



## **NOTIFICATION LETTER**

ATTENTION: Mortgage Servicer

DATE: December 2021

SUBJECT: Servicemember and Veteran Homeowner Protections During the Pandemic

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In the coming months, thousands of servicemember and veteran homeowners will be exiting COVID-19 hardship mortgage forbearances. For many, that will mean engaging their mortgage servicers in the loss mitigation process. As such, it is critical that you ensure that servicemember and veteran mortgage borrowers' rights under federal law are diligently protected during the loss mitigation process, and that any issues identified are addressed expeditiously.

In particular, we are concerned about complaints we have received from consumers – especially servicemembers and veterans – who believe they entered into COVID-19 hardship forbearance in accordance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, yet suffered negative impacts due to problems they encountered with how their loan account was handled by their mortgage servicer.

Military consumers describe a range of issues, including:

- Mortgages in a COVID-19 hardship forbearance reported as delinquent to Consumer Reporting Agencies (CRAs), even though they were current when the borrowers entered forbearance;
- Incorrect or confusing communications about COVID-19 hardship forbearances; and,
- Required lump sum payments for reinstatement.

Such actions, if true, may be in violation of the legal protections under the CARES Act or contrary to administrative guidance issued by federal housing agencies. The CFPB is currently reviewing these complaints to determine if further investigation is warranted.

We also want to take this opportunity to remind you that while servicemember and veteran homeowners possess all of the rights, entitlements, and privileges afforded to all other homeowners – such as the legal protections established under the CARES Act and the CFPB's

Regulation X – many of them also possess additional homeowner protections provided to them by the Servicemembers Civil Relief Act (SCRA).

### *Mortgage Protections*

On March 27, 2020, the CARES Act was signed into law. The CARES Act establishes the right to a forbearance for up to 180 days, and an extension for an additional 180 days, for homeowners with federally backed mortgages. Government-Sponsored Enterprises (GSEs) and federal agencies allow for an extended forbearance period of up to 18 months.<sup>1</sup> Mortgages receiving a COVID-19 hardship forbearance must be reported as “current” to CRAs if the loan was current before entering forbearance under the CARES Act.

Even if a borrower enters forbearance in a delinquent status but manages to bring their account “current” during forbearance, the mortgage must then be reported as “current” to the CRAs. Furthermore, borrowers in a federally backed loan generally cannot be required to repay their forbearance amount in a lump sum payment if they indicate that they cannot afford to do so when exiting forbearance, according to guidance issued by the GSEs and federal housing agencies.<sup>2</sup>

On June 28, 2021, the CFPB issued a final rule amending certain provisions in Regulation X (the “final rule”) to establish temporary protections for borrowers experiencing financial hardships due to the COVID-19 pandemic emergency. The final rule took effect on August 31, 2021.

The final rule, among other things, establishes temporary procedural safeguards that are in effect until December 31, 2021 to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages.<sup>3</sup>

The final rule also establishes additional temporary early intervention obligations to ensure that servicers are communicating critical information to borrowers about their options, temporarily permits servicers to offer certain COVID-19-related loan modification options based on the evaluation of an incomplete application, and clarifies when servicers are required to resume reasonable diligence efforts for borrowers exiting certain COVID-19 related hardship forbearances. In addition to these new temporary amendments, servicers must also continue to comply with the requirements in the Bureau’s Regulations X and Z for treatment of delinquent borrowers and borrowers who have applied for loss mitigation.

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<sup>1</sup> See [www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners](http://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners).

<sup>2</sup> For example, Department of Veterans Affairs, Circular 26-20-12, *Extended Relief Under the CARES Act for those Affected by COVID-19*, April 8, 2020, available at [www.benefits.va.gov/HOMELoANS/documents/circulars/26\\_20\\_12.pdf](http://www.benefits.va.gov/HOMELoANS/documents/circulars/26_20_12.pdf).

<sup>3</sup> See 86 FR 34848, available at [www.federalregister.gov/documents/2021/06/30/2021-13964/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement](http://www.federalregister.gov/documents/2021/06/30/2021-13964/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement).

## *Foreclosure Protections*

The SCRA, enforced by the Department of Justice (DOJ), covers all active-duty servicemembers, reservists on active-duty, members of the National Guard who are under certain orders to respond to a national emergency or are serving under Title 10 orders<sup>4</sup> and, in some situations, the dependents of such servicemembers. Some states have enacted state laws that provide similar protections for their National Guard who are not covered by the federal SCRA.

Mortgage servicers must comply with the SCRA regardless of whether their state law provides for judicial or non-judicial foreclosures. Under Section 3953, during a period of military service, and for one year after a period of military service (the “tail coverage” period), a creditor must obtain a court order prior to foreclosing on a mortgage. The mortgage at issue must have been taken out by a servicemember prior to entering military service in order for this protection to be applicable. This is a strict liability provision of the SCRA, and a person who knowingly violates this provision may be fined and/or imprisoned for up to one year.<sup>5</sup>

Section 3931 of the SCRA applies to foreclosures obtained in court where the servicemember does not make an appearance (also referred to as “default judgements”). In such cases, the plaintiff creditor must file an affidavit with the court stating: (1) that the defendant is in military service; (2) that the defendant is not in military service; or (3) that the creditor is unable to determine whether or not the defendant is in military service after making a good faith effort to determine the defendant’s military service status.<sup>6</sup>

If it appears that a defendant in such an action is in military service, a court may not enter a judgment until after it appoints an attorney to represent the interests of that defendant servicemember.<sup>7</sup> The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the defendant servicemember, or if there may be a defense to the action that requires that the defendant be present.<sup>8</sup>

## *Additional Resources*

- *Verification of Military Service* – <https://scra.dmdc.osd.mil/> (where mortgage servicers can verify a borrower’s military status by completing a search online using the Department of Defense’s Manpower Data Center (DMDC) database)
- *DOJ’s Servicemembers and Veterans Initiative* – [www.servicemembers.gov](http://www.servicemembers.gov)
- *CFPB’s Office of Servicemember Affairs* – [www.consumerfinance.gov/servicemembers](http://www.consumerfinance.gov/servicemembers)

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<sup>4</sup> See 50 U.S.C. § 3911(2)(A) - Members of the National Guard are covered by the SCRA when they are on orders for more than 30 days under 32 U.S.C. § 502(f) to respond to a national emergency, as declared by the President or Secretary of Defense. Members of the National Guard are also covered by the SCRA when serving under Title 10 orders for federal active duty, including training orders.

<sup>5</sup> *Id.* at § 3953(d).

<sup>6</sup> *Id.* at § 3931(b)(1).

<sup>7</sup> *Id.* at § 3931(b)(2).

<sup>8</sup> *Id.* at § 3931(d).

*Summary*

The CARES Act, Regulation X, Regulation Z, and the SCRA provide important legal protections for our military families and veterans who do so much for our country. The CFPB and DOJ appreciate your assistance in educating your employees about these protections to ensure our Nation's heroes are safeguarded.

Sincerely,



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U.S. Bureau of Consumer Financial Protection



Kristen Clarke  
Assistant Attorney General for Civil Rights  
U.S. Department of Justice