering today seek to do exactly that.

I. ENFORCEMENT ACCOMPLISHMENTS

(a) SCRA

When servicemembers place their lives on the line to serve their country, they should be able to focus fully on their military duties, without having to live in fear that their homes will be wrongfully foreclosed without their knowledge. Last year, we reached two multi-million dollar settlements on behalf of servicemembers, including a \$20 million settlement with Bank of America that is the largest SCRA settlement the Department has ever reached.

That \$20 million settlement began with a referral from the United States Marine Corps on behalf of a servicemember deployed to Iraq. Bank of America was scheduled to sell that servicemember's home at a trustee's sale in three days, even though Bank of America had already received a copy of his military orders. In the course of our investigation and settlement negotiations, the Department found that a total of 143 servicemembers' homes had been illegally foreclosed between 2006 and the middle of 2009. Under the May 2011 settlement, Bank of America will pay each victim a minimum of \$116,785, plus compensation for any lost equity. Under the consent order, Bank of America will give the same compensation to additionally identified servicemembers whose homes were illegally foreclosed through December 31, 2010. The Department reached a similar with Saxon Mortgage Services that will provide 22 servicemembers with a total of \$2.87 million.

Under both settlements, the banks have agreed not to pursue any remaining amounts owed under the mortgages; to take steps to remedy negative credit reporting; and to implement enhanced measures including monitoring, training, and checking loans against the Defense Manpower Data Center's SCRA database during the foreclosure process.

In February, the Nation's five largest mortgage loan servicers (Bank of America, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial Inc.) agreed to terms similar to these two settlements as part of a broader \$25 billion consent judgment with Federal and state attorneys general. These servicers will conduct full reviews of whether servicemembers have been illegally foreclosed on since 2006, and each identified victim will be compensated a minimum of \$116,785, plus any lost equity with interest. All five servicers agreed to put in place better policies, procedures, and employee training to ensure full compliance with the SCRA.

As a result of these 2011 and 2012 settlements, the vast majority of all foreclosures since 2006 will now be subject to court-ordered review to determine whether the SCRA rights of servicemembers were violated.

(b) USERRA

The Civil Rights Division has also been vigilant in protecting servicemembers' employment rights under USERRA. Servicemembers should be able to serve their country without running the risk of losing their jobs back home. To date, the Division has filed a total of 75 cases under USERRA, 42 of which have been filed during the current Administration. One such case involved Matthew King, a U.S. Army Guard member and Iraq War veteran, who was terminated from his job at Lowe's. In November 2011, the national hardware-store chain agreed to settle the Division's claims alleging that this termination violated USERRA, and King received \$45,000 for back pay and liquidated damages.

In another case, the Division went to trial and secured back pay and injunctive relief against the Alabama Department of Mental Health for failure to promptly reemploy a servicemember upon his return from active duty in Iraq. On appeal in this case, the Division successfully defended the first Eleventh Amendment challenge to USERRA.

(c) Outreach

These efforts would not be possible without our strong collaboration with the military community. The Department of Defense has provided critical assistance in identifying servicemembers whose rights were violated, and they have been a critical partner in our SCRA enforcement efforts. We have also worked to reach out to servicemembers directly. This past September, I joined the U.S. Attorney for the Western District of Kentucky, David Hale, and met with some 100 servicemembers at the Fort Knox military installation, including several from the Warriors in Transition Unit, to discuss the civil-rights protections we enforce on their behalf. This outreach continues. Last month, I joined with U.S. Attorneys David Hale of Kentucky and Jerry Martin of Tennessee and met with approximately 200 servicemembers of the 101st Airborne Division at Fort Campbell, which straddles the border of those two states.

II. COMMENTS ON PENDING LEGISLATION

Through our enforcement work, we have achieved great successes on behalf of servicemembers, but we have also identified ways that the SCRA and USERRA could be strengthened to better protect the rights of servicemembers. In September 2011, the Department formally transmitted to Congress a package of proposals for strengthening these laws, and we are eager to work with the Committee on many of the issues you are confronting in these bills. We were pleased when Senator Patty Murray included many of our proposals in S. 2299, the “Servicemembers Rights Enforcement Improvement Act.” The Department would welcome the introduction of a companion bill by the leaders of this Committee as well.

