



# Department of Justice

STATEMENT OF  
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DEPARTMENT OF JUSTICE

BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE

AT A HEARING ENTITLED  
"PRESERVING THE RIGHTS OF SERVICEMEMBERS, VETERANS AND  
THEIR FAMILIES IN THE FINANCIAL MARKETPLACE"

PRESENTED

JULY 31, 2013

**Statement of Eric Halperin**  
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**Before the Senate Committee on Veterans' Affairs**  
**July 31, 2013**

Good morning, Chairman Sanders, Ranking Member Burr, and Members of the Committee. Thank you for holding this hearing on preserving the rights of servicemembers, veterans and their families in the financial marketplace. It is a privilege to speak with you today about our shared priority of protecting the rights of our men and women in uniform.

Over the past four years, the Department of Justice has made enforcement of the Servicemembers Civil Relief Act (SCRA) 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 and the Office of Servicemember Affairs at the Consumer Financial Protection Bureau to ensure that servicemembers' homes and credit are protected while they serve our nation. We have also learned some important lessons from our enforcement efforts over recent years and have been reviewing ways this law could be amended to better protect the rights of servicemembers.

**I. SCRA ENFORCEMENT ACCOMPLISHMENTS**

The Civil Rights Division enforces several laws designed to protect the rights of members of the military, including the SCRA which provides a wide-range of protections. Among other protections, the SCRA postpones, suspends, terminates, or reduces the amount of certain consumer debt obligations for active duty members of the armed forces, so that they can focus their full attention on their military responsibilities without adverse consequences for themselves or their families. Among these protections are: (1) a prohibition on foreclosure of a servicemember's property without first getting approval from the court if the servicemember obtained the loan prior to entering military service, (2) a prohibition on foreclosure of an active duty servicemember's property through a default judgment without first filing an affidavit alerting the court to the servicemember's military status, and (3) the right of a servicemember to have his or her interest rate lowered to six percent on debt that was incurred before entering military service.

These protections are in place because servicemembers should not have to worry -- that their cars will be repossessed while they are on the front lines overseas, that they could lose their home, or that their spouses and children will be evicted while they are on deployment.

Enforcing these rights has been a top priority of the Division under the leadership of Attorney General Holder and former Assistant Attorney General Perez. Members of the military

who have made great personal sacrifices on behalf of this country should not be required to transition to civilian life only to find their credit ruined and their homes foreclosed on and sold. In enforcing the SCRA, we have worked closely with our federal and state partners. The Department of Defense has been invaluable to our enforcement efforts, especially our ability to bring large pattern or practice cases, and the CFPB has been an important source of information about the financial challenges facing servicemembers.

### **A. Wrongful Foreclosure Cases**

In 2011, we reached two multi-million dollar settlements on behalf of servicemembers whose homes had been foreclosed on without court orders while they were on active duty or shortly after they had returned from active duty. The first settlement was for over \$38 million with Bank of America. The Bank of America case began with a referral from the United States Marine Corps on behalf of a servicemember who was deployed to Iraq. Bank of America was scheduled to sell that servicemember's home at a trustee's sale in three days, even though the bank had already received a copy of his military orders. In the course of our investigation and settlement negotiations, the Department found that 309 servicemembers' homes were illegally foreclosed on between 2006 and 2010. Under the consent decree, Bank of America will pay each victim a minimum of \$116,785, plus compensation for any equity lost with interest.

Under our second settlement, Saxon Mortgage Services Inc. is in the process of paying out over \$2.5 million to 19 servicemembers whose homes were unlawfully foreclosed upon between 2006 and 2010. Each servicemember will receive a minimum of \$130,555, plus compensation for any equity lost with interest.

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 2012, we filed consent orders with Bank of America, JPMorgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial, Inc. (formerly GMAC) in *United States, et al., v. Bank of America Corp., et al.* (D.D.C.). These consent orders are known as "the National Mortgage Settlement," which was reached by the United States, 49 state attorneys general, the District of Columbia and the five servicers in 2012. Under these agreements, loans serviced by the nation's five largest mortgage loan servicers are being reviewed to find all servicemembers foreclosed on either judicially or non-judicially in violation of the SCRA since 2006, and to find all servicemembers unlawfully charged interest in excess of six percent on their mortgages since 2008. As a result of these settlements, combined with the

Department's other SCRA settlements, the vast majority of all foreclosures against servicemembers are now subject to court-ordered review.

Under the National Mortgage Settlement, most servicemembers wrongly foreclosed on will receive \$125,000 plus any lost equity with interest. For the foreclosure violations that took place in 2009 and 2010, the Justice Department is coordinating with the Office of the Comptroller of the Currency and the Federal Reserve Board, which are conducting separate reviews of 12 mortgage servicers under the Independent Foreclosure Review process.

Under the National Mortgage Settlement, Servicemembers who were denied a required reduction to a six percent interest rate will also receive a minimum of four times the amount wrongfully charged in excess of six percent. The financial compensation to servicemembers provided by the settlement is in addition to the \$25 billion in relief the settlement provides to homeowners based on the servicers' illegal mortgage loan servicing practices.

