

**ALLEGED VIOLATIONS OF  
THE SERVICEMEMBERS CIVIL RELIEF ACT**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON VETERANS' AFFAIRS**  
**U.S. HOUSE OF REPRESENTATIVES**  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION

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FEBRUARY 9, 2011  
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# **ALLEGED VIOLATIONS OF THE SERVICEMEMBERS CIVIL RELIEF ACT**

**WEDNESDAY, FEBRUARY 9, 2011**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:36 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [Chairman of the Committee] presiding.

Present: Representatives Miller, Bilirakis, Stearns, Lamborn, Benishek, Buerkle, Huelskamp, Johnson, Runyan, Stutzman, Filner, Michaud, McNerney, Donnelly, Walz, and Barrow.

Also present: Representative Miller of North Carolina.

## **OPENING STATEMENT OF CHAIRMAN MILLER**

The CHAIRMAN. Good morning everybody and welcome to the first oversight hearing of the House Committee on Veterans' Affairs for the 112th Congress and I appreciate everybody's attendance today. As we begin our important work on behalf of America's veterans and our servicemembers, I would like to point out that the veterans are well represented on this Committee, and while Members look after the interest of 23 million U.S. veterans and their families, some 12.2 million, over half of America's veterans reside in the States that we represent. I am especially proud of 110,000 veterans that live in the first Congressional District of Florida, the Florida Panhandle.

And that responsibility brings us to the subject of today's hearing. I know the Members on both sides of the aisle are concerned about today's topic, but consistent with past practice, I would like to limit opening remarks to myself and the Ranking Member so that we may have more time to hear from our witnesses, and of course any Member is able to submit their opening remarks for the record.

The Servicemembers Civil Relief Act (SCRA) has existed in various forms since the War of 1812, and each version has shared a singular goal, to protect those who protect us.

The 2003 revision, which I cosponsored and the amendments we have made since, continue that tradition. I am committed to ensuring SCRA remains a relevant and viable tool and I know the Ranking Member and the rest of this Committee share in my commitment.

My goal for this oversight hearing is to determine whether or not the SCRA afforded our servicemembers and their families are

meeting their needs. We are all aware of related matters pending before the court. This is not intended to be a trial of any sort. I am not seeking to prejudice that or any future action in any direction, at the same time it is important to recognize that this Committee has a duty to ensure that the law is working for active-duty servicemembers.

I have said recently and I will say it again, our Nation's war fighters and their families should not have to fight to keep their piece of the American dream while fighting on foreign soil defending the fundamental right that each and every one of us has.

I want to thank our witnesses for appearing before us. First I want to thank Captain Jonathan Rowles and his wife Julia for their persistence in exercising their rights.

Second, I want to thank JPMorgan Chase for reaching out to us, and more importantly, for admitting its mistakes and then making efforts that it has made to rectify them.

I hope our witnesses from the U.S. Department of Defense (DoD) will be able to assure us of the effectiveness of their program to educate servicemembers on their rights under SCRA, and I also look forward to hearing from the newly established Consumer Financial Protection Bureau about how it can contribute to preventing similar occurrences in the future.

What we have here now is what some might call a teachable moment. For the finance services industry, the lesson is to understand the Servicemembers Civil Relief Act and to undertake the same sort of review as has Chase to ensure its compliance. For DoD, it is time to review whether the military services' SCRA training programs are getting the job done. Finally, servicemembers are ultimately responsible for understanding their rights and responsibility under SCRA and holding their financial institutions accountable. Today we will be asking and listening for ways to ensure that these goals are in fact being met.

Before we begin I ask unanimous consent that all Members be allowed to sit at the dais and be permitted to ask questions. Hearing no objection so ordered.

I want to extend a warm welcome to our colleague, Brad Miller, from North Carolina. Mr. Miller drafted legislation last Congress on SCRA and I am happy he is here with us today.

I now recognize the Ranking Member, my good friend, Mr. Filner, for his opening remarks.

[The prepared statement of Chairman Miller appears on p. 62.]

#### **OPENING STATEMENT OF BOB FILNER**

Mr. FILNER. Thank you, Mr. Chairman, I appreciate you holding this hearing today. I know you have a rigorous oversight schedule and I am glad we are undertaking this issue for our first hearing.

I would like to ask unanimous consent that Mr. Reyes may introduce a statement for the record. Unfortunately his wife had an accident so he is with her this morning. He planned to be here today and has a statement to introduce into the record.

The CHAIRMAN. Without objection.

[The prepared statement of Congressman Silvestre Reyes appears on p. 85.]

Mr. FILNER. This is of course a very important issue as the Chairman stated and we have to monitor it, especially as our foreclosure crisis continues to unfold.

I want to thank all of the panelists here and especially those who have traveled great distances.

We want to find out why banks such as JPMorgan Chase have overcharged our military families who are actively engaged in defending our Nation.

While we want to know how these charges happen, we also want to know what is being done to prevent them from occurring again.

As foreclosure filings continue to rise, the effect on Americans has been acute, with my State of California having one of the most affected populations. According to RealtyTrac, California metro areas such as San Diego have been seriously affected by these foreclosures. Like many of our Nation's heroes, and most Americans, see homeownership as an integral part of the American dream. Unfortunately, for a number of our military families that part of the American dream has become a nightmare when JPMorgan foreclosed on their homes.

It is my sincerest hope that JPMorgan Chase will be taking immediate corrective steps to restore these families to their homes as soon as possible. I have grave concerns for as you mentioned Captain Rowles and his wife who are here. They have been through a 5-year nightmare with this bank. It is unconscionable that any family would have to endure this kind of treatment, but especially a military family.

For many of our returning servicemembers and veterans, the stress of what they have gone through by serving in a war may still affect them, that is why the protections under the Servicemembers Civil Relief Act are there to provide protection for all of our military families.

So, Mr. Chairman, I thank you for your commitment to stand up for veterans and their families by making sure that we take all of the steps necessary today.

I look forward to hearing the testimony and I want to thank those families who are here and have stood with our Nation. Now it is time for our Nation to stand with you.

I yield back, Mr. Chairman.

[The prepared statement of Congressman Filner appears on p. 63.]

The CHAIRMAN. Thank you, Mr. Filner, and I will now ask the first panel if you would please approach the head table.

With us today we have co-counsels representing Captain and Mrs. Rowles, Mr. Dick Harpootlian and Mr. William Harvey. They are accompanied by Captain and Mrs. Rowles. And Mr. Harpootlian, we appreciate you bringing the Rowleses and coming to testify before this Committee.

Your complete written statement will in fact be entered into the record and you are recognized. If you could real quick right in front of you there should be a button to turn the microphone on.

**STATEMENT OF RICHARD A. "DICK" HARPOOTLIAN, ESQ.,  
RICHARD A. HARPOOTLIAN, P.A., COLUMBIA, SC; ACCOMPANIED BY CAPTAIN JONATHON ROWLES (USMC), AND JULIA ROWLES; AND WILLIAM B. HARVEY, III, ESQ., HARVEY & BATTEY, PA, BEAUFORT, SC**

**STATEMENT OF RICHARD A. HARPOOTLIAN**

Mr. HARPOOTLIAN. Thank you, Mr. Chairman. It is an honor to be here today with the Rowleses. It is an honor to have met them and Lieutenant Colonel Sarah Letts-Smith, and Marine Corporal Hupfl who Bill Harvey and I represent, all three of them.

And since we have become involved in this case we have met and talked to numerous other members of our military services, fighting men and woman who have been through a living hell. While they have been trying to fight our enemies, they have had to fight a second front on the home front. They have been subjected to some of the most degrading, intimidating conduct that anybody—anybody that in my 40 years of practicing law have been subjected to.

My written statement details what the Rowleses went through, 5 years of it.

If you watched *The Today Show* on NBC this morning you saw Lieutenant Colonel Letts-Smith describe what she went through. And what they went through was not—and I have read the statement of Chase—human error, whoops, we found out we were taking money we shouldn't have taken, we subjected these people to illegal conduct, we made a mistake, we are going to correct it.

I was a State prosecutor for 12 years in South Carolina, every person we ever caught breaking the law, taking something that wasn't theirs was more than willing to give it back, give a mea culpa and go the other way—beyond their way.

I made some suggestions in terms of making this law tougher so that this isn't a debit on a balance sheet for a big bank so that they are deterred in the future from treating our American heroes the way they treated these folks.

Now one of those is to make it a felony rather than a misdemeanor. The second thing is to make the sanction stiffer. And third to give attorneys' fees. And attorneys' fees in many of these cases—we are in a class action—many of them are individual cases much like a 1983 case where the damages may only be—the financial damages may only be \$1,000, but you want to incentivize lawyers to get involved in representing our men and women in the military who have been wronged.

It is amazing to me—and I know Bill Harvey who has a son that is a helicopter pilot for the Navy, that anybody, let alone these folks, are treated in this fashion.

Now I talked to probably 100 military personnel that called me or e-mailed me that have been treated much the same way, and came to the conclusion that as you talk to corporate representatives, as you talk to these banks—not just Chase, but all of them—they treat our American fighting men and women as if they are insects. I mean that may be too strong a word, but you have seen the written statement and you can hear from those folks in a moment, they went through hell. This guy is deployed defending us.

Sarah Letts-Smith is in Iraq, two tours. They took her house. Put her kids and husband out on the street.

This is like a bad movie, except they are living it. While they are trying to defend us they are catching friendly fire, so to speak, from this country.

Now philosophically—we talked about this at dinner last night—and the Captain is far more gentle about this than I am. He does believe the criminal penalty should be increased, and he wants Chase prosecuted, and he has spoken to our U.S. Attorney in South Carolina, Bill Nettles, and obviously I am not privy to what the U.S. Attorney's Office and U.S. Department of Justice (DOJ) is doing, but I can tell you that that conversation went very well, and Bill Nettles has also spoken to Sarah Letts-Smith.

And so there is perhaps some criminal prosecution going forward, but the penalties need to be stiffer, the banks need to understand that they are not going to have their way with our American fighting men and women.

The last thing I would say is this. The United States Supreme Court, within the last 24 months in a case called *Citizens United*, decided that corporations have civil rights, the constitutional right to free speech. Well, with the constitutional right to free speech goes the constitutional responsibility that every citizen has. Patriotism is defined by the dictionary as loyalty to the country and a willing to sacrifice.

These corporate citizens have lost—if they ever had it—the willingness to sacrifice a penny for our fighting men and women and to do what these folks do every day for a hell of a lot less money than the bonuses they are getting on Wall Street on the banks.

Thank you.

[The prepared statement of Mr. Harpootlian appears on p. 65.]

The CHAIRMAN. Thank you, Mr. Harpootlian. And Captain and Mrs. Rowles, again, thank you for your persistence without which really several thousands servicemembers may not have benefited from SCRA.

In addition to questions that we are going to have for your counsel, I may have a couple questions for you and you may answer them if you want to. If you don't feel comfortable answering, you are welcome to refer them to your counsel, that would be entirely appropriate.

And I would like to ask, do you have a statement that you would like to give us or a few words before we begin questioning Mr. Harpootlian? Captain.

Captain JONATHAN ROWLES. I do not, sir. Mr. Harpootlian said everything.

The CHAIRMAN. Mrs. Rowles.

Mrs. JULIA ROWLES. I am fine. Mr. Harpootlian has covered pretty much our battle thus far.

The CHAIRMAN. Thank you.

I will ask if I can the first question of both of you, and again, you can answer the question or Mr. Harpootlian can answer it for you.

When did you first realize that Chase had violated SCRA? Did you notify the Marine Corps legal staff? And if you did, what action did they take on your behalf?

Captain JONATHAN ROWLES. Yes, sir. I first learned about SCRA while I was at Officer Candidate School (OCS) and my rights thereof.

Afterward in 2008, after lengthy letters and calls and whatnot, I did go to the legal staff at Naval Air Station Pensacola where I was a flight student at the time. They looked over the case, but they were unsure of how to proceed, and due to the volume of other cases that they had at the time they just did not have the resources to pursue it, at which time we were told that we were doing pretty much everything we could, sir.

The CHAIRMAN. And you say you were first educated about it at OCS?

Captain JONATHAN ROWLES. Yes, sir. We got a class while we were at OCS there in Quantico, Virginia, on our rights to SCRA.

The CHAIRMAN. Can you give us some idea of the reaction when you contacted JPMorgan Chase, and how they handled the situation? And I am sure you both had conversations with them, so feel free to elaborate.

Captain JONATHAN ROWLES. Yes, sir. I would characterize it as delayed and confused. I was asked to fax my orders several times back and forth. And being in the field you would have to—you would fax your orders, you would go away for a week or 2, you would come back to find they would ask for it again. You get a statement that is not correct so you call to recognize it. They say they need your orders again. At that point, I got a letter from my commander as well just to emphasize the point that I was active duty and sent my orders along with that as well, sir.

Mr. HARPOOTLIAN. Mr. Chairman, I think if Mrs. Rowles could speak. She was pregnant with their second child, he is deployed, the child was born prematurely. She was having to deal with the birth of a child alone and Chase at the same time, and she is a little more emotional about it than he is.

Mrs. JULIA ROWLES. Yes, sir. Chase always had a problem with acknowledging any of our evidence or our homework I guess you would say in our SCRA benefits.

We would instruct them that we are doing everything we could. We did make our payments every month on time in the full amount that they were supposed to be for, but however every month our statements were different.

While Jonathan is away either in training, flight school, or any of his Marine Corps duties, I was left at home to deal with Chase and their problems.

We have two children, one of them was born prematurely and had to have a lengthy stay in the hospital, but yet at the same time I am dealing with Chase and getting their phone calls, getting their harassment around the clock.

Jonathan missed 2 hours of our daughter's birthday party because Chase simply would not hang up the phone until he made a payment in which we had already paid our mortgage.

This constant harassment and constant ignorance for the SCRA benefits to servicemembers is ridiculous and it is actually—it is very upsetting that for 5 years we have had to educate Chase as to the benefits that we are—we were privy to.

The CHAIRMAN. Entitled to.

Mrs. JULIA ROWLES. Entitled to, I am sorry.

The CHAIRMAN. Did they ever acknowledge the fact—I mean obviously if they kept asking for orders they must have known that there was something that they had to abide by?

Mrs. JULIA ROWLES. We were—sir, we were sending them orders quarterly, which we later found out we did not have to do. Once you send in orders and verify that you are indeed active-duty military, we were acknowledged, we were granted the permissions under the SCRA, that should have been it until his contract expired and had he continued military service.

We had done that time and time again. And it is very—we didn't have to do this. It was harassment even without collection calls constantly sending them, I guess his orders and all other paperwork, was harassment.

The CHAIRMAN. I have some other questions that I want to ask, but I want to go ahead and turn the microphone over to the Ranking Member, Mr. Filner.

Mr. FILNER. Again, thank you for being here. I know it is not easy sometimes to do this and talk about your personal situation, but I think you are going to improve the lives of tens of thousands of people, so we really do appreciate it and we are sorry you are going through all of this.

The fact that we have some publicity for what you are going through means we will have some changes. There are literally tens of thousands of other people, many on active duty, who the banks are putting through hell.

The so-called loan modification programs don't work, people are having to provide this kind of information over and over and over and over again.

I have been on the phone with my constituents trying to call the major banks and they put you on hold for almost an hour at a time and switch you around to different people. After you think you got to right person, they take your information and then say they are the wrong person. Or, the next time you call, you get a different person who says, "I don't know what that person said, it is not in the computer so tell me your story again." I mean it goes on and on and on. People get so sick of fighting it that they just put their keys on the kitchen counter and leave. You have fought hard and that is important so we thank you for that.

But what is going on around the country is just tragic, it is immoral, I think it is illegal not only for those who are covered by SCRA, but for everyone.

The banks have packaged, repackaged, and resold so much that nobody knows who the owner of the note is. I don't think any court has really approved any of the foreclosures that have come before them, but it is impossible, to know who really owns the loan. I think people should just stay in their house, frankly.

I know the Chairman will be very surprised that I led a little demonstration around a house in my district that was going to be foreclosed on—we believed illegally. The sheriff was going to show up at 6:00 in the morning, so we had a couple hundred people surround the house at 5:00 in the morning. I was on the front steps just waiting to be taken away, because I thought a "sit in" at a house like that would spread across America like the "sit ins" dur-

ing the '60s for racial justice. But one of the biggest banks in the world and the sheriff just backed down from all the publicity they were going to get if they foreclosed on this woman who had two kids who were very sick. It was a tragic story.

I think what is going on all around America is wrong, tragic, and I am glad that you can be here to highlight some of that.

The CHAIRMAN. Would the gentleman yield just a minute?

Mr. FILNER. Yes, sir.

The CHAIRMAN. I just want to ask you a question. This may be a question you are going to ask because you just—

Mr. FILNER. Please.

The CHAIRMAN. Was JPMorgan Chase the company that you actually got your loan through or was your loan sold to them?

Captain JONATHAN ROWLES. My loan was sold to them, sir.

The CHAIRMAN. Okay, thank you.

Mr. FILNER. And we don't know if they sold that to somebody else, right?

Captain JONATHAN ROWLES. No, sir.

Mr. FILNER. I doubt if they owned it, but we will see when they come here.

I just want to again thank the counsel. You have made some very important and specific recommendations for us.

Mr. HARPOOTLIAN. Thank you.

Mr. FILNER. I think you gave us a lot of guidance. It is some of the best testimony I have ever heard here because you told us what we need to do.

By the way, if we increase the penalties, and I agree with you, can they refuse to handle loans in such a situation so they will never be subject to punishment. Do we have to do something about that too?

Mr. HARPOOTLIAN. Well, I mean I think obviously they don't have to as we know now they don't loan to people they don't want to loan to, they don't modify if they don't want to.

You know, I believe there are honest, well meaning, good people. Many of the small banks are modifying loans.

Mr. FILNER. Right, the small banks.

Mr. HARPOOTLIAN. The small banks are doing it. I mean they are not driven by the \$100 million bonuses, so the marketplace is a wonderful place, and I think it will be—if they don't want to loan money because they think they may be violating a Federal law and go the jail for it then they shouldn't be in the banking business.

Mr. FILNER. But we may have to say something for an active-duty application to be creditworthy with a lender.

Mr. HARPOOTLIAN. Well, that is certainly within your purview.

Mr. FILNER. I just am afraid that they will just take the path of least resistance and not give loans at all.

Mr. HARPOOTLIAN. Well, remember these folks under the law buy these houses before they go in.

Mr. FILNER. I see.

Mr. HARPOOTLIAN. So they are not active duty at that time.

Mr. FILNER. Okay. That's good.