(a) SCRA

H.R. 5747, the proposed “Military Family Home Protection Act,” would amend the SCRA to double civil penalties for violations of section 303 of the Act, to \$110,000 for a first violation and \$220,000 for subsequent violations. We support this change, and strongly urge the Committee to also include in this bill a provision that would double civil penalties for *all* violations of the Act. As you know, when Congress amended the SCRA to provide for civil penalties in 2010, it used the amounts authorized under the Fair Housing Amendments Act. These amounts, however, have not been adjusted for inflation, or for any other reason, since 1999. The Department believes that other violations of the law deserve the same heightened level of deterrence and remedy. This bill seeks to strengthen SCRA protections in a number of other important areas. We will continue to review these provisions and can offer technical assistance.

H.R. 4740, the proposed “Fairness for Military Homeowners Act of 2012,” would amend the SCRA to ensure that servicemembers who move away from their principal residences for active duty are not prevented from refinancing a mortgage on those residences. This is consistent with the SCRA’s overarching goal of ensuring that the consumer rights of servicemembers are not unfairly limited by virtue of their military service. We will continue to review this legislation and can offer technical assistance.

In addition to the amendments proposed by H.R. 5747 and H.R. 4740, we urge the Committee to amend the SCRA’s affidavit requirement, which provides that a party seeking foreclosure or other default judgment against a servicemember must first file with the court an affidavit stating whether or not the servicemember is in military service, to clarify that such requirement includes the obligation to take reasonable steps to determine the servicemember’s military status. Such steps would include, but are not limited to, searching available Department of Defense records. The amendment would simply

codify what several courts have already held. We also urge the Committee to amend the SCRA to clarify that the private right of action and the Attorney General's authority to enforce the SCRA, which were made explicit in the Veterans' Benefits Act of 2010, apply retroactively to violations occurring before the date of enactment of that Act. This would be consistent with the Department's litigating position and with the recent decisions of the Fourth Circuit Court of Appeals, and would ensure that the SCRA rights of all servicemembers can be vindicated.

(b) USERRA

H.R. 3860, the proposed "Help Veterans Return to Work Act," would amend USERRA to limit the undue-hardship affirmative defense to reemploying certain servicemembers so that it could only be claimed by small businesses. We share the goal of ensuring that the undue-hardship exception is not used in ways that run counter to the law's goals.

H.R. 4115, the proposed "Helping Iraq and Afghanistan Veterans Return to Employment at Home Act," is outside of our jurisdiction, and we defer to the Department of Labor on this legislation.

In addition to the amendment proposed by H.R. 3860, we strongly urge the Committee to amend USERRA to grant the Attorney General independent authority to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. This change would make USERRA operate more like the SCRA and other civil-rights laws by allowing the United States to always serve as the plaintiff in USERRA cases, to vindicate the public interest in ensuring the statute is enforced. This would significantly strengthen the Department's ability to address systemic violations of servicemembers' employment rights (such as a policy prohibiting extended absences, including absences for military service) that could adversely affect the employment rights of multiple servicemembers.

(c) Cross-cutting

Finally, the Department urges the Committee to amend both the SCRA and USERRA to provide the Attorney General with civil investigative demand (CID) authority. While the Department of Labor has subpoena power in its USERRA investigations, the Department of Justice has no pre-suit investigative authority under USERRA or the SCRA, and must rely on voluntary cooperation from the subjects of our investigations. Greater investigative authority would strengthen the Department's ability to enforce both statutes, especially through pattern-or-practice suits.

III. LOOKING FORWARD

The Department appreciates the opportunity to report on our accomplishments in enforcing the SCRA and USERRA, and to comment on the legislation the Subcommittee is considering today. We stand ready to work with the Subcommittee in strengthening these important laws that protect the rights of our servicemembers.

Thank you for the opportunity to share our views.