Behind each of these settlements are stories of servicemembers who have made great sacrifices for our country, only to have their rights violated at home. For example, we encountered a case involving a servicemember who was severely injured by an Improvised Explosive Device while serving in Iraq, breaking his back and causing traumatic brain injury. The servicer foreclosed on him, despite receiving notice on multiple occasions that he was serving in Iraq. He returned to the United States in a wheelchair with the prognosis that he would never walk again. He spent two years in recovery, during which time he re-learned how to walk and eventually run; however, he still suffers from the impact of traumatic brain injury. Under our settlement, the servicemember received \$130,651 and is eligible to have his credit report corrected to reflect that the foreclosure was not valid.

In another case, we encountered a victim who suffers from Post-Traumatic Distress Syndrome after a tour in Iraq in 2003-2004. Consequently, he regularly receives counseling and takes medication to address his nightmares and nervous condition. In an attempt to avoid foreclosure on his home, he notified the servicer of his active duty status and provided copies of his orders. However, the servicer foreclosed on him twice despite notice of his protected status.

## **B. Wrongful Foreclosures, Repossessions and Court Judgments; Improper Denials of Six Percent Interest Rate**

In July 2012, we filed and settled *United States v. Capital One, N.A.* (E.D. Va.), one of the most comprehensive SCRA settlements ever obtained by a government agency or any private party under the SCRA. Under the consent order, Capital One agreed to pay more than \$15 million in monetary relief to resolve allegations of a variety of SCRA violations, including wrongful foreclosures, improper repossessions of motor vehicles, wrongful court judgments,

improper denials of the six percent interest rate that the SCRA guarantees to servicemembers on pre-service credit card and other loans, and insufficient six percent benefits granted on credit cards, car loans and other types of accounts. The agreement requires Capital One to pay approximately \$7 million in damages to servicemembers for SCRA violations, including at least \$125,000 plus compensation for any lost equity (with interest) to each servicemember whose home was unlawfully foreclosed upon, and at least \$10,000 plus compensation for any lost equity (with interest) to each servicemember whose motor vehicle was unlawfully repossessed. In addition, the agreement required Capital One to create a \$5 million fund to compensate servicemembers who did not receive the appropriate amount of SCRA benefits after requesting a reduction to a six percent interest rate on their credit card accounts, motor vehicle finance loans, and consumer loans. Approximately \$3 million of this fund was used as payments to servicemembers. The remaining approximately \$2 million has been donated by Capital One to military emergency aid societies. Thousands of servicemembers who were victims of Capital One's unfair lending practices will be identified and compensated, with no action required on their part, for loans dating back to July 15, 2006, and those whose credit scores were damaged because Capital One violated the SCRA will have their credit scores repaired.

## **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 could be strengthened to better protect the rights of servicemembers. In September 2011, the Administration formally transmitted to Congress a package of proposals for strengthening all three statutes enforced by the Civil Rights Division that protect the rights of servicemembers and their families, including the SCRA,<sup>1</sup> and we are eager to work with the Committee on these proposals. We were pleased that, last Congress, then-Chairwoman Senator Patty Murray included many of our proposals in S. 2299, the "Servicemembers Rights Enforcement Improvement Act."

- These proposals, if passed, would: Double the amount of civil penalties currently available under the SCRA, to \$110,000 for a first violation and \$220,000 for subsequent violations;
- Codify the rule that a party seeking a default judgment against a servicemember must check Department of Defense records to determine whether the servicemember is on active duty;
- Clarify retroactive application of provisions establishing a private right of action and the authority of the Attorney General to enforce the SCRA; and

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<sup>1</sup> The other two statutes are the **Uniformed Services Employment and Reemployment Rights Act (USERRA)** and **Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)**.

- Grant civil investigative demand authority to the Attorney General to compel the production of existing documents in SCRA investigations.

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. Some violations of the SCRA involve small monetary amounts, making the civil penalty critical to ensuring compliance.

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 United States Court of Appeals for the Fourth Circuit, and would ensure that the SCRA rights of all servicemembers can be vindicated.

Finally, the Department urges the Committee to amend the SCRA to provide the Attorney General with civil investigative demand (CID) authority. The Department of Justice has no pre-suit investigative authority under 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 the SCRA, especially through pattern or practice suits.

In addition, the Administration has proposed as part of the FY 2014 National Defense Authorization Act to give the Department the ability to bring enforcement actions under the Military Lending Act (MLA) if violations of that Act constitute a pattern or practice or raise an issue of public importance. This is analogous to the Department's enforcement authority under the SCRA and would allow for more efficient and effective law enforcement, especially when actors are engaged in conduct that potentially violates both the MLA and the SCRA.

We will continue to work with Congress to identify areas in which additional legislative changes would improve enforcement of the SCRA and the MLA, which also extends vital economic protections to our servicemembers, and anticipate advancing additional legislative proposals this Congress.

### **III. LOOKING FORWARD**

The Department appreciates the opportunity to report on our accomplishments in enforcing the SCRA, and to comment on our legislative proposals to strengthen the SCRA. We stand ready to work with the Committee in strengthening this important law that protects the rights of our servicemembers.

Thank you for the opportunity to testify today, and I look forward to answering your questions.