I really do appreciate your recommendations and I appreciate your persistence and your courage for the Rowleses.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. We will take questions from Members who were here as the gavel went down. So Mr. Lamborn, you are first.

Mr. LAMBORN. Thank you, Mr. Chairman, and thank you for your service to our country, Captain Rowles and to Ms. Rowles, thank you for your sacrifices. You make sometimes just as many sacrifices as a spouse and mother and wife that your husband does, so we appreciate that.

I guess for Mr. Harpootlian, to make sure that this kind of thing doesn't happen again you said on the SCRA that you think the criminal penalty should be increased. Should there be anything else on the civil side that should be done as well?

Mr. HARPOOTLIAN. Sure. Right, I mean the criminal penalties need to be increased and Congress all the time passes mandatory minimums for somebody that makes \$100 off some crack. I suggest that you need to look at the criminal penalties here as if they were selling crack.

As to civil penalties I think they need to be increased, and I have said that if they voluntarily report that they may get some credit for that so they are not under a—I mean this thing has been going on at Chase for 5 or 6 years at least, and we submit—we haven't done any discovery in our case, it is stayed pending the Fourth Circuit's decision on private cause of action—but we submit that obviously somebody with the kind of calls they were getting and dozens of other people were getting and the complaints they were making had to work its way up to somewhere, and those folks need to understand they have an exposure to going to jail.

I was a State prosecutor for 12 years. Let me tell you something, anybody wearing a white collar thinks about that before they violate the law, and if you have a sanction that sends that message I think the banking industry will look at what they do or are doing when they get a complaint and try to correct it immediately rather than sitting on it for 5 or 6 years.

As to civil, again, I think they need to be increased to half a million dollars, and you need to give—if this were not a class action, an incentive for somebody to represent the Captain or people like him on an individual case by awarding attorney—or allowing a court to award attorneys' fees if they find it to be appropriate.

Mr. LAMBORN. And I am not wanting to make any comment on the ongoing action, you know, the courts will sort that out as this action goes forward, I am just talking about prospectively.

Mr. HARPOOTLIAN. Absolutely.

Mr. LAMBORN. Yeah.

Mr. HARPOOTLIAN. Absolutely. And Bill Harvey and I have talked about this at great length that prospectively there are a lot of things that can be done and where we are in a case that is pending in court waiting for the Fourth Circuit to decide whether the amendments you all made last year indicating there is a private cause of action are only prospective or just a clarification. That is pending in the Fourth Circuit right now.

Mr. LAMBORN. And Mr. Harvey, would you have anything else to add before I close on the civil side of things? You have spoken eloquently about what you think should be happening on the criminal side of the statute.

Mr. HARVEY. Well, the penalties on the civil side we believe need to be increased. So many people—you read JPMorgan Chase's statement where the average damage is \$70 that they are sending back. Seventy dollars really doesn't incentivize many attorneys to handle a private cause of action case such as us.

If you increase the civil penalties, you increase the attorneys' fees, I think it would help people like the Rowleses be able to prosecute their own rights.

Mr. LAMBORN. Now and for either one of you, my understanding from practicing law years ago is that the Fair Debt Collection Practices Act doesn't allow creditors to call in the middle of the night or keep calling when someone says please don't call me again. There are remedies already in law right there, including Colorado. Prospectively does this statute need work on that front as well?

Mr. HARPOOTLIAN. Well, of course we brought a class action and Congress for whatever reason limited class actions to a gross of \$500,000 per class. Now individually you could do that and you can get attorneys' fees for that if they violate the Fair Debt Collection Act. But in this context if there are 5,000 of them out there it would be, you know, \$100 a piece in damages under the Fair Debt Collection Act. And we are looking at that, but our case is stayed and we need to see what the Fourth Circuit says about the private cause of action under this Act.

Mr. LAMBORN. Okay. Thank you gentlemen. Once again thank you for your service.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman, Mr. Ranking Member for having this hearing today.

I have a couple of questions. Mrs. Rowles, you mentioned that you have had several conversations with JPMorgan. After your several conversations, have you ever talked to anyone in management, and if so what was their response?

Mrs. JULIA ROWLES. Thank you, sir, that is a wonderful question. And yes, we have tried numerous times to speak with anybody in management. There were occasions where we were told we were speaking with management, and to our surprise, management did not know how to fix our problem either.

Jonathan and I traveled to Colorado from South Carolina briefly right before he deployed in July because we thought we found a mortgage branch manager that said he could help us. And after sitting with him for hours on two different dates, he threw up his hand in the air and said I have no clue how to fix your situation, there is nothing I can do, sorry. And that was pretty much the consensus of every manager we spoke with.

I would spend hours trying to find people that actually would talk to us and that would not just write down our name and number and say that they would call us back. We have spoken with managers in South Carolina to Texas to California, nobody knew how to fix our problem.

Mr. MICHAUD. Okay, thank you.

For the attorney, it seems hard to believe that JPMorgan is the only bank that is doing this. Are you aware of any other institutions that are doing this?

Mr. HARPOOTLIAN. Well, there have been news reports of, I think, other institutions. And your last witness today from Louisiana will explain. He is suing a whole lot of banks on a whole lot of these violations.

So we have been focused on our case which is Chase, because, you know, I am a three-man law firm, Bill is a small law firm, we are taking on a behemoth so we are keeping our eye on the ball.

But again, your last witness today a gentleman from Louisiana is suing a bunch of them and I think he can tell you in chapter and verse who is doing what. But it seems to be an industrywide—and that is why I talk about this corporate citizenship—there is no sense of them having any patriotism. I mean these folks don't care about, or at least they exhibit no care about, our fighting men and women, and I deem that to be unpatriotic.

So if you are going to get the rights of free speech, which they were given by the Supreme Court, you should have the responsibility of supporting this country when it is in need.

And by the way, when the banks needed help, everybody here helped them, everybody here helped them, and now these folks need them. They have enough to give them the help and now our fighting men and women need help and they are saying we are sorry we are going to give you back the money plus seven and a half percent interest, no harm, no foul, and that ain't enough.

Mr. MICHAUD. Another question, and I don't know if it is hard to prove, but when you look at the fact that suicide rates among our active military personnel have increased dramatically because of what is happening in Iraq and Afghanistan, and also if you look at some of the concerns that those who have committed suicide a lot of it actually deals with financial issues and problems at home.

My question to you is since *Citizens United* gave, you know, their rights to, you know, corporations, and since I am pretty—well, I don't know for sure—but you probably could assume that some of those suicides have been because of financial problems that could ultimately have led to banks such as JPMorgan and others doing what they have done to our fine men and women who are wearing the uniform, is there any—is this—can you comment on that as far as suicides?

Mr. HARPOOTLIAN. Well, I know this from talking to dozens of military men and women that called me and Bill after *The Today Show* ran the initial spot. Everyone of them had a story. I know I talked to one guy who was in Afghanistan calling the bank because his wife couldn't get any answers. Using—and they get—I mean I am not in the military, but they get a card with so many minutes that they can call home on. Sarah Letts-Smith, one of the plaintiffs here, in Iraq having to use the time she ought to be talking to her husband and four kids to call home. Now Sarah is a tough cookie, but she even was brought to tears when she talked about this.

So does it have an emotional impact? No question about it. Is that what you want somebody that is in an F-18 over Afghanistan or over Iraq, is that—you want them worried about that, that kind of pressure or is it patrolling Afghanistan or one of the other spots that we are in is? Is that what you want them focused on?

I am not a psychiatrist, but I will tell you every one of these folks, and I mean Sarah and Jon are very stoic here this morning, but when you talk to them about what they went through, and these are tough people and it brings them to tears.

So I think it has an emotional impact, I think it is deleterious to our ability to win. I mean if you get it down to brass tacks. You don't want these folks worried about is the wife and kids going to be on the street as Sarah Letts-Smith found out. They evicted and threw her family on the street, foreclosed her house. The Act is clear they could not do that. They violated. Chase did that. And they have said they have given or rectified it with 12 people; 12. We know now there is maybe 15 to 20. All these folks went through hell.

And again, whether it caused suicides or not I don't know, what I do know is when you are a weapons officer on an F-18 and you are flying in dangerous situations you want to be focused on that and not about whether your pregnant wife at home who is having a baby and getting calls at 3 o'clock in the morning from collection people is going to be thrown out on the street.

I mean it is simple. And that is what the Act is about and this Committee has spoken clearly about that last year and every year. I mean as I have said in my statement historically going back to the 1919, 1918, this Congress has made it clear they don't want that to happen, it is happening, and there is only one reason for it, greed.

So I encourage you to take the action to make sure that there is a consequence for that kind of conduct.

Mr. HARVEY. And Congressman, if I may add, Congressman Filner spoke about modifications, loan modifications. A lot of times these servicemen and women, they are on their second and third tour, the value of the house has gone down, they need a modification. They go to these banks, you know, they are getting paid fighting wages instead of their wages that they can earn at home and yet the banks turn them down almost categorically for modifications.

This Committee might consider something to do with loan modifications for active servicemen and women.

The CHAIRMAN. Dr. Benishek, do you have a question?

Mr. BENISHEK. Yes, I do. I understand you went to the court or the legal assistance that you had through the Marines?

Captain JONATHAN ROWLES. Yes, sir, every Marine is afforded the opportunity to meet and talk with lawyers about various legal situations at the base they are at.

Mr. BENISHEK. Did they seem to understand this bill here that afforded you this protection, and do they offer the services of contacting the banks for you? I mean it seems to me you started with these people and they didn't help you, then you had to contract your own lawyers to work it out.

Captain JONATHAN ROWLES. Yes, sir. We presented all the evidence that we had there in 2008 to the lawyers at my duty station, and I just don't think it was in their lane, sir, and they didn't know a lot about the intricacies of it. And I had explained what I had been doing with letters and phone calls and searching for various people, and at that time they believed that was about all I could

do. And so for a good while I continued to believe that that was all I could do, but I continued to make the phone calls and letters anyway until they—Chase threatened to affect my credit at which point—which is a big deal when you hold a security clearance—and that is when I took action to seek private counsel.

Mr. BENISHEK. All right. It just seems to me that there should be some method through the military in order to obtain your rights through their counsel. I am just a little bit chagrined that you had to, you know, suffer through this prolonged process on your own basically.

Mr. HARPOOTLIAN. Well, sir, the problem is the military counsel, they are not really in the business of suing people or—I mean that is what you—I mean ultimately the only way you are going to make them do the right thing is sue them.

In the Marine Corps, Judge Advocate General (JAG) folks, that is not what they do, and the Justice Department now is somebody that could do that, but are they going to do that over a, how much was it Bill, average?

Mr. HARVEY. Seventy dollars.

Mr. HARPOOTLIAN. Seventy dollars, no. So, I mean these things fall through the cracks. And I can tell you these are very educated, very sophisticated, as is Sarah Letts-Smith, they knew their rights and they pursued them. There is a bunch of folks out there that never claimed it because they didn't understand it.

So I would suggest that what could happen, I mean a simple thing like a Web site, and Sarah and I talked about it the other night, where you could go on and say I am getting deployed, this is what I have, what can I do? And have a—you don't need it at a base, you need a national—somebody that is up to speed on it that can answer questions on a help line. I mean if my Apple computer breaks, I get help real quick. I don't know why our military folks can't get that same kind of help. And this Committee would do something about that.

Mr. BENISHEK. Thank you.

The CHAIRMAN. Thank you, Doctor. Mr. McNerney.

And also I would like to add that we will have testimony from the U.S. Department of Defense (DoD) in a couple of minutes. One with a brand new program that I hope will shed some light on what DoD is doing now to help provide this information to our servicemen and women.

Mr. McNerney.

Mr. MCNERNEY. Thank you, Mr. Miller. First I want to congratulate you on your elevation to Chairman.

The CHAIRMAN. Thank you.

Mr. MCNERNEY. I look forward to working with you on these issues in the next few years.

I want to thank Captain and Mrs. Rowles for your service to our country. You volunteered, you didn't get drafted, and that just speaks a lot about what your intentions are for our country.

My first question has to do with when did these banks know that they were violating law? I mean did they know or is there a difference between what the large banks know and what the small banks know? Or were they just ignorant and wanted to remain ignorant or where was this coming from?

Mr. HARPOOTLIAN. Well, I think you can get a chance in just a few minutes to ask Chase about that, and perhaps they will tell you. They are not under oath so they will tell you what they think happened.

I have read their statement, which is oh, you know, stuff happens. So I don't know.

If this lawsuit is allowed to go forward, I can guarantee you we are going to find out.

Mr. MCNERNEY. Well, I mean they were informed——

Mr. HARPOOTLIAN. Five years ago in this case.

Mr. MCNERNEY. They were informed repeatedly.

Mr. HARVEY. Constantly.

Mr. MCNERNEY. So you really can't claim ignorance after being informed year after year, phone call after phone call. Well, right, we have to see what happens in the lawsuit.

Were there any of your clients that are facing repercussions in their crediting rates and their careers with regard to this?

Mr. HARPOOTLIAN. All of them. Sarah Letts-Smith has a security clearance, she is a lieutenant colonel in military intelligence. She cannot get a car loan now. She cannot get any credit whatsoever. She has a terrible credit report and that poses serious threats to her security clearance. So—and you just heard from the Captain the same thing.

Mr. MCNERNEY. So I mean this is affecting the whole spectrum of your life. Your ratings, your career, the whole bit.

Mr. HARVEY. And I spoke with Martin Hupfl who is one of the named plaintiffs about his auto loan. He went to buy a car last week and could not get an auto loan and they cited Chase's closing down of his—and reporting his prior auto loan which they closed down while he was in basic training at Parris Island.

Mr. MCNERNEY. Is Chase able to take back this damage in any way or are you stuck with it?

Mr. HARPOOTLIAN. Oh, we hope so. We hope so. We hope both of the criminal side and on the civil side. But again, we are pretty early in this process.

Mr. MCNERNEY. So the lawsuit may be the sort of tool to educate these lenders that there are laws that they need to comply with.

Mr. HARVEY. Unfortunately lawsuits tend to be that way. The only thing that gets their attention.

Mr. HARPOOTLIAN. Well, I will say this, and that is why I talk about these criminal penalties, you know, if you are on the wrong side of that razor wire that is a lesson you never forget, and I would suggest increasing the penalties and encouraging the Department of Justice to be aggressive and prosecuting.

Under the current law, it is a misdemeanor and you can go to jail for a year. Put somebody in jail, then banks will stop doing it. As long as it is a debit or a credit on a balance sheet it is a risk whether you are buying securitized loans or whether you are risking getting caught doing this, it is just a risk as long as it is a financial problem, a financial risk.

Mr. MCNERNEY. I mean there is bound to be a lot of service-members that are facing this and not bringing——

Mr. HARPOOTLIAN. Absolutely.

Mr. MCNERNEY [continuing]. I mean there is bound to be.

Mr. HARPOOTLIAN. Absolutely.

Mr. MCNERNEY [continuing]. Thousands.

Mr. HARPOOTLIAN. Yes, sir.

Mr. MCNERNEY. Tens of thousands, there is bound to be.

Mr. HARPOOTLIAN [continuing]. We believe so.

Mr. MCNERNEY. Well, especially people from the National Guard that have jobs and expect to have a certain pay and then get pulled into service.

Mr. HARPOOTLIAN. Again, Sarah Letts-Smith was in the Reserves, she had a great job, her husband had a great job, she gets activated, goes to Iraq, her firm that she worked for had less than 50 employees, they fired her, her husband lost his job, and then, you know, she is over there trying to fight to keep them in their home, and you know, winning the military battle, but losing the fight at home.

Mr. MCNERNEY. So I mean I was going to ask what took so long for Chase to recognize this problem? But it seems to me like—

Mr. HARPOOTLIAN. We brought a lawsuit, that is what got them—this complaint we understand is what started the process. Captain Rowles came forward, a complaint went to the Justice Department, and we filed a lawsuit.

Captain Rowles is responsible for everything that has happened as a result of the attention that has been given.

Mr. MCNERNEY. Well, and of course Chase is the only one that is stepping forward at this point in time; is that correct?

Mr. HARPOOTLIAN. We pushed them. They are not stepping anywhere. They had a big nudge.

Mr. MCNERNEY. They are being pulled forward. So all the other lenders are out there in this bliss that they have and not being made to pay the price yet.

Mr. HARVEY. Well, we hope that they are listening to you all and what we are doing here.

Mr. MCNERNEY. Okay. Well, our line has been drawn. Thank you.

The CHAIRMAN. Thank you very much.

And so the Committee knows we have reached out to the American Bankers Association (ABA) and will help in educating as best we can, but that doesn't change the fact that we are here because of what has happened in the past and your line of questioning is right on target and I thank you.

We have a Member who would like to speak out of order because they need to go to another hearing. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and let me commend you and the Ranking Member for this hearing. This is very good.

I guess we should clear the air here and point out that JPMorgan Chase got \$25 billion in Troubled Asset Relief Program (TARP) funds, so for them to settle for a mere pittance of \$2 million based upon, you know, not even providing economic damages to these people, not providing pain and suffering damages, not to mention what they did was illegal, I guess my question for the counsel is, under the Servicemembers Civil Relief Act, which maybe it has already been asked, were these military people aware of this Act? Was Chase aware of this Act?

Mr. HARPOOTLIAN. Well, all these folks had to send the orders, the ones that are members of the class, the 4,000 or 5,000, whatever today's number is—we heard several different numbers—in our class action had to send in the orders, had to ask for protection to be a member of the class. So they were aware.

Mr. STEARNS. Okay.

Mr. HARPOOTLIAN. And Chase got their orders and got to documents, so they were aware.

Mr. STEARNS. In your estimation just off the record, do you think there are other institutions, financial institutions besides Chase that are doing this?

Mr. HARPOOTLIAN. Well, in a moment you are going to hear again from this gentleman from Louisiana, an attorney down there that is suing, we talked this morning, Bank of America, a number of other financial institutions, he has individual cases and may very well have class action cases, so it is based on what he tells me rampant.

Mr. STEARNS. Is Goldman Sachs included in that list?

Mr. HARPOOTLIAN. You will have to ask him.

Mr. STEARNS. Okay, okay.

Mr. Chairman, I think at some point it would probably be useful for you and the Ranking Member, and I would be glad obviously to sign on for a U.S. Government Accountability Office (GAO) audit of this problem or bring some kind of Inspector General here, which I think would corroborate all this information, but also give it an official overlay which the counsel could use based upon that information. I think that would be helpful for you wouldn't it?

Mr. HARPOOTLIAN. Oh, absolutely.

