

September 2013

Regulatory Alert – Servicemember Protections

What you need to know:

Regulatory interest in financial protections for military personnel, veterans, Reservists and National Guardsmen (collectively, servicemembers) has significantly heightened over the summer months. Financial services regulators, along with the Department of Justice (DOJ), Department of Defense (DOD), Federal Trade Commission (FTC), and Congress have taken a variety of actions that reinforce the importance of servicemember protections as a compliance concern. A brief overview follows.

• Enforcement Actions

- A large student lender and servicer reported in its Form 10Q filing for the quarter ended June 30, 2013 that the Federal Deposit Insurance Corporation (FDIC) intends to take enforcement action against the company for certain violations of Section 5 of the *Federal Trade Commission Act* (governing unfair, deceptive, or abusive acts or practices, or UDAAP), including with respect to the *Servicemembers Civil Relief Act* (SCRA) and the *Equal Credit Opportunity Act* (ECOA) and its implementing regulation, Regulation B.
- The Bureau of Consumer Financial Protection (CFPB or Bureau) initiated an enforcement action against a bank and its nonbank partner that required the companies to pay nearly \$6.5 million in restitution to harmed servicemembers based on the CFPB's findings the entities failed to properly disclose all fees charged to participants in a military-oriented auto loan program, and for misrepresenting the true cost and coverage of add-on products financed along with the auto loans in violation of UDAAP provisions.
- The FTC required a firm that specializes in home loan refinancing for current and former military consumers to pay a \$7.5 million civil money penalty for allegedly failing to remove consumers from its company call list upon demand, and misstating the terms of available loan products during telemarketing calls in violation of

IN THIS ISSUE

[What you need to know](#)

[What you need to consider](#)

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the Do Not Call provisions of the FTC's Telemarketing Sales Rule.

- **Regulatory Actions**

- The New York State Banking Department is reportedly looking into whether companies that are aggressively courting military veterans, teachers, firefighters, and police officers to take loans against their pension benefits (referred to as pension advances, which are similar to small dollar, short-term, and payday loans) have engaged in false advertising, violated State usury laws, or violated a Federal law that restricts how military pensions can be used.
- Though not directed specifically to servicemembers, the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) jointly issued an Investor Alert in May to inform consumers about the risks associated with selling their own, or purchasing another person's, rights to an income stream derived from monthly pension payments or regular distributions from a legal settlement, highlighting the growing regulatory interest in pension advance products.
- The DOD issued an advance notice of proposed rulemaking (ANPR) in June seeking comment on the need to revise the DOD's existing regulations (which implement the *Military Lending Act*) to enhance protections applicable to consumer credit extended to members of the armed forces and their dependents. The ANPR also seeks comment on examples of alternative programs designed to assist servicemembers who need small dollar loans.

- **Financial Literacy Initiatives**

- The CFPB launched a new initiative in July aimed at providing direct financial coaching services to transitioning veterans (and their spouses and surviving spouses) and economically vulnerable consumers that will begin in 2014. The CFPB also conducted an industry conference in August to solicit vendor input on the program as well as to explore partnering opportunities between the vendors and the CFPB.
- On July 17, 2013, the CFPB participated in the first Military Consumer Protection Day (MCPD), joining 26 other Federal, State government, and nonprofit organizations, including the DOD, the FTC, and Military Saves, to highlight free consumer protection resources for military members.

- **Congressional Action**



- The Senate Committee on Veterans' Affairs conducted a hearing on July 31, 2013 to consider "*Preserving the Rights of Servicemembers, Veterans and Their Families in the Financial Marketplace*." Representatives from the CFPB, DOD, DOJ, and the Financial Services Roundtable provided testimony. The hearing highlighted the coordinated efforts of the agencies to ensure that the SCRA is effectively implemented. Holly Petraeus, CFPB Assistant Director of the Office of Servicemember Affairs, testified that SCRA compliance problems have been identified across consumer credit products, though primarily in mortgage and student loan servicing.

What you need to consider:

The increased scrutiny by DOJ, DOD, and the regulatory agencies, along with the heightened awareness in the marketplace, exposes bank and nonbank providers of consumer financial products and services, and their affiliates and third-party vendors and service providers, to growing risks for practices that could potentially impose financial harm on servicemember consumers and their families through violations of UDAAP or noncompliance with the SCRA. Consideration should be given to:

- Conducting a comprehensive review of SCRA compliance across multiple lines of business including:
 - Reviewing policies and procedures,
 - Identifying and testing SCRA processing controls,
 - Validating SCRA-relevant populations,
 - Testing processes for intake of servicemember requests for SCRA benefits and application of benefits, as well as the intake and resolution of servicemember complaints,
 - Testing and validating benefit calculations, and
 - Reviewing and testing protection activity (i.e., foreclosures, judgments, repossessions) for compliance
- Conducting fair lending and UDAAP reviews across multiple business lines to ensure that appropriate policies, procedures, and controls are in place for different products and services to protect servicemembers from being taken advantage of or otherwise treated unfairly by any practices or products.
- KPMG has prepared a Services Brochure outlining issues associated with SCRA compliance and servicemember protections. It is included as an attachment to this Regulatory Alert.

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