



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C. *

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak **

Shawn P. Black **

Margaret A. Noles

Robert J. Brewer

Regina Uhl

Of Counsel

David M. Tritter

** Also Licensed in New York, Washington,
West Virginia and Iowa*

*** Also Licensed in New York*

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To: Clients and Friends

From: David F. Dulock

Subject: Federal Regulators Issue Joint “Guidance” for Mortgage Servicer Practices impacting Military Homeowners with Permanent Change of Station Orders

On June 21, 2012, The Consumer Financial Protection Bureau, 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 (herein “regulators”) issued a joint guidance entitled “Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders” (herein Guidance”) to addresses risks related to military homeowners who have informed their loan servicer that they have received Permanent Change of Station (PCS) orders and who might seek assistance with their mortgage loans.

PCS orders, which are non-negotiable and operate under short, strict timelines, occur when a service member is ordered by the military to relocate to a new installation. For military homeowners, receiving PCS orders can present challenges when they are unable to sell their homes to pay off the mortgage debt. For example, a service member’s household income may drop if the service member is unable to find a renter willing to pay rent that will cover the mortgage payment or the spouse is not immediately able to secure a job in the new location. Additionally, a service member’s housing allowance may be lower at the new duty station. Thus, in order to avoid defaulting on their loan obligations, military homeowners need clear, accurate, and timely information about available options such as loan modification or short sale, so they can make informed decisions and request the assistance for which they may qualify. The Guidance, which is intended to ensure compliance with applicable consumer laws and regulations, also advises mortgage loan servicers that their employees should be adequately trained about the options available for assisting military homeowners with PCS orders.

The Guidance addresses practices such as:

- Failing to provide service members 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.
- Asking service members with PCS orders to waive their legal rights under the Servicemembers Civil Relief Act or any other law as a prerequisite to the mortgage servicer either providing information about available options or evaluating the service member’s eligibility for assistance.
- Advising service members 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 they are having financial difficulties in order to obtain assistance for which they would not otherwise qualify.

- Failing to provide a reasonable means for service members to find out information about the status of their request for assistance.
- Failing to timely communicate the servicer's decision regarding requests for assistance from homeowners with PCS orders and failing to include an explanation for the denial, where required.

If a regulator determines that a mortgage servicer has engaged in practices that are unfair, deceptive, or abusive, or if a regulator determines that a mortgage servicer has in any way violated federal consumer financial laws, it will take appropriate enforcement action.

The Federal Housing Finance Agency, and the Departments of Agriculture, Defense, Housing and Urban Development, Justice, Treasury, and Veterans Affairs have announced their support for the Guidance.

The text of the Guidance is attached, and the Guidance is also available at:
http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf.

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Board of Governors of the Federal Reserve System
Consumer Financial Protection Bureau
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency

Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders

The Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency (“the Agencies”) are issuing this guidance to mortgage servicers as part of their supervisory programs. This guidance is being issued to address mortgage servicer practices that may pose risks to homeowners who are serving in the military and to ensure compliance with applicable consumer laws and regulations. Specifically, this guidance addresses risks related to military homeowners who have informed the servicer that they have received military Permanent Change of Station (PCS) orders (hereafter, “homeowners with PCS orders”).

For military homeowners, PCS orders to move to a new duty station present unique challenges. Although PCS orders are non-negotiable and operate under short, strict timelines, homeowners with PCS orders remain obligated to honor their financial obligations, including their mortgages. If their homes have declined in value, they may be unable to sell the home and obtain sufficient funds to pay off the mortgage debt and may continue to be obligated to make monthly payments after relocating to the new duty station.

The Agencies have particular concerns about the following practices which have the potential to mislead or otherwise cause harm to homeowners with PCS orders:

- 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).¹
- Asking homeowners with PCS orders to waive their legal rights under the Servicemembers Civil Relief Act (SCRA)² 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.

¹ This guidance does not obligate servicers to offer any particular loss mitigation programs.

- 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.
- Failing to provide a reasonable means for homeowners with PCS orders to obtain information on the status of their request for assistance.
- 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. Information provided to homeowners with PCS orders regarding any available assistance options, such as the Making Home Affordable Program and other programs offered by or through Fannie Mae, Freddie Mac, the FHA, the VA, and the USDA-RD, should be accurate and readily understandable. 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.

² 50 U.S.C. app. §§ 501-597b. Among the protections under SCRA are restrictions on foreclosures of servicemembers' property securing pre-military-service mortgages for which the servicemember is still obligated, while the servicemember is in "military service," as that term is defined in § 511(2), or within nine months thereafter. The period of nine months will revert to 90 days after December 31, 2012.