Mr. STEARNS. Yeah, so I would recommend at your earliest convenience we send that letter out and get this investigation started.

I will just conclude and thank you, Mr. Chairman, for allowing me to speak. I have to go to another meeting.

Obviously, everybody in this room is appalled and outraged by what happened to these military people. I think that is why many of us serve on the Veterans' Affairs Committee because we care so much for our servicemen and women and know the sacrifice they are making, and so I am very glad to lend my support to this investigation and just express my outrage of what happened.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Stearns. Mr. Walz.

Mr. WALZ. Well, thank you, Mr. Chairman, and I too would like to congratulate you on assuming the chair. Your commitment to veterans has been unquestioned and unwavering and your ability to work with everyone on both sides of the aisle is well known also, so thank you for holding this hearing.

To the Rowleses, you are not going to get enough "sorries" in this, and that doesn't cut it. What you have gone through, and I think Ms. Rowles you brought up a very good point on this is, the harassment that comes on birthdays and things like that, this is your life.

And Mr. Harpootlian brought up, I think, the key issue on this is this Act wasn't passed to give some type of bonus or a lottery to servicemembers, it was meant to make sure you could focus on

your job while defending this Nation without the worries back home.

I have been waiting years for something like this to happen because I have been screaming about it. As a senior enlisted soldier with a deployed unit who spent weeks dealing with these things and it is not just houses, it started out with cars, it moved to leases, and I will tell you the hardest one was cell phone contracts. No, I don't need that contract anymore I am in Iraq so I would like to cancel it early without the penalty. Oh, no, oh, no, you are going to pay the full amount for that.

I, too, have expressed great outrage on this because of the hardship it puts on the family. If the spouse at home is unhappy, our National defense is degraded from it. I have seen it every time it happens and it is absolutely unacceptable. So thank you for bringing this up.

A couple things I want to focus on and I want to avoid the gross generalization, but I think the Chairman brought up a good point, there are some great learning opportunities here, there is also a lot of learning opportunity on tort reform that we are talking about and I hope we start thinking about that in terms of what tort reform of stopping this individual's right to get just compensation when they are wronged needs to be toned down, and gross generalization of tort reform needs to happen, it is out of control. Well, you have a constitutional right to be here and we need to get this right.

My question to you, and it was brought up by Mr. McNerney, I am very, very concerned for your military career because I know as a senior enlisted person how bad this can damage you. Have you felt the repercussions?

Captain JONATHAN ROWLES. No, sir, my command has been very supportive of this. The most—the scariest part of this entire thing was when I received the letter that this could go to collections.

Mr. WALZ. Yes.

Captain JONATHAN ROWLES. And as everyone knows in this room collections effect a security clearance.

Mr. WALZ. That is right.

Captain JONATHAN ROWLES. And my job requires a security clearance. If I don't have that, I can't fly and my career is wasted.

Mr. WALZ. I have seen careers ended because of the issue.

Captain JONATHAN ROWLES. Yes, sir.

Mr. WALZ. And it happens all the time unfortunately.

My next question went with that chain of command and we heard about it and I think Mr. Harpootlian brought up a great point on where the JAG office can help in all those things.

I, as a senior enlisted soldier, was well versed on this as early as 2004 after the Soldiers and Sailor's Civil Relief Act was modified to servicemembers. We were well versed on this so I was on the phone a lot. The frustration I had that you had was that I was far more well versed than the lenders on the other end. But I got to the point after a while was that claiming ignorance wasn't good enough, that there was knowledge on the other side.

My question to you is, is your chain of command well versed in this? Do you think they did everything they could? And I am not sure as a captain who did you go to? Did the sergeant major do anything or is it through the JAG office?

Captain JONATHAN ROWLES. Well, sir, I went through several different commands during this 5-year period. Quantico, Pensacola, San Diego, and I visited with the JAG officer in Pensacola just to get a feel of what my rights would be, and every chain of command that I have expressed this with has been supportive. I have asked them for letters of proof and so I could further what the banks were asking for at the time, and every chain of command has been supportive of that. Although I don't think they are all well versed as we are now.

Mr. WALZ. Well, I am going to ask a question, Mrs. Rowles this might be you. Did you ever talk to someone on the phone who was a veteran?

Mrs. JULIA ROWLES. No, sir.

Mr. WALZ. It would be a lot easier wouldn't it if they understood what an order looks like, if they understood what a new station of duty meant and all of those things? Has there been any efforts on the bank to maybe hire some people like an ombudsman that was actually a veteran that would understand what you are talking about? Have you ever had—

Mrs. JULIA ROWLES. I sure would hope so. It would make it, sir, on our behalf, a lot easier talking with these people knowing we move all the time. We have in the past 5 years, we have been at four duty stations. Every time we have had to send different orders in, and half the time they have lost them.

Mr. WALZ. Yeah.

Mrs. JULIA ROWLES. So it is a problem that they don't even know what SCRA is.

Mr. WALZ. Well, I appreciate it, and I am going to leave this for the next one because I know the Chairman is very responsive to this. There is a whole other can of worms here as Mr. McNerney mentioned with the National Guard, because it gets into the sticky point of when you established the loan, when you got deployed were you already in the service? Yes, but I was National Guard, now I am on Title 10, now it changes my status, and the banks are going by a strict letter of the law denying some of those things instead of the spirit of the law.

A National Guardsman deployed for 22 months is on active duty for 22 months, but they are getting out of this by saying you established the loan when you were only part-time, you weren't on Title 10, and that is something the attorneys—a whole other can of worms.

I yield back.

The CHAIRMAN. Thank you. Colonel Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. First of all as a 26-plus year veteran myself, I echo what my colleague Mr. Michaud and Mr. McNerney said, few people can relate to the sacrifices emotionally, physically, otherwise that military members go through and their father and mother families, and on behalf of the grateful Nation, I want to apologize to you for what you have gone through.

Just a couple of quick questions. What was the over all time frame? Maybe I missed it earlier. From when this first started till now. How long has this been going on?

Captain JONATHAN ROWLES. This has been going on since 2006, sir. I was a commissioned officer on March 31st of 2006, I first

stepped on the yellow footprints January 22nd there in Quantico. Shortly after I completed OCS after March, I sent in my orders, at which time I was at the Basic School (TBS) in Quantico. That took about 4 months because I kept getting letters saying please re-verify or I would get a statement that had an outrageous amount that I knew from experience as a financial manager before I joined the Marine Corps was not right, and I would call to question about it and I would get the run around, but then I couldn't continue to pursue it because then I would have to go to the field for a week and then I would have to come back and start the entire process over again of re-verifying or calling somebody and I would get somebody else, and that has pretty much been the story since 2006, sir.

Mr. JOHNSON. Earlier you indicated, ma'am, that you had talked to people in management. What level of management? And were any of these conversations in person or were they over the phone?

Mrs. JULIA ROWLES. Sir, yes. Most of them were over the phone; however, I do not know the level of management, but we did fly to Colorado to visit with one mortgage branch manager that would actually sit down and schedule a meeting with us.

Mr. JOHNSON. So did anyone ever give you a business card that identified them as a vice president or a director or anyone like that?

Mrs. JULIA ROWLES. No, manager was all we got.

Mr. JOHNSON. Okay. Are you getting any help with your legal fees now from the Act itself? I confess that I don't know what the Act provides, but are you getting any help at this point?

Mr. HARPOOTLIAN. There is no provision for attorneys' fees in the Act. Mr. Harvey and I are doing this on a contingency fee. If there is a private cause of action we will be able to recover something for the class and take a percentage of that, which would have to be approved by a court. Judge Margaret Seymour in South Carolina is handling this case, a district court judge, so she would have to approve a fee.

Mr. JOHNSON. Yeah.

Mr. HARPOOTLIAN. But there is no provision. That is one of the things we talk about under 18 U.S.C. 1983—or 21 U.S.C. 1983 cause of action. You can get attorneys' fees in addition to recovering your damages. The idea being if the damages are so small, and in these cases they may very well be, you want to incentivize an attorney to get involved you give them the opportunity to get attorneys' fees.

Mr. JOHNSON. Sure. Well, I want to applaud what the Chairman said earlier, we are going to get an opportunity to question the Department of Defense.

I would like to just clarify as a veteran, and I am sure you know this too, Captain Rowles, that the legal department within the military, they are not permitted by law to represent us in civil cases, and so it is not maybe that they didn't want to, it is that they are prohibited from doing so. They can advise and I am glad to see that you did get advice. Are there ways to improve that, perhaps.

I would just like to point out that, you know, Mr. McNerney asked, you know, do small banks know more or less than the big banks do? JPMorgan Chase is not a small bank. They have big

money as was pointed out in TARP. They posted a 47 percent profit surge on January 15th, a \$4.3 billion profit surge. I think you pointed out the need for increased criminal penalties. Obviously these folks don't understand dollars and cents very well, so maybe criminal penalties would help in that regard.

And Captain Rowles, I want to tell you, if your security clearance is impacted by this I want to know because you will get a letter of reference from me to somebody.

Captain JONATHAN ROWLES. Thank you, sir.

Mr. JOHNSON. I yield back, sir.

The CHAIRMAN. Mr. Barrow.

Mr. BARROW. I thank the Chairman, and with my thanks to Captain and Mrs. Rowles I will yield my time for questioning and thereby I waive opportunity and to let the other Members of the Committee have the time. Thank you.

The CHAIRMAN. Thank you very much. Mr. Miller.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Chairman. I think all of us have thanked Captain Rowles and Mrs. Rowles already and I want to as well, but I also want to do something unusual and thank the lawyers. I was able to eke out a living for about 20 years as a lawyer before fortunately enough I was elected to Congress and got a city paycheck.

But I can imagine when the Rowleses were first sitting in your office this case did not look like a moneymaker, and I from time to time took cases with very uncertain damages, very uncertain law, economically bad decisions to take the case because the facts that presented themselves just offended my sense of justice, and I think lawyers taking cases like that are a service to the profession and a service to the public, so I appreciate your pursuing this claim on behalf of the Rowleses and so many others.

Mr. HARPOOTLIAN. Thank you.

Mr. MILLER OF NORTH CAROLINA. I did handle or introduce legislation a couple years ago to ensure a private cause of action because there were at that point a variety of cases around the country that went different ways on whether there was a private cause or action or not, and the compensatory damages seem to be unclear, the availability of punitive damages seem to be unclear. There was no provision for attorneys' fees as you have pointed out.

I think there is a pretty good argument under ordinary statutory construction principals that there should be compensatory damages, there should be punitive damages.

Mr. HARPOOTLIAN. Right.

Mr. MILLER OF NORTH CAROLINA. But remedies matter. What you can do about it if you have been wronged really does matter, and my clear impression at the time is that some of the banks knew full well that they were pursuing legal proceedings against people who were deployed, that that was in clear violation of the law, and they looked at what the servicemember could do about it and thought—made a calculation and decided to go forward, and punitive damages is supposed to get at that kind of conduct. And good luck with continuing this litigation.

Mr. HARPOOTLIAN. Thank you.

Mr. MILLER OF NORTH CAROLINA. Remedies are frequently an issue in any kind of legislation. You can fight and fight and fight

over what the law requires and then you have to have a second fight about what you can do about it when they have been wronged, if their rights under that statute have been violated.

Frequently the interest groups that are likely to end up as defendants in those suits fight any kind of or a provision that says there can be no class actions.

Would this lawsuit—would any lawyer have brought this lawsuit if there was a prohibitional class action?

Mr. HARPOOTLIAN. Absolutely not. I mean it is one thing to make the calculation you may not get anything because courts are deciding it, it is another thing to try to recover \$700 from a big bank and litigate that. You wouldn't even be in Federal court, you wouldn't have the discovery mechanisms that you have in Federal court, it would be a—it is a no brainer. You wouldn't—I mean you could try it, but you wouldn't get anywhere with it.

Mr. MILLER OF NORTH CAROLINA. Well, my quick calculation is that either you have a 40 percent contingency fee that would be \$280, that wouldn't take you real far.

And second, attorneys' fees, what role do you think attorneys' fees will have as a deterrent? It is not just about compensating people who have been wronged, it is about deterring the conduct in the first place.

Mr. HARPOOTLIAN. Well, let me let Mr. Harvey answer that, because you talked about how small these claims are.

Mr. HARVEY. Well, the claims are very small. Captain Rowles came into my office, I looked at it and the first thing I did was contact the U.S. Attorney's Office because I went and did some research and I found that the Department of Justice had made this a priority, and the U.S. Attorney's Office in South Carolina has been very helpful with regard to pursuing this on their behalf from their standpoint.

But from the standpoint of attorneys' fees it would have been very difficult—very difficult for me to bring a private cause of action for Captain Rowles alone in Federal court had it not been for the ability to pursue this as a class action. It would have been very difficult to bring it as a single claim.

Mr. MILLER OF NORTH CAROLINA. Okay. You had said that you really focused your attention on Chase, not all of the banks, but there had been litigation, there has been litigation, there have been news reports, this is in fact a common problem and not just with Chase. And other banks I know that you have said that Chase didn't jump to do the right thing, they got pushed, and you were the one doing the pushing. Again thank you. But there have been some other banks that have just brazened it out.

What can we do to distinguish between the kind of remedies that are available for a bank that maybe makes an innocent mistake but then fixes it when it is called to their attention and those who just brazen it out as has been the case with Georgia Bank in other litigations?

Mr. HARPOOTLIAN. Well, we suggest in the statement that folks that self-report be dealt with in a different way, and that is very common in virtually every other kind of civil or even criminal. To determine whether there is criminal conduct there has to be willfulness.

So if they find it, they catch it, and they do something about it quickly they shouldn't be subjected to criminal or any significant civil penalties; however, Mr. Odom, who you are going to hear from in just a little while who practices in Shreveport has dealt with five or six banks and he will be I think your last witness today, you need to ask him about the other banks.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Chairman for the time and for being able to speak.

The CHAIRMAN. Thank you very much, Mr. Miller. Mr. Runyan.

Mr. RUNYAN. Thank you, Mr. Chairman, for the opportunity to serve with you. We know it is going to be a challenge, but we have to fight for these men and women that fight so hard for us.

And with that Captain Rowles, thank you for your dedication and your service to this country and I sincerely apologize to you, your wife, and the rest of your family for having to go through this, because it is not something—it is not a pressure you need on you or your family especially in the high intensity situations you volunteered to put yourself through.

I think we all share the same concerns with SCRA and quite frankly the reason you are here.

I really want to ask a question that really says I know we talked about, you know, maybe starting a Web site or you know having a veteran around that can actually answer these questions.

Going through your experience what do you think is the best way to really get this out there and make this aware? Because you said you obviously said you were told in Officer Candidate School that it was there, but obviously there is not a lot of people aware of it.

Captain JONATHAN ROWLES. Sir, I believe that education first right, when they reach the schools, you know, the recruits or the candidates that is a great place to start because you reach everyone right then. You are not going miss a single one who doesn't go through the military, who is not going to go through some sort of basic training.

But I also believe that there should be a sustainment to that because you are hose fed through basic training, you do get a lot of classes and a lot of times, you know, you are sleep deprived because that is how they break you down and build you up to make you a Marine or a sailor or a soldier.

The sustainment should come from what I believe, sir, is the sustainment should come from within the commands and from within the representatives themselves, the family readiness officers. Each command has one from my experience in the Marine Corps and I just believe that it is an education mind set where we push more information to the family readiness officers because they are the ones who can contact the wives, the families when we are in the field, when we are in the air, when we are deployed, and to make them more aware of this, because every soldier, sailor, Marine doesn't want to worry about finances, but they worry about back home, and the Family Readiness Counselor (FRO) has that kind of contact, the family readiness officers.

So if we can educate them more about these benefits then I believe that that will trigger not only the memory from basic training, but it will also create that sustainment to continue those benefits throughout your military career.

Mr. RUNYAN. Well, from your personal experience does that conversation to that family readiness counselor continually happen or is it just something that, you know, obviously in your situation you will have other servicemembers that are colleagues of yours that you can direct toward that, but was that pathway open for you at all?

Captain JONATHAN ROWLES. The pathway to the family readiness officer is quite open. They all have offices within the commands, which is why I think it should maintain within the command because you are a tight knit group, and as we all know, information passes through a tight knit group very easily. So if one person contacts the FRO and she gets in that 6 percent before they deploy I guarantee you that ever single other lance corporal or sergeant or whatever will be talking about that within 24 hours around their commands.

Mr. RUNYAN. And kind of down that same line of questioning now moving to the family aspect, you know, is there anything you can say to other families facing similar situations on how to, you know, you have the family readiness counselor there, but how to tackle it even further if nothing is happening?

Captain JONATHAN ROWLES. I believe it would be tough for every single person to run to the bank and say these are my rights, because everyone is so busy and everybody wants to keep their personal finances close because we are strong and prideful and we don't want to admit we need help.

But to go further I think if—it could be easier to go to the banks and simply say I am a servicemember and I am being deployed next month and for the banks to know the SCRA so well that they can say, okay, great, we are going to do this, this, this, and this for you, thank you very much for your service, have a great day, and then for that to happen it would make things so much easier for the servicemembers instead of this piece of paperwork here and this piece of paperwork here and this procedure here and oh, please re-verify this, and you need a letter from your command.

If the banks were so aware of SCRA protections that you could just walk in and say here are my deployment orders and for everything to be settled I think that would be best, sir.

Mr. HARVEY. And as we have seen the only way to do that is to have an enforcement arm that gets their attention. That is the only way they are going to do what Captain Rowles has suggested.

Mr. RUNYAN. Well, I thank you guys for your time and I yield back, Mr. Chairman.

The CHAIRMAN. Mr. Donnelly.

Mr. DONNELLY. Thank you, Mr. Chairman, and I too want to say what a pleasure it is to have you as our Chairman. I have had the honor to serve with you for a number of years and your only focus has been what can we do to help our veterans, so I think you are going to do a great job and I am honored to have the chance to serve on this Committee with you.

I want to start off by saying thank you so much Captain and Mrs. Rowles for your service to this country, to the fellows who are with you for helping them out with these changes. The last thing you need Captain or you need Mrs. Rowles when you are fighting

for our country and you are trying to hold everything together back home is to have to deal with these things.

And so one of the questions I have for you Mrs. Rowles is your support group when these calls would come in and when you would have them badger you, did you have any list or idea of who to contact to try to get some help from? You know there are folks on the base, but when you have to fly out to Colorado to try to get this straightened out, you are raising a family, you are trying to hold a house together, you are trying to take care of your husband's phone calls and dealings, and then you have to go to Colorado, it is how much can you put in a bushel basket before it all pours over?

Mrs. JULIA ROWLES. Sir, there has been a lot of stressful times with this, and the funny thing is, is that Chase has admitted to us that we have done nothing wrong, but still from years and years of harassment there is still not even small problems they have not rectified.

It has been almost a year since we have received a mortgage statement from Chase, even though we continuously pay our mortgage. They still have not cashed our January mortgage payment. We are here talking about the problem, but yet it doesn't seem like even for us that they want to fix small things.

But myself there is no—besides family there is not a large support system, because everybody's finances in the military, everybody has different mortgage companies, everybody has different credit cards, there is no avenue for—to fix any of these problems.

Mr. DONNELLY. For you to go to an office there and say—

Mrs. JULIA ROWLES. There is no—no.

Mr. DONNELLY [continuing]. Here is what they are doing to me. Here are the hassles they are giving me. I don't know how much longer I can try to keep holding everything together. There wasn't an office or a place to go to on base?

Mrs. JULIA ROWLES. No, no.

Mr. DONNELLY. Okay.

Mrs. JULIA ROWLES. No, sir.

Mr. DONNELLY. Okay. And Captain, I know you have mentioned it before, but I would think there is almost nothing worse than sitting there in Iraq and knowing that your family is dealing with this and you are being told you may lose your house and you may lose everything you worked for. The things you are fighting for and protecting are the things they are telling you you may lose in the process of fighting for and protecting your country. How did you deal with that on a regular basis?

Captain JONATHAN ROWLES. To tell you the truth, sir, it was difficult. It is definitely a point of friction. Everybody wants to be strong and upright and say nothing is wrong, but when you call your wife at 2:00 in the morning just to see how things are going and you spend 20 minutes talking about how we can send another letter or how we can make another phone call or—instead of honey, I love you, how was the day, how are the babies, it is rough.

So you know, you spend your time trying to not worry about home, but it is still in the back of your mind when you are fighting, yes, sir.

Mr. DONNELLY. You probably can't even sleep at night when you were dealing with that.

Did you have anybody in particular at Chase like here is your contact, here is the Chase veterans team at any point?

Mrs. JULIA ROWLES. Sir, actually the number that we were given to SCRA was an answering machine. We would leave our name and number and they promised to get back with us within 24 hours; however, as many people know the military is a 24-hour job and there would be times where Jon or myself were not around to answer a phone call and then the process began over again. Funny you try to call that same SCRA number now and it has been disconnected.

So no, there is no person to call, there is no special servicing department where we can say hey, we are SCRA, help us and funnel us to a correct department. We would have to go through the same computer prompts that everybody with any Chase mortgage went through.

Some days we actually found somebody who said they were going to help us. Apparently there is probably hundreds of pages of Chase notes on our account that they said that they have reviewed, but Chase did not and to the best of my knowledge currently does not have an SCRA mortgage facilitator to handle these problems.

Mr. DONNELLY. Well, I also have the privilege of serving on the Financial Services Committee, and we promise you this will change.

Mrs. JULIA ROWLES. Thank you, sir.

Mr. DONNELLY. Thank you.

The CHAIRMAN. Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Captain and Mrs. Rowles, I wanted to give you an opportunity to elaborate a little bit on Mr. Runyan's good question with regard to what advise would you give to other military families that are facing this situation, and then approximately how many other families would you say are facing this situation?

Captain JONATHAN ROWLES. Sir, I would say every single servicemember that deploys or has a loan before they join has this situation. Every single one of us who knows those rights fills out that paperwork, and from my experience there has never been a standard form for SCRA.

The starting point for every single time that I have dealt with different banks in my personal experience has been simply to call them and say I am an active-duty servicemember about to deploy, and each bank has their own way of dealing with it.

With Chase it was a fax machine only. There was no one to call, no one to talk to, it was here is the fax number that you can send your things to. I never in my 6—my 5 years dealing with this never did I ever speak to an SCRA department member. There was a fax machine number that I had written on several statements and that was it.

But when I dealt with other banks I would call them and say I am a servicemember and they would say, great, when are you getting back? And on the next statement there was my reductions.

So each individual bank has their own, in my experience, their own way of dealing with it, but with Chase and every single

servicemember that deserves these privileges I would say right now the process is try and call and find someone, but there is no single point to get to.

Mr. FILNER. Mr. Bilirakis, could you yield for 1 second? I think that line of questioning is good, but it seems to me there are two responsibilities here.

One is our military and the other is the banks. I mean is there a SCRA representative at the military that you can call? Why shouldn't they also be fighting for you? There is a class here called our fighting men and women. I guess we are going to have someone from the DoD on the panel, but it seems to me you can't fight this as an individual and the banks know that, why aren't the Marines or DoD fighting for you?

Is there any SCRA office that we could call? Why shouldn't they be calling the banks? Why should you be dealing with any of this? I will leave that in the air because I think legislation would require that.

The CHAIRMAN. DoD will be up in just a minute and we will be able to ask them that question.

Mr. FILNER. Thank you.

Mr. BILIRAKIS. I will yield back, but I also want to apologize and I want to thank you for your service.

Captain JONATHAN ROWLES. Thank you, sir.

The CHAIRMAN. Mr. Huelskamp.

Mr. HUELSKAMP. I will yield my time. I have questions for Chase.

The CHAIRMAN. Thank you very much.

Mr. Filner, do you want me to go? We will start the round. I will go ahead and allow any other Member. Mr. Michaud, any other questions? Any questions on the minority side? Majority side?

Mr. FILNER. I am looking forward to the next panel. I thank you very much for being here. Mr. Harpootlian, are you on Fox by the way?

Mr. HARPOOTLIAN. You guys don't watch Fox.

Mr. FILNER. I never watch Fox so I didn't know how good you were.

Mr. HARPOOTLIAN. I actually do Megan Kelly's show every Monday at 1:30.

Mr. FILNER. Well jeez, you are ruining my preconceptions. Mr. Chairman, fair and balanced.

Mr. WALZ. If I could for just 1 minute. This is a question I know I sound like a broken record on this, but once again it seems to me that Armed Service Committee and the collaboration with the VA Committee, that seamless transition might be appropriate on this issue, and I know I continue to push that and I know we have talked and you share my concerns.

The CHAIRMAN. I concur. As a Member of the Armed Services Committee rest assured this will be brought to their attention as well.

I was going to say, if there are no other questions—

Mr. FILNER. I just wanted to finish my thought.

Again, I think the banks are a disgrace in all this. They are just looking—it is not that they aren't concerned with the figures—they have taken a risk and said, hey, nobody is going to bother us with this and it is worth it.

Again, I think our military goes beyond the base family responsibility officer. This is a national issue and this is a national law and these are our fighting men and women. The military needs to have an office and the military needs to—if the JAGs can't do it as someone pointed out by law, then somebody else need to. They have a \$500, \$600, \$700 billion budget?

Mr. HARPOOTLIAN. Well, sir, that is a legislative issue and I want to make sure that Captain Rowles takes no position on that.

Mr. FILNER. No, I understand that. I am just saying from our perspective—

Mr. HARPOOTLIAN. Right.

Mr. FILNER [continuing]. That—I mean the military should be fighting for this and make it clear to the banks. Why are we giving them this TARP money? They should be certifying as part of it that they understand what SCRA is and that they are going to abide by it and take responsibility for it.

So, I think there are two things here. We need to do what I think you recommend about the banks, but I think we have to have the military fight for our servicemembers—and not just on this issue.

Mr. HARPOOTLIAN. Right.

Mr. FILNER. You are facing enormous pressures and we have a Pentagon that should be taking this stuff off of your shoulders.

Captain JONATHAN ROWLES. Thank you, sir.

The CHAIRMAN. Thank you, Mr. Filner, and I appreciate the line of questioning. We thank the Rowleses for being here. Mr. Harpootlian and Mr. Harvey thank you for being here.

And we would like to now ask the second panel if they would to make their way to the desk.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. HARPOOTLIAN. Thank you, Mr. Chairman.

The CHAIRMAN. Our second panel will be one person, Ms. Stephanie Mudick, Executive Vice President of the Office of Consumer Practices with JPMorgan Chase, and I appreciate your willingness to be here with us today, and without objection your statement will also be entered into the record, and you are now recognized for 5 minutes.

**STATEMENT OF STEPHANIE B. MUDICK, EXECUTIVE VICE PRESIDENT, OFFICE OF CONSUMER PRACTICES, JPMORGAN CHASE & CO., NEW YORK, NY**

Ms. MUDICK. Thank you, Chairman Miller.

Chairman Miller, Ranking Member Filner, and Members of the Committee, thank you for inviting me to appear before you today.

My name is Stephanie Mudick, and I am the head of the Office of Consumer Practices at JPMorgan Chase & Co. I am here today to discuss errors that Chase discovered in our compliance with the Servicemembers Civil Relief Act and what we are doing about them.

The SCRA provides vitally important financial protections to the men and women of our armed forces during active duty, a period of personal sacrifice for them and their families.

Before I go further I would like to express to the men and women serving our country, and to the Members of this Committee,

Chase's deepest regret over the mistakes we made in applying these protections. I commit to you that we will get this right.

We have identified two problems in our home lending business with respect to certain mortgages held by active-duty servicemembers.

First, in many instances, Chase charged SCRA eligible borrowers interest and fees that raised their effective interest rate above the 6-percent cap. We have begun paying back \$2.4 million in overcharges to approximately 4,500 customers.

Second, to date we have identified 18 servicemembers whom we improperly foreclosed upon. In 12 of these cases we have either rescinded the sale or entered into a settlement with the borrower. We will attempt to make the remaining borrowers whole as soon as possible. Because our review is ongoing, these numbers could change.

With regard to the case of Captain Rowles, we have reviewed the history of his account and we clearly made mistakes. The customer service that we provided to him and to his wife was unacceptable, and the fact that this was a servicemember makes our mistakes all the more inexcusable. We deeply regret any hardship we caused the Rowles family.

We have communicated to Captain Rowles through his attorney, and actually this morning I met with Captain Rowles and his wife briefly, and communicated our commitment to resolve this matter and our genuine desire to make him and his family whole as soon as possible.

We have made significant enhancements to our processes to ensure that we comply fully with the SCRA going forward. We have centralized SCRA loan set-up in a single unit located in Florence, South Carolina, whose members received enhanced SCRA training.

We have a daily review and reconciliation of the entire list of SCRA protected borrowers to ensure they are properly identified in our systems.

The calculation of the 6-percent interest rate cap now is subject to 100 percent quality control review every billing cycle, and we have implemented enhanced controls on foreclosure referrals and sales through repeated checks on military status at different points in the process.

In addition to these enhancements to our controls, we are taking steps to better support our servicemember customers.

We are enhancing our communications with military personnel about their SCRA rights.

Chase currently has a Web page dedicated to military personnel, and we plan to provide a prominent link to a Web site recommended by the Department of Defense. We will also send a letter to borrowers whom we believe may be military personnel advising them of the existence of SCRA protections. We would welcome the opportunity to work with the government to provide better information to servicemembers about their rights.

We are following the suggestion of Holly Petraeus of the Consumer Financial Protection Bureau that we reach out to servicemembers who have Army Post Office or Fleet Post Office addresses to ensure that they are aware of their SCRA rights.

We have created a hotline staffed by 30 Chase employees in Monroe, Louisiana, who are trained on SCRA coverage to make sure that servicemember customers can work with customer service representatives who do understand their unique issues.

Two people in each of our 51 Chase homeownership centers are being trained in SCRA matters so that servicemembers and their families can have local access when they wish to speak to a Chase representative face to face. By this summer, we will have 76 such centers located in 27 States and the District of Columbia, serving the vast majority of Chase customers.

I should note that the SCRA also applies to other types of consumer loans. We are actively reviewing our other businesses to ensure that they too, comply with SCRA.

Mr. Chairman, Members of the Committee, we are deeply disappointed that we have let down the men and woman of our military. We will work very, very hard to earn back their trust and yours, and we are committed to doing so.

I would be happy to answer questions from the Committee.

[The prepared statement of Ms. Mudick appears on p. 71.]

The CHAIRMAN. Thank you for your testimony.

You talked about Chase's deepest regret over the mistakes that were made. In those mistakes that were made do you consider how it was handled a mistake, the phone calls that were made, the harassment that took place? Does Chase understand with a servicemember how critical a security clearance is and the negative effect of not just their credit rating but their employment opportunities and opportunities to advance? Does Chase understand these?

Ms. MUDICK. Mr. Chairman, I think we do understand these issues, and we are working very hard to be more and more sensitive to the issues and concerns that our servicemember customers have.

Our focus is really on making sure that we have effective compliance with the Act and we are really trying to make sure that we have the proper safeguards.

The Rowleses' situation is a situation that we are not proud of, and we think that there will be lots of opportunities both to deal with the Rowleses and provide them with redress and also to ensure that the enhancements that we have already started to make on SCRA compliance really reflect best practices going forward.

The CHAIRMAN. You were here for the testimony of the Rowleses. There was a comment about a hotline that had been set up for SCRA compliance and the fact that they have called it and now it has been disconnected. Do you know anything about that or is that the Louisiana hotline up or what happened?

Ms. MUDICK. I am afraid I don't know the hotline number that they are referring to specifically, but we have recently set up a hotline that is staffed by 30 employees in Monroe who are trained and specifically trained in SCRA. We actually do have some former members of the military who are part of that staff, and the goal is to make sure that there is one place that servicemembers can call so that they can explain their concerns and they can get clear answers.

The Rowleses, I think, made very clear today that one of their issues was that they felt like they were talking to different service

people all the time and had to repeat their story and that is something that we are really trying to fix.

The CHAIRMAN. What caused your audit and is the audit complete? It has been represented to this Committee that you did not begin this self-audit until legal action was threatened. Could you expound upon that a little bit?

Ms. MUDICK. Yes, sir. In the ordinary course of our business we routinely audit all elements of our operations and controls across all of our businesses, and we do that with SCRA as well as other regulations that we are required to comply with.

We actually did do an audit of our home lending business in 2008, and during that audit there were some specific issues identified. The business worked on those issues. They tended to be around the coding, the correct coding of SCRA accounts, and it was not really until the period following the audit that we began to understand that there were other elements of SCRA compliance that we needed to look at.

We actually have made various changes over the last several years in terms of our review of SCRA.

In 2009 we sent out an attorney alert to all of our attorneys to make sure they were checking the DoD Web site, because one of the things that we recognized was that we were not checking that Web site with sufficient consistency or regularity. We started with external advisors doing an internal review in 2010. This all predated actually the Rowleses' lawsuit.

So I would take exception to Mr. Harpootlian's comment earlier that the only reason why we are looking at this is because we have been sued.

The CHAIRMAN. Can you tell me what the results are so far within your audit and give us some ideas of some of the things that Chase is now doing to make families whole?

Ms. MUDICK. Yes, sir. Our review is ongoing, but I will say that we have identified several things that it is very clear we were not doing as well as we should have.

First, we were misreading orders. We were misreading orders and not necessarily calculating the period of eligibility correctly, and as a result, we were not correctly ascertaining when and how the interest rate adjustment should be made, and we were not calculating the aggregate of interest charges and fees below the cap.

So that was one set of problems that I think reflected the fact that we did not have the right people looking at the orders and we didn't have sufficient training.

So that is one reason why we now have a set up unit that is located in Florence, South Carolina, where we are having a group of employees look at every single SCRA request and make sure that it is set up correctly.

We also identified problems with coding. And part of the issue here is that much of our execution around making sure we were complying with SCRA is manual. So we have employees who are making decisions about what the orders say, about what the eligibility period is, about what the right calculations are, and we didn't have a really strong quality control process around that. These are human beings. The orders can be very difficult to read; every service has different orders.

Again, we take full responsibility for misreading them, but we really needed to have some checks and balances and we did not have sufficient checks and balances in the past. We do have those today.

As a result of incorrect coding—and by coding I mean an account is coded SCRA—sometimes the coding fell off the account, and as a result of which, we did not get the benefits correct for the service-members.

So again, we now have not only 100 percent quality control, we have a daily reconciliation. If any single account falls out of our group of SCRA coded accounts, we have several people reviewing to understand why and how that fell off and whether it needs to be reinstated.

So you know, we are doing a number of things now to really try and ensure that we have full SCRA compliance.

One of the issues that I know you all are aware of is that we have had some improper foreclosures. We now check the DoD Web site at least three times, and often a number of other times, before there is either a foreclosure referral or before subsequent action is taken with respect to a foreclosure.

So from our standpoint this is very much about having a system in which there are multiple check points and different employees reviewing specific accounts and particular moments in the life of an account to make sure that we get it right.

The CHAIRMAN. One quick question and then I will turn it over to the Ranking Member for questions.

I come from a home building background, a real estate background—how many people contact you as a lending institution and say “you are charging me the wrong interest” yet continue to pay you at the rate they believe that they legally are required to pay? And if you have people doing that why in the world wouldn’t you figure out a way to work with them to solve their problem instead of going to foreclosure?

Ms. MUDICK. Mr. Chairman, I think actually the way this was handled was that when an individual called, an employee who was trying to provide customer service dealt with that individual’s situation and said either, “I will try and get back to you,” or “let me see if I can understand it better” or the employee might not have even dealt with it that way. You know, if we are to listen to the Rowleses, they had a number of conversations in which they didn’t even get the benefit of that kind of service, and frankly, not only do we deeply regret that, but we are very embarrassed by that, and that is clearly an opportunity for us.

So for us I think it is making sure that a call that raises that kind of question for a servicemember really gets channeled to the right place. And there is no question that somebody who is dealing with that kind of an issue needs to have specific training so that they know where to look and how to look and who to go to within our organization to see whether the interest is being charged correctly.

The CHAIRMAN. Mr. Filner.

Mr. FILNER. Thank you, Mr. Chairman.

How many executive vice presidents are there at Chase? Or let me put it another way. How high are you in the hierarchy there?

Ms. MUDICK. I am a member of Chase's Executive Committee, which is fewer than 100 employees at JPMorgan Chase.

Mr. FILNER. And what do the 100 people do? I mean, is that the highest policy office in Chase?

Ms. MUDICK. There is an Operating Committee, which is a group of approximately 20 people.

Mr. FILNER. So how many executive vice presidents are there?

Ms. MUDICK. I don't have the answer to that question, sir, I am sorry.

Mr. FILNER. But you will find out for me, right?

Ms. MUDICK. I will indeed.

[Ms. Mudick subsequently provided the following:]

JPMorgan Chase has 20 Executive Vice Presidents at the corporate level. Stephanie Mudick is one of these Executive Vice Presidents, and is a member of JPMorgan Chase's Executive Committee, which comprises 55 senior officers who lead our businesses and functions.

Mr. FILNER. Could you fix things if we needed to? You are here on behalf of Chase, so I assume that means you can fix things. Can you fix things? I mean you said you weren't aware of that hotline number. Can you call somebody and find out what is going on there?

Ms. MUDICK. Together with my colleagues there is——

Mr. FILNER. Okay, so you can't fix things.

Ms. MUDICK. I would say that we try and fix whatever we can.

Mr. FILNER. Okay. The Rowleses testified that they didn't have any statements for a year, you haven't cashed their last mortgage check. Can you fix that today? You said you were going to make them whole. I mean they have brought up several questions. Can you fix those problems?

Ms. MUDICK. We are trying to fix——

Mr. FILNER. I don't want a we. You, can you fix that?

Ms. MUDICK. I can, together with my colleagues, cause changes to be made in our organization.

And with respect to the Rowleses, you know, we are trying to figure out how we can come to an agreement. We have agreed to mediate.

Mr. FILNER. Come to an agreement because of a lawsuit? But you said you were going to make them whole. As I read your statement your average payment to make people whole is \$70. Does that make people whole who have gone through this stuff?

Ms. MUDICK. The median payment is \$70, and let me explain to you how we get to that number.

Mr. FILNER. Because you are just dealing with the amount of interest that you overpaid, plus some fees. That is all you are dealing with. You have not dealt with any human costs or any emotional costs—pain and suffering. You are just dealing with the amount of interest and fees that you overcharged, right? I mean that is what it says here anyway.

Ms. MUDICK. Congressman, most of the servicemembers who were impacted by this are not even aware that they overpaid, and in part that is because the amount they overpaid was not material to them.

Mr. FILNER. I can't believe that there is nobody else going through what the Rowleses are going through.

But you know, you can't make the changes so you are not making them whole. You know, you broke the law. Your bank broke the law. Shouldn't someone go to jail for that? And who should? Who is responsible? Are you, as the executive VP who was given us from the bank to answer for this stuff, should you go to jail?

Ms. MUDICK. We are doing a review internally in order to figure out—

Mr. FILNER. Who is responsible?

Ms. MUDICK [continuing]. Who is responsible for what happened.

Mr. FILNER. Are you going to tell us who, are you going to give us a person or people that are responsible?

Ms. MUDICK. Well, we will certainly hold those folks who are responsible for this account—

Mr. FILNER. I know, but you broke the law. How are we going to hold someone accountable? Are we going to know who did what when?

Ms. MUDICK. As a result of our review, we will be happy to share more information with the Committee.

[Ms. Mudick subsequently provided the following information:]

Chase deeply regrets the mistakes we made in applying the protections of the Servicemembers Civil Relief Act. The errors here were not made intentionally, but our processes were not what they needed to be. We are devoting all possible resources to correcting past mistakes and to improving our processes and controls to ensure that we are in full compliance with the SCRA. Of course, if we learn that any Chase employees intentionally engaged in wrongdoing in connection with the application of SCRA protections, Chase will discipline them accordingly.

Mr. FILNER. I am sure you will. I think you are probably going to have to discover all the problems before you are going to give them to us.

It just seems to me that you all—you are not alone in this. You all have no responsibility, everything you said was impersonal, nobody is responsible. You know, you said the SCRA coding fell off the statement. Nobody took it off, nobody was responsible, it fell off? Oh, wow.

So you look at your testimony, everything is impersonal, nobody is ever responsible, and yet these people's lives have been turned upside down. Somebody, or some group of people, should be held responsible. Maybe then, as the attorney said, maybe you will take this seriously. Maybe if somebody went to jail with a white collar. There is no more Mr. Morgan and Mr. Chase, I take it, but somebody should take responsibility for what is going on.

You just cannot hide, as the Supreme Court tells us now, you are an individual, you are not just a corporation. Somebody has to come forward and take responsibility for this. You just cannot apologize and give people \$70 and think this is over. This is not over for them. You heard what they are still going though and now you can't fix it anyway.

So when are they going get their mortgage statement? Just take one thing at a time. You should be able to call somebody right now and say get them their mortgage statements, but apparently you can't.

I appreciate your apology, but you have broken the law, you have ruined people's lives, and people ought to take responsibility for that.

The CHAIRMAN. What actions has Chase taken to make the affected homeowners whole? And are the homeowners satisfied generally with the actions that JPMorgan Chase has taken?

Ms. MUDICK. Mr. Chairman, we are in the process of sending out checks, and in certain cases—

The CHAIRMAN. You are currently sending out checks. Have affected homeowners been notified the checks are forthcoming? I guess if they don't know they are coming they don't know if they are satisfied yet, correct?

Ms. MUDICK. That is correct. We have credited a number of accounts for our home equity borrowers and we have done that and I don't believe that we have heard any complaints, certainly not that I am aware of, for the folks whose accounts we credited.

And obviously in the context of the foreclosures, I mentioned that currently the number that we have identified is 18 improper foreclosures. For ten of those, we were able to actually unwind the sale and give the home back to the borrower. Two of those—

The CHAIRMAN. When you say unwind the sale, had they gone all the way through the foreclosure proceedings to the courthouse sale or was it prior to that? I mean at what point were they in the foreclosure process?

Ms. MUDICK. Well, for those whom we foreclosed upon the foreclosure process had been completed. Whether there was a courtroom involved depended on the geography of course, but since we still owned those homes we were able to return those homes to the borrowers. In two of those situations, we settled. And there are still six cases outstanding where we are trying to figure out how to work with the borrowers to come to the right resolution.

Obviously because there is a lawsuit, you know, we can't necessarily directly engage with them, but we want to make sure that we are able to make them whole.

The CHAIRMAN. You talked about the number that you had totally gone through, but how many people were in the process then, of foreclosure? Is it above the number that you have already talked about?

Ms. MUDICK. The SCRA does provide certain limitations on what a lender can do, and that limitation really extends to foreclosure sales. So when a borrower becomes delinquent we may take certain actions, but we cannot go to judgment or sale.

So I can't answer your question as to how many borrowers are currently in a delinquency process.

The CHAIRMAN. So as long as you don't foreclose you can harass them?

Ms. MUDICK. The law prevents us from foreclosing, the law does not prevent us from engaging in what we would call loss mitigation, which is trying to reach out to a borrower who is not paying and engage in conversation with them. We do our best to make sure that if we are making calls or receiving calls, there is no harassing language in those calls.

The CHAIRMAN. How many SCRA eligible individuals are there involved in your loss mitigation process right now?

Ms. MUDICK. I can only tell you that I know we currently have SCRA protected borrowers. I don't know the answer; I am happy to get back to you with that information.

The CHAIRMAN. I wish you would for the record.

[Ms. Mudick subsequently provided the following information:]

There are currently 643 SCRA-protected home lending borrowers who are at some stage of the loss mitigation process.

The CHAIRMAN. Mr. Huelskamp.

Mr. HUELSKAMP. Thank you, Mr. Chairman, and I appreciate the opportunity to ask a few questions.

Per the SCRA, on your application forms does Chase actually have a box to check to indicate the applicant is a military member?

Ms. MUDICK. I don't know the answer to that question. I will have to get back to you on that.

[Ms. Mudick subsequently provided the following information:]

Chase does not ask borrowers about their military status on our standard mortgage application form. The protections of the SCRA apply only to debt obligations that originated before a servicemember's active duty military service and for which the servicemember is still obligated. Chase's policy is not to foreclose on any active duty servicemember, regardless of when his or her loan was originated.

Mr. HUELSKAMP. Okay. Do you think it would be a good idea to have that on the application if you do not currently?

Ms. MUDICK. Yes, I do.

Mr. HUELSKAMP. And as far as unwinding foreclosure, I find that rather interesting, as far as how that might be done, but more importantly, repairing the credit rating. What is Chase doing for those situations where you have admitted or will admit failure to follow the law? Obviously making them whole financially doesn't necessarily change their credit rating. Can you describe what you all do or have done in order to repair them in terms of the credit bureaus?

Ms. MUDICK. Yes, sir. Congressman, the SCRA does not prevent any kind of credit reporting other than credit reporting solely because somebody is asking for SCRA benefits.

As a practice, we have not engaged in negative credit reporting in connection with our SCRA borrowers. What that means is that in cases in which we may have made a mistake or not treated somebody as an SCRA protected borrower—we may have taken actions and done some credit reporting—we will reverse all of those to the extent that the borrower is SCRA protected.

Mr. HUELSKAMP. So on those that you refunded about \$2 million, the 4,500 families that you indicate in some testimony here, they will be made whole on their credit reports?

Ms. MUDICK. The lion's share of those borrowers will not have had any credit reporting on them at all. And to the extent that others have, we will definitely take action with respect to that and reverse the reporting.

Mr. HUELSKAMP. And how do you reverse the reporting? Can you strip that off there, do you admit an error on the report? How exactly would you go about that?

Ms. MUDICK. I believe we can ask the credit bureaus to remove the reference.

Mr. HUELSKAMP. And are they required to do so?

Ms. MUDICK. I believe that is the terms of our agreement with them, yes.

Mr. HUELSKAMP. Okay. And you would do that with all the credit bureaus in reference to these individuals?

Ms. MUDICK. Yes, sir.

Mr. HUELSKAMP. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman, and thank you for coming as well.

You had mentioned earlier that there are errors and you regretfully are sorry for the errors and you are going to pay back what you owe these individuals. What is the interest rate you are paying—giving the money back?

Ms. MUDICK. The interest rate, sir, is seven and a quarter percent.

Mr. MICHAUD. Seven and a quarter percent.

Ms. MUDICK. Yes, sir.

Mr. MICHAUD. You heard the Rowleses went through a lot, and you mentioned errors, and originally when I heard about—so yeah, it is possible for people to make errors, but what the Rowleses went through, 5 years, harassing phone calls at 3:00 or 4:00 in the morning, it is just—is beyond errors.

And you heard some of my colleagues talk about arrogance, greed within JPMorgan, and actually Mr. Stearns mentioned the fact that JPMorgan received, I know they paid it back, \$25 billion on the TARP funding. Mr. Diamond, the Chief Executive Officer (CEO) for JPMorgan received an additional bonus in 2007 of \$28 million, last year almost \$16 million, and you are paying these individuals seven and a half percent interest.

I think there is a disconnect when you look at the bonuses received by the CEOs and what you have done to individuals who serve this country very well.

I am sure that the chief executive officer for JPMorgan has a very nice home, he probably can cater Christmas parties, Thanksgiving parties at his very elegant home, and he can probably sleep very well at night, and the reason why he and others can sleep very well at night is because there are men and women in this country that are protecting this country so individuals such as Mr. Diamond can sleep well at night very easily.

However, my big concern is the fact that when you look at the suicide rate among our active military men and women, it has increased substantially, and part of the reason is financial reasons where these men and women cannot support their family. And what JPMorgan and I am sure other companies have done is added that burden to these men and women. In some cases, I am not saying in any cases the suicide is directly caused by JPMorgan, but it is because of financial problems that they are facing.

And when I hear the Rowleses' story of 5 years having to go through this and the harassment, it is just beyond me that it has taken this long. And the fact that it is seven and a half percent is disgraceful. It is un-American, unpatriotic.

We heard the attorney in the first panel talk about increasing penalties for companies such as JPMorgan. My question is, first of all would you support increase in penalties, number one, changing the law? And if you don't support changing the law do you think that we should or attorneys around the country, because of the *Citizens United* cases where corporations have many rights that individuals are now accorded, should corporations be held liable under wrongful death if it could demonstrate that financial stress was because of banks putting that stress on individuals because they are not following the law?

Ms. MUDICK. Congressman, we take full responsibility for our failures here both with respect to the Rowles family and for the other servicemembers who are impacted by this, and we are deeply disappointed in ourselves.

I personally have a very high level of confidence that the errors that we made were not a function of any intention to mischarge any of these servicemembers. And to say that we regret it is really an understatement, but I am certain that this was not done with any intent.

With respect to whether the law should be changed, that is certainly within the Congressional purview, and you all need to do what you think makes the most sense and will work.

Mr. MICHAUD. Well, I can say as one individual and I know my time is running out, the regret that you say that you deeply feel does not show in your actions with seven and a half percent for these individuals, especially when you look at a \$28 million bonus for the chief executive officer of JPMorgan and almost \$16 million last year.

Words are cheap, action is what is important. And I would encourage you to look at your actions versus saying a seven and a half percent so that Mr. Diamond can go home tonight and sleep comfortably, because men and women put their lives on the line for us each and every day, and they do not need this added stress because of errors, especially when those errors have been brought to light over and over again by the Rowleses, and I am sure others as well.

So with that I yield back the balance of my time.

The CHAIRMAN. Mr. Stutzman.

Mr. STUTZMAN. Thank you, Mr. Chairman. I appreciate the opportunity to ask a few questions and appreciate your testimony and being here today.

Obviously this is one that is a situation that nobody ever wants to see happen and I am sure you don't and I know I can't imagine what the families have had to deal with, and especially circumstances that we are facing with the economy and also with the difficulties in financing today and the marketplace and housing.

Do you feel that Chase has gone above and beyond in correcting these errors with the families?

Ms. MUDICK. What we are doing is really focusing on making sure that we have the right processes now to ensure that there aren't any other families who could be impacted, so that has really been what we have been thinking about and we are trying to ensure that we do it correctly and fully and completely.

We think with respect to a remediation to the families we are doing what is right and what is appropriate, and obviously in the context of the litigation, you know, which we have agreed we will go to mediation and we hope we are going to be able to figure out what, you know, an agreement between the parties so that we can move forward, we can make sure that the servicemembers and their families can move forward.

Mr. STUTZMAN. Do you have or does Chase have an idea of what that might look like?

Ms. MUDICK. No, I can't really speak to current discussions around settlement or mediation. Obviously we have come up with an approach to remediation that we think covers the losses or the mischarges that the servicemembers have experienced.

Mr. STUTZMAN. Do you know if there are other entities that may also—the same situation may arise out of other organizations, other entities that do make the same sort of loans that may pop their heads up that we find other problems like this in other entities? Do you have a trade organization that you work together with? Have you been having any discussions with other entities so far?

Ms. MUDICK. We obviously have been trying to really pay most of our attention to making sure we get this right going forward and to making sure that we take care of the servicemembers who we overcharged.

That being said, we have found that the problems that we have experienced come from both the Heritage Chase organization and the Heritage organizations we have acquired in the last couple of years, Washington Mutual and EMC, which was part of Bear Stearns. Given the fact that there have been problems in each of those organizations, it suggests that there may be issues out there amongst other lenders.

Mr. STUTZMAN. I am sure others are probably watching this situation and watching how you all are responding and handling this situation. Is there anything that Chase feels that they cannot only exhibit but share with other organizations for making sure this doesn't happen anywhere else?

Ms. MUDICK. I think that each organization has to do its own internal review to figure out whether they have any issues and what kinds of issues those are.

With respect to making this better and easier for servicemembers, we would be happy to both work with the Committee and with the Department of Defense to figure out how to make the process a smoother one.

Mr. STUTZMAN. I mean is it possible that this happens outside of just loans to servicemen and servicewomen? In the other loans that you make, is there a possibility of this happening anywhere else?

Ms. MUDICK. I think that the issues that we are talking about today are really specifically focused on ensuring that we are satisfying the rules of the Servicemembers Civil Relief Act.

To the extent that the issues that have been raised suggests that there are customer service questions or customer experience elements, we are very much looking closely at those and trying to

make sure that we have a very positive experience for all of our customers, including our servicemember customers.

Mr. STUTZMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. Thank you for being here, Ms. Mudick.

I have to tell you I am a high school teacher by profession so I am optimistic and forgiving, but I am also up for a dog ate my homework line and I am very disappointed especially when you talked about—you said we take full responsibility, but the problem was orders.

I want to show you, this is my Chase credit card agreement. I don't have time to scroll through it all, if you take a look at that. You seem to know that. That is a military deployment order. Let me be very clear it says, you are deployed on temporary change of station assigned to the 10th Military Police, number of days in determinant with proceed on the 15th of February, security clearance secret, and that is it.

How difficult is that? I, as a 17-year-old E-1, got orders, knew I had to be in Omaha to get on the plane and end up in Fort Benning. You can provide me a 63-page document to calculate interest to the exact penny, but you come in front of this Committee—I am not an attorney, but I have to give you some good advice, don't go to court and give that answer, that that is the reason that these people got in trouble because you couldn't calculate the orders, you didn't know when they went on the service.

I came here looking for answers, I appreciate you sitting in front of us, but I am highly, highly disappointed that that is the reason you didn't get it right?

I suspect everything after that now to be how much you are going to do. The question that Mr. Stutzman asked is very good, what about your affiliates? How can we guarantee the affiliates that fall under JPMorgan and all those other names that I can't track down are going to follow through with this?

You told us, well, you didn't need Mr. Harpootlian and you didn't need these folks, Mr. Harvey, you were going to do it on your own. So we should just tell them to go away and wait and you are going to fix that?

Are you going to stick to this that you couldn't read this? That is a standard military order that everybody sitting behind you has been in the military knows. Any 17-year-old kid can read that. You deal in complex documents. My mortgage is 230 pages long. So now you come in front of us and tell us that.

I am just sorry, I am not buying the full responsibility line. And I certainly give you the chance to respond.

Ms. MUDICK. I think that we have identified a number of problems with respect to how we handled this, and we acknowledge that we failed here, and we acknowledge that there were a number of different ways in which we made mistakes.

So we are trying to figure out how to fix them. We are trying to figure out how to have effective safeguards going forward. We are trying to make sure we have the right checks and balances. We are trying to make sure we have the right employees associated with making sure that we have this right. We are trying to make sure

that there is the right management focus. There are no resources that we are not prepared to assign to this.

Mr. WALZ. Where was the original call center? That wasn't your one in the Philippines was it? Would they have handled that originally the one in Makati City outside Manila?

Ms. MUDICK. We have service centers across the United States and a few outside the United States.

Mr. WALZ. Is there a chance that this servicemember's call could have gone outside the United States to a non-citizen?

Ms. MUDICK. There is a chance, yes, sir.

Mr. WALZ. Then that is a problem, right, in your mind?

Ms. MUDICK. In my mind, sir, all servicemembers would be better off making sure that they were speaking to somebody who had a deep knowledge of SCRA and what their rights are and that is the way we are handling these—

Mr. WALZ. Do you have a veterans hiring preference in Chase?

Ms. MUDICK. I believe the answer to that is, yes, sir.

Mr. WALZ. So human resources would if I am a veteran they have a preference on hiring veterans?

Ms. MUDICK. I will have to double check on that, but I believe the answer the yes, sir.

[Ms. Mudick subsequently provided the following information:]

JPMorgan Chase is taking significant measurable steps to offer jobs to veterans. Chase has partnered with 10 other large companies to commit to collectively hire 100,000 military members leaving active duty service and other veterans by the end of 2020. The program, called the "100,000 Jobs Mission," expects to add more partners and increase the target number of jobs as it grows. The partnership for the 100,000 Jobs Mission has committed to hiring 20,000 veterans by the end of 2012. To apply for a position at JPMorgan Chase or to post a resume, veterans can go to [www.chasemilitary.com](http://www.chasemilitary.com).

In addition, Chase will require all of our vendors to disclose their military hiring practices and will make contract decisions in part based on the strength of those programs.

Mr. WALZ. Okay. And the last thing I would leave you with, and I just can't stress it enough, I watched my friend from Maine and they are not known for being very emotional but I know how this touches Mr. Michaud.

I think about this as a deployed soldier, my wife has a 2-year old, a crisis is the car won't start to get to work, and those things upset my day in a non-combat area to the point where you are trying to deal with them. I cannot imagine, and I have seen it on soldiers, of what they go through. The level of stress and what Mr. Michaud was starting to hit on on the suicide rates, I don't think we should underestimate that and we are certainly not drawing that there is a cause and effect to this, but anything that is adding stress to a servicemember, especially in a combat zone, is incredibly risky type of behavior, and so no stone should go unturned, no lack of trying to fix this.

And I cannot stress enough going back to this, that is the weakest answer I have ever heard given in front of this Committee that we couldn't read the military orders coming from one of the largest financial institutions in the world. There are thousands of lawyers that work for you, give it to them or go get a 17-year-old recruit and they will interpret it for you.

I yield back.

The CHAIRMAN. I thank the gentleman for his question, and I think it is important that we still continue to frame this. JPMorgan Chase keeps representing that they made mistakes. The fact is the law was broken.

Ms. MUDICK. We failed to comply with all aspects of the law, yes, sir.

The CHAIRMAN. Mr. Miller.

Mr. MILLER OF NORTH CAROLINA. Thank you, Mr. Chairman. Well, I know we have all been hard on you for breaking the law and I appreciate your expressions of contrition and I appreciate them more because there are other banks who have done the same thing who have not been at all contrite and have continued to brazen it out and fight every lawsuit in every jurisdiction over—using every procedural defense that is available to them. But this is not an obscure provision of the law that you really, you know, there are a lot of laws out there, I guess we can't know all of them until—and how they might apply to our conduct, but the 6-percent cap of mortgage payments may be relatively new, but the stay on legal proceedings has been in law off and on at least since the Civil War and continuously since the first World War, and the thinking behind it is that if you are in the service of our country, if you are serving our Nation's military you should be able to give your entire energy, your entire attention to the defense of our country and not have to worry about what may be going on in a courthouse back home, how your lives may be affected when you are not there to defend yourself. That if you have a claim against someone who is serving the country in the military it can wait until they can come home and defend themselves, and that is not an obscure law.

Now one of the Members asked the last panel if someone else had made the mortgage and Chase had bought it, and the Rowleses said yes, that they had got it from an independent company and sold it to Chase. Now am I correct in assuming that it is now in a securitized pool and that there are now investors who really own it, it has now disappeared into the mortgage backed securities so that you don't really own it, you service it; is that correct?

Ms. MUDICK. We do not own the loan, that is correct.

Mr. MILLER OF NORTH CAROLINA. It is owned by a securitized pool and you service that; is that right?

Ms. MUDICK. I don't know whether it is owned by a securitized pool or whether it is just owned by another institution, but I know that we—

Mr. MILLER OF NORTH CAROLINA. But you are servicing it.

Ms. MUDICK. But we do service it, yes.

Mr. MILLER OF NORTH CAROLINA. Okay. And I understand also that the four biggest banks, you all, Wells Fargo, Bank of America, Citibank, secured service two-thirds of mortgages in the country; is that correct?

Ms. MUDICK. I believe that is correct, yes, sir.

Mr. MILLER OF NORTH CAROLINA. Okay, so this is not a small business for you.

Ms. MUDICK. It is not.

Mr. MILLER OF NORTH CAROLINA. And I understand also that your servicing unit is a separate corporation, it is an affiliated corporation; is that correct? It is certainly a separate unit.

Ms. MUDICK. I believe it is a separate unit, yes.

Mr. MILLER OF NORTH CAROLINA. So it is all they do. I mean that is all they do is service mortgages, collect payments, calculate how much people owe, give payout to people who are selling their house or whatever, foreclose, modify, that is all they do, right?

Ms. MUDICK. Well, they are part of our home lending business, but yes, it is a unit of our home lending.

Mr. MILLER OF NORTH CAROLINA. Okay. So there are not that many laws they have to keep up with; isn't that right? This is a big deal.

Ms. MUDICK. Well, there are a lot of laws that they have to make sure that they respect and adhere to, but you are absolutely correct, this is a very big deal.

Mr. MILLER OF NORTH CAROLINA. Okay. This is not something that should have escaped your notice.

Who is training your people and who is training the people who are training them if they miss this?

Ms. MUDICK. We have fairly extensive training programs, which we have enhanced recently and will continue to look at and enhance to make sure that they are clear and simple and specific. And we have compliance review those programs. We have internal auditors review those programs. And now in the context of us looking at all this, we are having outside counsel look at these programs also.

Mr. MILLER OF NORTH CAROLINA. Okay. Mr. Harpootlian made several suggestions on how the law might change. Well, first of all, I am not clear of the status of his litigation against the Rowleses' class representatives action against Chase. Are you—that is still in litigation, right? There are some issues still in litigation?

Ms. MUDICK. It is still in litigation. We have just agreed to go to mediation.

Mr. MILLER OF NORTH CAROLINA. Okay. But you have contested whether there is any private right of action before the law changed; isn't that right? That is still a position that you are taking, right? That the Rowleses and others who may have had their houses foreclosed upon before the law changed a year ago, they can't do anything about it.

Ms. MUDICK. Congressman, I have not reviewed our papers, so I don't know the answer to that.

Mr. MILLER OF NORTH CAROLINA. Okay. Mr. Harpootlian suggested that the banks might take this law more seriously and be more careful about complying if there were attorneys' fees. Do you think attorneys' fees would help? For attorneys' fees for plaintiffs.

Ms. MUDICK. I think that we, as a bank subject to these rules take them very seriously, and I think our problem was—

Mr. MILLER OF NORTH CAROLINA. Okay. Your conduct suggests otherwise, but I understand you are saying now that you are taking it seriously.

Ms. MUDICK. Well, I think we did a bad job at satisfying the rules, but we understood our obligations and tried to do the right

thing and to make sure that we were in full compliance. We did a terrible job.

Mr. MILLER OF NORTH CAROLINA. Okay. If someone has had their rights under the SCRA violated, first of all, why should they not be compensated for that, and why should there not be a provision to pay their attorneys by the defendant if the defendant violates the law, at least with respect to what are obviously knowing violations?

Ms. MUDICK. We want to make sure that we compensate the people whose rights we didn't enforce to the fullest extent. It is not for me to say whether and how you should amend the law to provide for attorneys' fees.

Mr. MILLER OF NORTH CAROLINA. My time is expired, Mr. Chairman. Thank you for your indulgence.

The CHAIRMAN. To follow up that question, Mr. Harpootlian said that basically they were doing it on a contingency basis. Your answer to me would assume that if Mr. Harpootlian were billing the Rowleses that would be something that JPMorgan Chase should pay, but if they are not billing them then that would not be your responsibility; is that a correct assumption?

Ms. MUDICK. Sir, I don't recall saying or suggesting that. You know, I am not a litigator so I can't tell you when we have to pay attorneys' fees and when you don't have to.

The CHAIRMAN. And I understand, but the answer to Mr. Miller's question just his last question—

Mr. MILLER OF NORTH CAROLINA. Well, that is not—I mean, Mr. Chairman, I appreciate your question, but that actually is not the way attorneys' fees provisions work.

The CHAIRMAN. Oh, I understand.

Mr. MILLER OF NORTH CAROLINA. Okay.

The CHAIRMAN. I understand. But her answer led me to believe that she was concerned about making sure that the Rowleses were made whole and we certainly expect that to be the case, but you know, the attorneys' fees I think are part of the discussion and in making sure that, you know, if the claim is that the Rowleses aren't damaged because they haven't paid attorneys' fees, if that is their position, I think that they are making a mistake. Any other questions?

Mr. FILNER. Just one last question, if I may. Ms. Mudick, a corporation is set up to avoid personal liability and accountability. I think the Supreme Court may have unintentionally shattered that with its *Citizens United* ruling and said that you are an individual, so it seems to me you have responsibilities and your people have responsibilities and accountability.

Mr. Walz said, to put Mr. Michaud's point in context, that he wasn't suggesting cause and effect. I would go further, and I think there is a cause and effect. People who are under pressure we know commit suicide, and I would call it homicide frankly because you are putting them under pressure and you are responsible for that. You have errors and you have caused tremendous, tremendous harm.

You are never going to make them whole with \$70 I will tell you that. You need to take responsibility, and your whole corporation needs to understand when you are dealing with these issues, and

I don't care if they are servicemembers or not, although that is more clear in the law, that you are putting millions of people under incredible pressure. They have committed suicide. Veterans and non-veterans and you are responsible.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, and if there are no further questions, thank you, Ms. Mudick, for being here today.

Ms. MUDICK. Thank you, sir.

The CHAIRMAN. And with that I would call our third panel to the table, and we would like to welcome back Colonel Shawn Shumake, Director of the Office of Legal Policy for the Secretary of Defense, and I extend a warm welcome to Ms. Holly Petraeus in her first appearance before this Committee. Ms. Petraeus is the Team Leader for the Office of Servicemember Affairs of Consumer Financial Protection Bureau's (CFPB) Implementation Team at the Department of the Treasury.

Ms. Petraeus, I have had the honor of working with your husband and his dedication to this Nation and our troops is beyond reproach. I am confident that you will serve America's military families with equal distinction in your new capacity, and without objection both of your written statements will be entered into the record, and you are each recognized to 5 minutes.

**STATEMENTS OF HOLLISTER K. PETRAEUS, TEAM LEAD, OFFICE OF SERVICEMEMBER AFFAIRS, CONSUMER FINANCIAL PROTECTION BUREAU IMPLEMENTATION TEAM, U.S. DEPARTMENT OF THE TREASURY; AND COLONEL SHAWN SHUMAKE (USA), DIRECTOR, OFFICE OF LEGAL POLICY, OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE, U.S. DEPARTMENT OF DEFENSE**

**STATEMENT OF HOLLISTER K. PETRAEUS**

Mrs. PETRAEUS. Thank you, Mr. Chairman, Ranking Member, distinguished Members of the Committee, I appreciate the opportunity to speak with you today about the Servicemembers Civil Relief Act as well as the Consumer Financial Protection Bureau Implementation Team's work to establish the Office of Servicemember Affairs.

First of all, I would like to thank this Committee for its continuing efforts to protect servicemembers, veterans, and their families from predatory financial practices.

I have been a member of the military community my entire life and I feel that it is very important that our military has strong advocates working on its behalf. And it is my intent that the Office of Servicemember Affairs be one of those strong advocates, educating and looking out for military personnel and their families.

I come from a military family, one that has a tradition of service going back to the Revolutionary War. My father served in the Army for over 36 years, fighting in both World War II and Vietnam. Two of my brothers also served in Vietnam, and of course, my husband is currently serving, and I am a military mom, as well. The military is in many ways a separate community in our Nation, and it is one that I have the privilege to know very well.

The last time I testified before Congress was over 6 years ago, when I spoke about deployment-related issues at a joint hearing of two Senate Subcommittees. At that time my husband had just begun the second of three deployments to Iraq and I was a long-time volunteer in the military community.

As a volunteer, I had the opportunity to serve as a senior Family Readiness Group advisor during deployment and to work with local, State, and national legislators on issues affecting Army families.

Five months after that testimony, I became the Director of BBB Military Line, a program of the Council of Better Business Bureaus providing consumer education and advocacy for servicemembers and their families, a position that I held for 6 years.

In that role, I oversaw a national program that worked with the Department of Defense as a partner in the DoD Financial Readiness Campaign, and fostered outreach from the 120 local Better Business Bureaus to military communities across the United States.

While with the BBB, I made on-site visits to many military installations—learning about the consumer issues that impacted them, giving presentations on consumer scams, and working to establish local BBB-military relationships. I guided development of teen and adult financial curricula, taught to over 10,000 individuals in military communities around the United States and wrote a monthly consumer newsletter addressing issues of interest to the military.

Professor Warren asked me to join the Implementation Team at the end of last year, I started a little less than a month ago, and we are hard at work building the Office of Servicemember Affairs.

The Dodd-Frank Act, which was signed into law on July 21, 2010, established the Consumer Financial Protection Bureau and charged it with ensuring that consumers have the information they need to make financial decisions that are best for them and their families.

The CFPB will work to promote fairness, transparency, and competition in the markets for mortgages, credit cards, and other consumer financial products and services. The CFPB will set and enforce clear, consistent rules that allow banks and other consumer financial service providers to compete on a level playing field and that allow consumers to see clearly the costs and features of financial products and services.

On July 21st of this year, many consumer financial protection functions that are currently with other agencies will transfer to the CFPB. I have to point out, however, that responsibilities relating to the Servicemembers Civil Relief Act, the focus of this hearing, will remain with the prudential regulators and the Justice Department.

Eventually the CFPB will grow into a fully operational financial regulator and supervisor, and it will be the primary place where members of the public, including servicemembers, can come with questions and complaints about consumer financial products and services.

The Dodd-Frank Act authorizes the Office of Servicemember Affairs to work in partnership with the Pentagon to see that military

personnel and their families receive strong financial education, to monitor their complaints about consumer financial products and services and responses to those complaints, and to coordinate efforts by Federal and State agencies to improve consumer financial protection measures for military families.

We are authorized to enter into agreements with the Department of Defense to carry out OSA's work and to make sure that we achieve those goals.

Within the CFPB our job is to make sure that every division understands the unique military community and the financial issues that impact it. I plan to work with our examiners to ensure they are current on military-specific issues, to encourage our enforcement team to take action against financial providers who break the law to harm servicemembers, and to work with the consumer response unit to be sure that it is attuned to the military community and responsive to its concerns. We also plan to work closely with the CFPB's financial education team.

Right now we are focused on planning and scheduling visits to military bases and other meetings that will help us identify problems and determine where we can make the biggest difference. I have already met with senior DoD officials, and it is clear to me that the people at the Pentagon are very supportive of our mission.

In addition, I have met with senior staff from the Department of Justice's Civil Rights Division. The Justice Department is eager to work with the CFPB to protect the rights of servicemembers.

I was pleased to hear about the scope of DOJ's enforcement activities on behalf of servicemembers, which include authorized lawsuits against three nationwide lenders and several other active investigations involving both foreclosure issues and failure to lower the interest rate to 6 percent.

We are planning to coordinate closely with DOJ in light of its enforcement responsibilities under the SCRA.

This past Tuesday I sent a letter to the chief executive officers of the 25 largest banks that provide mortgage servicing. This was prompted by the recent news reports alleging that major financial institutions had violated the SCRA, which provides financial protections for our military. I urged the chief executive officers to take steps to ensure that their institutions are in compliance with the law.

We have already started a conversation with the military community. Professor Warren and I have been to Joint Base San Antonio where we had two roundtable discussions. The first was with military service providers, as well as the base's leadership. We asked questions about what scams and other financial problems these providers were seeing, and how they thought those financial problems might be dealt with.

The second roundtable was with military personnel and spouses from the Air Force, Army, and Navy. They felt strongly about the need for mandatory financial training, not just in basic training, but on a continuing basis.

The military spouses in the room also brought up the difficulties and temporary loss of income when moving a spouse's civilian career job, as well as the basic financial strains of frequent moves. I could certainly relate to that as I have moved 23 times in 36

years of marriage. We plan to do more roundtables in the coming months.

Protecting our servicemembers from suffering devastating financial repercussions for answering the call to service is not only the right thing to do—it is also important to our National security. Military personnel who are distracted by financial problems cannot do their jobs to the best of their abilities. In fact, hundreds of people in the military have their essential security clearances revoked each year due to financial problems, which then means they can't do the job they were trained for.

A recent Department of Defense survey found that servicemembers consider their finances to be the second largest source of stress in their lives, ahead of deployments, health, family, and war.

I was dismayed to learn about the recent allegations of mortgage-related violations of the SCRA. I hope that the recent attention to this issue will cause all lenders to take steps to educate their employees about the financial protections that the SCRA provides and to take appropriate proactive steps to ensure compliance. This law was put in place to enable our soldiers to focus on their jobs, and it is important that it be adhered to. Servicemembers should not have to struggle to get the protections that are due to them under law.

A National Guard wife once told me that her husband had been activated three times, and each time she had to fight with their bank for months to get the SCRA applied.

As you know a foreclosure is devastating for any American family to experience, but it can be especially painful for military families. Both the family back home and the servicemember abroad, who feels helpless to take action to prevent the foreclosure, are put in a terrible situation. That is why it is so important that servicemembers receive all the protections afforded to them under the SCRA.

Last month, I attended the White House announcement of the Strengthening Our Military Families initiative. The President, First Lady, and Dr. Biden all spoke at that event, affirming their commitment to military families, and almost the entire cabinet was in attendance as well. There is currently a very positive feeling in this country toward the service and sacrifice of military families, and a desire to support them. One way is to help to enforce the laws that are already on the books to protect them and to hold to account those who ignore them. Another is to write new rules when needed. It is also important to educate the military about their financial protections and about best financial practices. That will all be a big part of the mission of the CFPB and the Office of Servicemember Affairs.

Thank you.

[The prepared statement of Mrs. Petraeus appears on p. 75.]

The CHAIRMAN. Colonel.

#### **STATEMENT OF COLONEL SHAWN SHUMAKE**

Colonel SHUMAKE. Chairman Miller and distinguished Members of the Committee, thank you for allowing the Department of Defense to comment on the Servicemembers Civil Relief Act and to explain how we educate our servicemembers about it.

The Department recognizes the fundamental importance of the SCRA, which has as its lofty goal providing servicemembers peace of mind, knowing that while they put their lives on the line that their personal affairs and economic interests will be protected.

The SCRA's protections are broad and diverse. The Act protects servicemembers from evictions, default judgments, and foreclosure. It allows them to delay judicial proceedings and in some cases to cap their interest rates. It provides some tax relief.

Congress continues to play a pivotal role in protecting our servicemembers. To ensure that the SCRA could be aggressively enforced by those for whom it is designed to protect, Congress passed the Veterans' Benefit Act of 2010, which clarified that servicemembers could seek civil enforcement of the SCRA through the courts and be awarded damages and attorneys' fees.

Although many courts had found that such a private right of action has been implied, others have rejected that interpretation, leading to the unconscionable conclusion that servicemembers had benefits and protections that could not be enforced. This is now resolved.

For the last several years, Congress has relieved many of the burdens of military service through a number of substantive changes to the SCRA. In 2008, Congress extended the 6-percent interest rate cap for pre-service mortgage obligations beyond the last day of active duty for a full year thereafter. At the same time, Congress also amended the SCRA to extend protections from foreclosure on pre-service mortgages from 90 days to 9 months after the servicemember leaves active duty. Under these conditions and during this time, no servicemember can be foreclosed on absent a court order.

In addition to amendments to the SCRA, Congress has provided other important protections through other laws as well.

Beginning in February 2009, it provided \$855 million as part of the stimulus package to expand pre-existing Homeowner's Assistance Program benefits. This addresses the unique economic pressures faced by military personnel who are required to relocate under military orders during the adverse housing market conditions.

Later in 2009, Congress recognized that because most servicemembers rent and are not homeowners, they faced particular difficulties when their landlords are foreclosed upon. The Helping Families Save Their Homes Act of 2009 provides significant protections when such servicemembers face possible displacement.

Although these two statutes do not amend the SCRA, they recognize that servicemembers face challenges with their housing that in some ways puts them at greater risk than those not in service.

These amendments to the SCRA and the other powerful statutory provisions discussed earlier mean little if our servicemembers do not know about them.

The Service secretaries are directed to ensure that their members know about the benefits and the protections of the SCRA. This educational process involves coordinated and overlapping efforts.

The Military Legal Assistance Program provides the first line of defense for servicemembers; however, if they are unable to resolve the matter, the servicemember may be referred to civilian counsel

or be directed to seek representation through several different State and other pro bono programs.

The Department's efforts to educate servicemembers and their families centers around the installation and around various reserve component mobilization and demobilization processing centers. These reserve component processing centers are particularly critical because two of the most important economic protections and benefits, the 6-percent interest rate cap and the protections against foreclosure only apply to pre-service obligations. Accordingly, those most likely to benefit from these protections are in fact Reservists and National Guardsmen called to active duty.

Because each of the services have the authority to best determine how to provide the necessary training and counseling, the Department has asked the services to set out how they educate their members about the SCRA.

The timing of the request did not allow time to gather this data from the services and then organize it in a way to show how this information is presented to the servicemember; therefore, that information will be submitted separately as soon as possible.

I look forward to answering your questions, sir.

[The prepared statement of Colonel Shumake appears on p. 78.]

The CHAIRMAN. Thank you, Colonel, you just mentioned the fact that each individual service was ensuring that their members understand their rights under SCRA. I would like to have those responses by the 28th of this month, and again remembering that the letter to the secretary asks that the Department's efforts to educate the servicemember and their families in private industry about the protections afforded in affirmative responsibilities placed upon servicemembers under SCRA.

Colonel SHUMAKE. Yes, sir.

[The DoD subsequently provided the following information:]

### **1. General Responsibilities and Overview**

The Servicemembers Civil Relief Act (SCRA) states that the Secretaries concerned are responsible for educating their members about its benefits and protections.<sup>1</sup> Their efforts are supplemented by programs, personnel, and resources at the Department of Defense ("the Department") level and through close contacts between the Office of the Under Secretary of Defense for Personnel and Readiness and the legal and financial readiness communities for the Services.

Through these combined efforts our servicemembers receive multiple opportunities to gain enough information about the SCRA and know when to seek more in-depth information from those legal and financial advisors who have more specialized knowledge. The main educational effort, as a practical matter, falls to the legal community, although the commander has ultimate responsibility for the mission readiness of the troops.

Accordingly, much of this document focuses on the judge advocate communities and their efforts and responsibilities not only to brief the troops and make educational materials readily available online to the force, but also to train the trainers in the school house environment.

In addition, the Department's network of Personal Financial Managers (PFMs) plays a significant role in the SCRA educational process, given that many of the SCRA's provisions directly impact finances, such as the interest rate cap of 50 USC App. § 527 and the mortgage protections of 50 USC App. § 533 (hereinafter "sections 527," and "section 533"). These PFMs are trained to alert the servicemembers about the general protections available and to refer them to the free, confidential legal assistance services available under 10 USC § 1044. Because of the relationship between general financial well-being and mission readiness, a general overview of the

<sup>1</sup>Section 105, Codified at 50 USC App. § 515.

Department's efforts to ensure the financial readiness of our servicemembers will be addressed in paragraph 7, below.

## **2. SCRA Focus: Mobilization, De-Mobilization and Deployment**

The provisions that are the primary focus on this hearing are found in section 527 (interest rate cap) and section 533 (no foreclosure without a court order for certain obligations). Both of these sections apply only to obligations incurred before active duty (i.e., "pre-service"). The interest rate cap has its greatest protections with respect to mortgages. The interest rate cap for pre-service mortgage obligations extends during active duty and for 1 year after leaving active duty. Because of this pre-service condition, those who most stand to benefit from this protection are those members of the Reserve Component—Reservists and National Guardsmen—entering active duty. The majority of those currently involved in the ongoing war efforts are members of the Army. Accordingly, the focus of SCRA training for these members is at the Reserve Component processing centers.

The Army's Readiness and Deployment Checklist for members of the Reserve Component lists SCRA training as one of the required blocks of instructions. Every Reserve Component unit that goes through a mobilization center run by First Army receives a briefing about the SCRA. First Army processes virtually all Army Reserve and Army National Guard units.

The opposite side of the coin from mobilizations and deployments is demobilizations. This offers another important opportunity to inform members of the force about their rights under the SCRA. Given that the protections of both section 527 and 533 extend for a period after active duty, these briefings are particularly important for members of the Reserve Component.

The Army Vice Chief of Staff has directed that the Reserve Component's mandatory demobilization briefings be standardized. Such training will include SCRA instruction. It appears that similar efforts are underway in the Army to standardize the mobilization briefings as well.

Representatives from the National Guard Bureau indicate that when considering pre-mobilization and mobilization training, both at home station and at the reserve processing centers, that Army National Guard units receive multiple SCRA briefings during the deployment cycle.

For the Army, both regular (Active Component) and Reserve Component Soldiers deploying individually (as opposed to mobilizing and deploying with a unit) will process through a Continental United States Replacement Center (CRC). The SCRA is specifically covered in the CRC briefings.

In all cases, deploying Soldiers must complete a DA Form 7631, Deployment Cycle Support checklist. This form has a specific block to indicate the Soldier has been briefed on the availability of legal assistance and that "counseling on civil matters" was received.

## **3. Accessions (Initial Entry Training)**

The military Services are tasked with providing SCRA information to initial accessions.

The Marines provide enlistees with a copy of NAVMC 11494, a form that explains basic SCRA benefits and protections.

The Navy provides enlistees information about the SCRA in their Recruit Training Guides. Although there are no formal lessons covering it, the material is testable and ensures the material is in the same location as all formal lessons.

The Army provides SCRA training to some in basic training, although it is not standardized. The U.S. Army Recruiting Command, however, has indicated that it will update its training annexes to include SCRA material. The annexes are part of the recruiting packet.

Airmen receive standardized SCRA training during basic training.

Although all opportunities to familiarize servicemembers with the basics of the SCRA are important, the Department recognizes that the tremendous amount of other information provided new accessions may limit their ability to process and retain SCRA information. Therefore, the Services also rely on additional installation and deployment readiness training.

## **4. Reaching the Force: Installation/Headquarters Training**

The bulk of the education of servicemembers and their families concerning the SCRA is handled at the installation. The installation focuses more on the regular members of the force than on the Reserve Component, but as noted, Army Reserve Component units are well covered during the mobilization process. Still, a number of provisions of the SCRA and the other Congressional legislative initiatives provide

important benefits and protections for all servicemembers and are the subject of significant educational efforts at the installation level.

SCRA education at the installation level is considered an essential part of the command's preventive law responsibilities. Each of the Services has the responsibility to ensure that preventive law services are provided within their command. Realistically, this program is implemented by judge advocates. It can take many forms.

Perhaps the most important preventive law effort is accomplished during installation readiness exercises at which servicemembers process through various stations, including legal assistance. Some services provided at these stations include the preparation of wills and powers of attorneys. Sometimes information papers will be provided, including basic information on the SCRA. Some installation readiness exercises involve actual SCRA briefings.

Other installation preventive law efforts include articles in the installation newspapers on hot topics or new legal developments, including refreshers on the benefits and protections of the SCRA. Another example of preventive law includes "newcomers' briefings," which provide basic legal information for those new to an installation. These briefings are open to servicemembers and often their families. It is not likely that all of these briefings address SCRA issues, but they at a minimum alert potential clients to the availability of the local legal resources.

- *Online and Service Headquarters Resources / Efforts*

Local Web sites are another method of providing information to an evolving and increasingly technologically savvy force. Many major installations have legal assistance Web sites with some general SCRA information. These local Web sites are supplemented by headquarters-level Web sites and other online resources.

The Headquarters-level Air Force legal assistance policy office Web site has been robustly pitched to its members. In 2010 alone, the Web site had more than 133,000 visitors. This Web site contains updated SCRA information. The Air Force legal assistance policy office also contributed to a live blog that had almost 10,000 visitors and 219, 294 Twitter impressions. The Headquarters-level Departments of the Army and Navy legal assistance policy offices also have online resources with specific SCRA information available to all their members.

The Navy legal assistance policy office has developed an on-line pre-deployment briefing that is being formatted by the Navy distance learning staff for complete access by all Sailors from any location. The Army is developing a similar resource and has been field testing it at one installation with good success.

This Navy legal assistance policy office has also developed a "legal readiness check-up" that will direct Sailors to their nearest legal assistance office based on a number of deployment-related legal issues, including many that involve SCRA protections.

In addition, the Navy and Marine Corps legal assistance policy offices provide legal assistance practice advisories to the field to alert it of changes in law. These go to all Naval Judge Advocates and have included recent advisories on the Helping Heroes Keep Their Homes Act of 2009 and the Veteran's Benefit Act of 2010.

The Army legal assistance policy office publishes periodic electronic newsletters and conducts video training conferences with the field. Those have addressed SCRA and mortgage foreclosure issues. All the Services' legal assistance policy offices regularly push new developments to their installation-level legal offices.

- *Department of Defense Office of Legal Policy*

This office meets regularly with Chiefs of Legal Assistance for the Services and shares new developments to ensure consistent, across-the-Services awareness of all types of legal assistance issues. The Office of Legal Policy meets informally with staffers from the House and Senate to share information and respond to requests for comments on legislative proposals, many involving the SCRA. These proposals are staffed with the Chiefs of Legal Assistance for the Services for expert advice and dissemination.

In 2009, this office drafted and submitted the private right of action language as part of the Department's proposed draft authorization bill for FY 2010. In only slightly modified form, that proposal became the Veterans' Benefit Act of 2010.<sup>2</sup> This provision ensures that those whose protections and benefits under the SCRA have been violated or denied can actually bring legal action and recover monetary damages and attorneys' fees. This is likely the most important change to the SCRA since the sweeping changes in 2003.

<sup>2</sup> Section 303, Public Law 111-275, October 13, 2010, amended the Servicemembers Civil Relief Act (50 USC App. § 501 et seq.) by adding at the end new title VIII, Civil Liability.

In January 2011, the Office of Legal Policy worked with experts on the SCRA from the private sector who had written an article addressing the new private right of action language enacted as part of the Veterans' Benefit Act of 2010. The Office of Legal Policy was able to obtain a commitment from the editors of the Army's Judge Advocate General's Legal Center and School to publish a scholarly article in *The Army Lawyer*. The article was drafted by Professor Gregory M. Huckabee, a former Army judge advocate who teaches at the University of South Dakota, and who served as the Army representative and Chair of the 1991–1992 Department of Defense Task Force responsible for revamping the Soldiers' and Sailors Civil Relief Act, the precursor to the current SCRA; and by Colonel (Retired) John Odom, U.S. Air Force Reserve, a nationally recognized expert on the SCRA who currently is in private practice in Shreveport, Louisiana.

As part of its general outreach responsibilities, the Office of Legal Policy has participated in a number of print, blog, and televised interviews on various legal topics such as the SCRA, the Homeowner's Assistance Program,<sup>3</sup> the Military Spouses Residency Relief Act,<sup>4</sup> and the Helping Families Save Their Homes Act of 2009.<sup>5</sup> These efforts focused on getting the information to the individual servicemembers and alerting them to the availability of help from the military legal assistance offices across the country and the world.

The Department of Defense, through the Office of Legal Policy, has reached out directly to the force through direct e-mails to alert them to new developments in the law impacting their financial and legal well-being.

In September 2008, as the mortgage crisis worsened and before the Homeowner's Assistance Program became law as part of the February 2009 stimulus package, over one million servicemembers were informed by e-mail drafted by the Office of Legal Policy of a change to the Joint Federal Travel Regulations that allowed servicemembers to be relocated at government expense if their landlord was foreclosed on. That protection preceded the Helping Families Save Their Homes Act of 2009, which provided protections applicable to everyone—not just servicemembers—whose landlord was foreclosed on.

This e-mail assures them that protections and resources for dealing with the financial difficulties that were sweeping the country in late 2008 were available. It mentioned general SCRA protections against evictions and that legal proceedings could be delayed. It referred the servicemember to installation family readiness and support centers, to Military OneSource counselors, and to the local legal assistance offices.

This across-the-force-message was supplemented by a series of postings on every servicemember's pay statement (the Leave and Earnings Statement) throughout 2009. These messages were concise and to the point:

“RENT, MORTGAGE, EVICTION, OR FORECLOSURE DIFFICULTIES? GET FREE, CONFIDENTIAL HELP. VISIT YOUR MILITARY LEGAL ASSISTANCE OFFICE OR CALL MILITARY ONESOURCE AT 1-800-342-9647.”

An alternative message said:

HOUSING DIFFICULTIES? SEE YOUR MILITARY LEGAL ASSISTANCE OFFICE OR CALL MILITARY ONESOURCE AT 1-800-342-9647.

The CHAIRMAN. Ms. Petraeus, the press release that Treasury sent out announcing the Bureau talked about a hotline that was going to be set up for consumers, and I guess the question is has the hotline been established? And if it is, is there an option for servicemembers to ask questions about SCRA?

Mrs. PETRAEUS. We have taken the first step, which is to get our Web site up and running, so you can contact us that way, and I have just been in discussions to make sure that we do ask that question, are you military, so we can be sure to address their particular issues. That is as far as we have gotten so far. We are just still in the process of building the organization.

The CHAIRMAN. How many people will staff the hotline or do you even know at this point?

<sup>3</sup>Section 1001, Public Law 111-5, February 17, 2009, codified at 42 USC § 3374.

<sup>4</sup>Public Law 119-97, November 11, 2009, amended section 511 of the Servicemembers Civil Relief Act (50 USC App. § 571).

<sup>5</sup>Sections 701, Public Law 111-22, May 20, 2009.

Mrs. PETRAEUS. Don't know at this point. We are just—we are still figuring out a lot of these things.

The CHAIRMAN. Since the SCRA statute doesn't provide for enforcement authority to the Bureau, what role would you find yourself playing with SCRA?

Mrs. PETRAEUS. I think our role is definitely going to be an educational one. Although we don't enforce it, we can certainly educate about it and that is a big part of our mission, really, to educate the military, to provide them the best possible financial education, and obviously one part of that can be to talk about the SCRA.

So we will be working with the Department of Defense to see if we can find ways to get that information out there so it is retained.

You heard Captain Rowles mention that sometimes the basic training is not the best time to get all this financial information because you are stressed, you are tired, you are worried about the next chow call and your next formation and you just don't absorb it, so we have to work with them and see if we can find a way to teach it so people do retain it and really understand it.

The CHAIRMAN. Colonel, how does DoD measure the level of knowledge of its servicemembers of their rights and responsibilities under SCRA?

Colonel SHUMAKE. Sir, it is difficult to tell how any one person understands it or in fact at those pre-deployment briefings whether it is sinking in. You really don't know until they kind of show up in your office as a legal assistance attorney and you start going through it.

Certainly there are provisions that I think people don't grasp. I think there is a lot of misunderstanding about even the main topics today with respect to the interest rate cap, for instance that it only applies to pre-service obligations. Many times folks don't know that.

Likewise, I would say that with some of the latest changes, you know, you have to keep pushing it out, you have to be sure that those changes such as I mentioned where we have extended it from 90 days to 9 months on the foreclosure protections that prevent a foreclosure, again on a pre-service mortgage obligation only, that cannot happen without a court order.

So we are always—we have to stay on top of that because even that was extended in the last—about the last act of the last Congress where that sunset provision that would have taken that 9 months back down to 90 days was changed.

And so it is a constant effort in part on my office working closely with the chiefs of legal assistance for the services to make sure everyone understands it and we push that information out to the field through a number of different ways.

But again, sir, it is hard to measure what any one person understands or how they perceive it, we just have to keep training on it.

The CHAIRMAN. If a servicemember notified a base legal officer that they thought there were potential violations of SCRA, what actions would you expect the legal staff to take?

Colonel SHUMAKE. Well, sir, I would. You know, a lawyer is always going to be hesitant unless perhaps they are sitting across the table in litigation from saying bad things about what another

lawyer has done, but in listening to Captain Rowles' testimony, I have to say that I was very disappointed if our legal assistance attorneys says, "Jeez, I just don't know this or I don't think I can help you."

You know, I don't know everything about the law and no one does, but I know how to pick up the phone, and I would expect that our folks would pick up the phone and take some of that pressure off these folks, particularly if the client happened to be Captain Rowles' wife while he is deployed, I would hope that we would fight for her. And sometimes that is just wading through the bureaucracy and it is just getting them to the point where, you know, you can get somebody to listen by saying, "No, I need to talk to somebody who understands the SCRA, I need to talk to your boss." That is what I would expect.

You know, hard again to say what happened and what information was passed, but I know that is how I would do business if I was a legal assistance attorney and they came to me.

The CHAIRMAN. I appreciate you bringing up the fact that the base legal officer in Pensacola or the JAG that he went to, basically said it was out of his lane, and I don't think that is an appropriate response.

Colonel SHUMAKE. Sir, it is not, this is their lane, this is what we do, and we have—we don't need to set up a SCRA office specifically, we have legal assistance offices, we need to train, we need to make sure they are trained. We have to take care of our folks and represent them zealously, that is what our responsibility is. It is not any different when we put on this suit.

The CHAIRMAN. Mr. Filner.

Mr. FILNER. Like the Chairman I appreciate that strong statement of what you should be doing.

I would take it a bit further. For example, when this story broke and it was clear there were problems did you talk about sending letters to the banks about SCRA laws? As we heard there are only four banks that do 70 percent of the mortgage business, did you talk about that?

Colonel SHUMAKE. Sir, what we did was I made sure that the information got out and I had talked to JPMorgan Chase and I had their hotline, I made sure that that got down through all the chiefs of legal assistants down to the lowest level.

Mr. FILNER. Yes, but did you tell JPMorgan Chase or Citibank or Bank of America or Wells Fargo what SCRA required?

Colonel SHUMAKE. Sir, not in this case.

Mr. FILNER. Okay, you didn't. Did Secretary Gates think about calling in the presidents of those 20 institutions or 10 institutions or 4 and say, hey, is what occurred ridiculous. This was a major story and it still is?

Colonel SHUMAKE. Yes, sir.

Mr. FILNER. Did Secretary Gates say we have to protect our people and make sure the banks know? Did that happen?

Colonel SHUMAKE. Sir, I can't really comment on what Secretary Gates thought about that, sir. I don't know.

Mr. FILNER. It didn't happen.

I just would go beyond the pure legal matter because the fact that this is not known, and that this is your responsibility. As you

said, to take the pressure off these military families. That means going further. I heard from this hearing several things that we should be doing, but you should have recommended these actions.

Look, the simple fact of having on a bank application a box to check that you are protected by SCRA—I don't know how you phrase that, but you could figure it out—it should be on every mortgage application. So everybody has a check mark to make.

Why shouldn't banks have to certify their awareness of this when they get these \$25 billion checks from the government? I think the banks ought to contribute to a fund to set up the SCRA office or an ombudsman. You are taking a very bureaucratic approach, the banks are taking an ultra bureaucratic because nobody is responsibility in a bureaucracy.

Instead of taking what I will call a political stance, get the damned presidents of JPMorganChase and the Bank of America into a room and say you have responsibility here. Don't send us the 150th ranking executive vice president, but take responsibility for this. Bring them into the room. Tell Secretary Gates I said that.

I won't ask you how high you are up in the chain of command because there are probably thousands between you and the Secretary.

We have to protect these people. The banks aren't doing their job, we can expect that, but we could pass laws that make them do their job. We are their protectors, we should be doing our job, and if that means that you—I mean I don't know how you are going to relate to Justice or DoD, Mrs. Petraeus, but I mean the enforcement has to be done, and these banks will not respond as we have heard unless there is some legal consequence to their action. Nobody is responsible.

You know, the SCRA code fell from the applications. All these codes are sitting around waiting to fall down? This is ridiculous.

I think we have to pinpoint responsibility—I mean you have to talk to these guys directly. Put them on the spot, have them take responsibility for what is going on in their own bank.

I suspect that the President of JPMorgan Chase still doesn't even know what SCRA means, because somehow it is going to be taken care of and they are going to send out their \$70 checks and make people whole.

So I think you said a very strong statement, Colonel, but you have to expand that into the existing way we learn things and the way we do things.

I don't know but I assume the military could have everybody's e-mail address. Send out an e-mail that says do you know what SCRA is? Here it is in writing. If you don't understand it call us at this number. We could do that to the vast majority of our troops. We have the Rowleses, the tip of the spear for tens of thousands of others, so let us notify the tens of thousands of others. They don't know what is going on.

I can't believe from the testimony that there are only 18 soldiers who have been foreclosed on by Chase mortgage. That is inconceivable to me with their millions of loans.

Talk to Secretary Gates and tell him to bring in these presidents and do something.

Colonel SHUMAKE. Sir, if I might point out we have sent out e-mails to every single servicemember active and reserve on the foreclosure issues.

Mr. FILNER. Could you give me a copy of that?

Colonel SHUMAKE. Yes, sir, absolutely.

[The DoD subsequently provided the following information:]

Below is the email that was sent out in September 2008 to every Active and Reserve member. It deals with financial problems in general and evictions related to foreclosure of landlords specifically.

—————Original Message—————

From: AFLA2008  
 Sent: Tuesday, September 16, 2008 11:49 PM  
 To:  
 Subject: Information about Armed Forces legal assistance for financial matters (00317711 32)

If you are struggling financially, you are not alone. You can get help.

Recently the economic news across the country has not been good. Consumer prices are rising. Real estate prices are falling.

Foreclosures are up. Often this impacts renters too, who are forced to relocate when their landlords are forced into foreclosure.

Military members face many of these same challenges.

A new law allows the government to pay for some local moves when military members or their dependents are forced to move because their landlord is facing foreclosure. There are also a number of laws specifically designed to help military members when they face economic or legal difficulties.

Legal proceedings can be delayed. Military members generally cannot be evicted unless a court orders it. Mortgages can be renegotiated. Grants or low cost loans may be available.

If you are having problems making ends meet or are being forced to move from your rented home, you can get free, confidential help from a number of sources:

- Your Installation Family Readiness/Support Center can provide financial counselors.
- Your military legal assistance office can provide a licensed attorney. This Web site will identify the military legal assistance office closest to you: <http://legalassistance.law.af.mil/content/locator.php>
- Military OneSource can provide financial counselors—24/7—by calling, toll-free, 1-800-342-9647.

P.S. Responses to this email will not be answered. Please direct your questions to your legal assistance office or the Military OneSource Web site at [www.MilitaryOneSource.com](http://www.MilitaryOneSource.com)

Mr. FILNER. Okay.

Colonel SHUMAKE. We have also put it on their LES's. Everybody gets that, everybody looks at that.

Mr. FILNER. Tell me what an LES is.

Colonel SHUMAKE. I am sorry, leave and earning statement. Your paycheck or basically your pay receipt. We have put the information on that. And so you have to be careful on how much you can—

Mr. FILNER. All right, I would like to see what you are doing, because—

Colonel SHUMAKE. Yes, sir.

Mr. FILNER [continuing]. Sometimes this stuff becomes so bureaucratic that nobody either pays attention or understand them.

I would have put a big red notice in there that says stop, are you a homeowner? Then you may be having problems. I doubt that is what you did. You probably put a little line that says don't forget that the SCRA, which you learned in school, should be applied. But listen, these kids learn in different ways, you need to hit them on

the head in different ways, and this stuff is serious, and we just can't assume that they are going to have the responsibility to read a little bureaucratic line on there.

Thank you, Mr. Chairman.

[The DoD subsequently provided the following information:]

There were two different Leave and Earning Statement (LES) remarks used in 2009 for the housing/mortgage crisis—both including the Military ONESOURCE number. They are listed below:

RENT, MORTGAGE, EVICTION, OR FORECLOSURE DIFFICULTIES? GET FREE, CONFIDENTIAL HELP. VISIT YOUR MILITARY LEGAL ASSISTANCE OFFICE OR CALL MILITARY ONESOURCE AT 1-800-342-9647.

HOUSING DIFFICULTIES? SEE YOUR MILITARY LEGAL ASSISTANCE OFFICE OR CALL MILITARY ONESOURCE AT 1-800-342-9647.

We also ran a MILITARY PAY NEWSLETTER Article in September 2008 (this is specific to members who are renting private housing that is foreclosed and they are not the owner):

“Foreclosure”

An armed forces member who relocates from, or whose dependent(s) relocate from leased or rented private housing by reason of a foreclosure action against the landlord, is authorized a short distance move (this provision does not apply if a member and/or dependent(s) are the homeowner).

The household goods move is to another dwelling from which the member is to commute daily to the permanent duty station (or at a location at which the dependent(s) reside).

Before using this authority, a member is encouraged to exhaust remedies available under the Servicemembers Civil Relief Act (50 USC, Appendix 531) and State law. The Servicemembers Civil Relief Act limits evictions of servicemembers or their dependents to court orders during periods of military service. It also empowers the courts to stay proceedings for a period of 90 days (may be shorter or longer if the judge determines it is needed) or adjust the obligation under the lease. Consult your legal office for specific situations.

The CHAIRMAN. We have votes coming up in just a few minutes, so Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman.

Ms. Petraeus, in your statement did you say that for the military families that the second issue of stress is financial?

Mrs. PETRAEUS. Yes, the Department of Defense did a survey, I don't have the details of that survey, but I did say—it was of servicemembers, I believe, not family members—and I said that they considered their finances to be the second largest source of stress, and that was ahead of deployments, health, family, and war, so.

Mr. MICHAUD. Colonel, and I want to get back to the whole suicide issue because I know, you know, finances are very stressful and what the Rowleses went through is just unbelievable, and for suicides within the military, do you follow up on why a suicide occurs—had occurred?

Colonel SHUMAKE. Sir, I would have to get back with you on that. I don't have the visibility on that followup in the suicide world.

[The DoD subsequently provided the following information:]

There is a general consensus based on recent studies that bad economic times contribute to increases in suicides. From that broad conclusion, one could more narrowly conclude that an individual's own financial difficulties could be a stressor contributing to suicide.

- Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces Report, August 2010. This report at pages 11 and 12 notes

many historical factors affecting suicide rates, including exposure to trauma and access to lethal means, but it goes on to note that a number of additional layers of complexity require consideration. Two of those are noted: the impact of multiple deployments and the use of Internet-based communications with family while deployed. The report at page 44 also states that failed relationships and mental health diagnoses were primary stressors. This report does not specifically note economic factors, but they might reasonably be considered to arise as an effect of multiple deployments. (<http://www.health.mil/dhb/downloads/Suicide%20Prevention%20Task%20Force%20final%20report%208-23-10.pdf>)

- Army Health Promotion Risk Reduction Suicide Prevention Report, 2010. This report concludes that economic difficulties are potentially magnified for service-members. It suggests that is a stressor potentially impacting the suicide rates. ([http://www.apd.army.mil/pdffiles/p600\\_24.pdf](http://www.apd.army.mil/pdffiles/p600_24.pdf)) Rand Study: The War Within, Preventing Suicide in the U.S. Military. This report at page 35 does mention financial hardships as a stressor that could affect suicide rates. ([http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND\\_MG953.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG953.pdf))
- Department of Defense Suicide Event Report for 2008. This report at page 23 indicates that excessive debt or bankruptcy was reported for 10 percent of suicides. (<https://dodser.t2.health.mil/>)
- Department of Defense Suicide Event Report for 2009. This report at page 2 indicates that excessive debt or bankruptcy was reported for 11 percent of suicides. (<https://dodser.t2.health.mil/>)
- "Relationship between Economy, Unemployment and Suicide," prepared by the Suicide Prevention Resource Center, November 12, 2008. It notes that a review of the last two decades of literature suggests "a strong relationship exists between unemployment, the economy, and suicide." This article did not focus on the military. ([http://www.sprc.org/library/Economy\\_Unemployment\\_and\\_Suicide\\_2008.pdf](http://www.sprc.org/library/Economy_Unemployment_and_Suicide_2008.pdf))

Mr. MICHAUD. If you could I would appreciate it, because I can't help but believe with the number of suicides in the military that it has not been caused by, you know, financial stress.

Colonel SHUMAKE. And you mean specifically a report that goes back and tries to characterize kind of an autopsy if you will in what happened?

Mr. MICHAUD. Well, I mean has there been a conclusion or been suicide notes, you know, I just can't stand it anymore because I can't make my mortgage payments or stuff like that. Has there been any reports done on suicide rates in the military of why they have occurred? If you can follow up.

Colonel SHUMAKE. If we have it I will find out.

Mr. MICHAUD. Yeah. Because my concern is, and we heard the representative for JPMorgan this morning apologize and they are going to pay seven and a half percent interest, which I think is just unbelievable when you look at the chief executive officer of JPMorgan a \$28 million bonus in 2007.

I guess my concern, and I come from the manufacturing sector of the paper industry, and unfortunately some of the paper industry they violate a lot of environmental laws, and when I asked actually one of them why they do it and they said, well, you know, it is cheaper to violate the law, it is just the cost of doing business. And that is a concern that I have when you look at the violations that we heard this morning and the fact that seven and a half percent.

Actually what I would like to see is the Justice Department find someone who actually had committed suicide and it is related to financial stress and actually hold a corporation liable under the Wrongful Death Act and that is when we actually will start seeing companies really follow the law versus paying a penalty because of

the cost of doing business, and that is really where we are going to actually get the law followed is if we do have a hammer there to do that.

So I want to thank you both for coming this morning. I appreciate your testimony.

Colonel SHUMAKE. Thank you, sir.

The CHAIRMAN. Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman, and again, I thank you, you are certainly starting out with the promises you made when you assumed the Chairmanship of this Committee and holding pointed, important hearings for your veterans and their families, so thank you for that.

To the Ranking Member your passion is also there, Mr. Ranking Member, and I appreciate it. I have to tell you though having been an enlisted soldier for 24 years I have to tell these guys to wear their helmet at times, and it becomes really hard. Those are the things I want them to focus on, the things like how do you set that head spacing timing on that .50 caliber, how do you get your mission done? And it becomes quite burdensome to try.

And you know, this is where I think there is a shared responsibility in the country and a corporate ethic to go a little above and beyond. And I am not absolving those soldiers of personal responsibility, Lord knows, they can get themselves into some of that, they can help get out of some of it, but I have to tell you one thing for you Colonel that I said, it is hard for them to remember it all.

I know when I was able to resolve some of these and they were specifically car loan issues with young soldiers of doing that on a deployment. A senior NCO on the phone who has had a little more experience with talking to people cutting through the bureaucracy really made a difference.

My question to you is do you get reports on that? I never filed a report on that and I did a bunch of these where there were issues of they were violating the rules of the law, we went in, we corrected them, and I will give credit in most cases these auto financiers were pretty good about working it out and were being pretty good citizens, but no one reported that. So do you think you have an actual number? Do you think you have a grasp of how big a deal this is?

Colonel SHUMAKE. Sir, it is hard to tell, particularly when you are looking at the fact that you have attorneys, and usually it is going to be the attorneys. Of course if it is a senior NCO doing it, no, sir, we are not going to hear about that. We are not going to know, they are going take care of business like they do.

Mr. WALZ. Would you guess that is more common? I mean that is my personal experience, I can't say if that is an—

Colonel SHUMAKE. Sir, I kind of—I guess I come from a, you know, the legal focus and so I don't hear so many cases of that.

Mr. WALZ. Okay.

Colonel SHUMAKE. I kind of hope that first sergeant sends them to legal assistance and I kind of hope that legal assistance attorney is doing what I described earlier.

And we do get reports—of course, you know, you can't tell exactly what is going on in the attorney/client world, but the services will report the number of clients they see overall and they break it

down into certain categories, and one of the categories generally is SCRA.

I know that for the Marines they—I think it is the Marines—they have the Uniformed Services Employment and Reemployment Act—

Mr. WALZ. Right.

Colonel SHUMAKE [continuing]. Which is the re-employment rights, they kind of mixed categories, so I just kind of have to guess on that.

But there is a general overall report that you could track depending on how good their system is in the past. I do know that right now I can get a snapshot of how many—

Mr. WALZ. So you feel fairly comfortable that you are getting a—least a—how did you come to know about the JPMorgan issue? Did they come to you?

Colonel SHUMAKE. Sir, I got a call from a Senate staffer who asked if I heard anything about it, and I then called my friends in the American Bankers Association and my office does have contacts with—

Mr. WALZ. That is great.

Colonel SHUMAKE [continuing]. With the ABA. I have given Webinars for those guys on two occasions.

Mr. WALZ. That is great.

Colonel SHUMAKE. Gone out to the banking—

Mr. WALZ. So this work—I mean as far as the reporting and stuff you wouldn't want it—we never want it to happen, but you think the followup afterwards works?

Colonel SHUMAKE. I think it was good, sir.

Mr. WALZ. Okay.

Colonel SHUMAKE. Because it was the ABA, after I made the call to the ABA the next thing I know I got a call from one of their attorneys who said JPMorgan Chase would be giving me a call. So once I got that—

Mr. WALZ. I think that needs to be noted because there is a help and I know the Chairman mentioned about ABA and reaching out to them, that is smart. Because what we want to do is we want to alleviate this, we want to make sure that it doesn't happen, put safeguards in, but the biggest thing is never to have it happen in the first place.

Colonel SHUMAKE. Yes, sir. And so I think from that information we can then—my office could push it down and we had the hotline out because the JPMorgan Chase piece ran on *The Today Show* on the 17th.

Mr. WALZ. Great.

Colonel SHUMAKE. We had it out that weekend.

Mr. WALZ. Colonel, can you tell me, and just maybe as an example of how this is—the difficulty of this as you mentioned. I think of myself in my situation. I signed up when I was 17, I didn't buy my first house until I was 33, I deployed 7 years after that. I actually wouldn't have been covered then, correct, because I had the loan during service?

Colonel SHUMAKE. That is correct. The mortgage protection on first the interest rate cap is pre-service and so is the foreclosure

piece. And again, all the foreclosure piece says is that you have to have a court order to do it.

Mr. WALZ. So for a National Guard soldier like me my life situation obviously changed greatly from 17 to 40 when I am deployed, children, home, all of that, but because of the nature of the way this is set up, I was not afforded those protections because I would have already been in the service when I got the loan.

Colonel SHUMAKE. Well, it has to be a pre-service, so I think if you had some gaps in there you might be able to make your argument.

Mr. WALZ. But if you are National Guard the whole time the way I understand this you are not; is that correct?

Colonel SHUMAKE. Well, no, sir, if you left—it is not so much that you are in active service in the National Guard, it is that you are on active duty.

Mr. WALZ. Yeah.

Colonel SHUMAKE. That is the key.

Mr. WALZ. But if you were a technician or any of these people do they—

Colonel SHUMAKE. The technician—I am going to pass on the technician because that is about as complicated as it gets.

Mr. WALZ. Well, I appreciate it, but I do think your point is right about explaining this out.

My last question, Mrs. Petraeus on this is, I have to tell you I talk with a lot of my bankers. The CFPB is not their favorite organization at this point even though it is brand new.

How are you going to get beyond that to say we are not here to persecute, we are here to help the consumers and you can help us make that happen? Are you feeling that? I mean are you feeling cooperation from these institutions?

Mrs. PETRAEUS. Yeah, I think so. I mean part of our goal is to make a level playing field for consumers, and that doesn't mean, you know, that we are anti-business.

Mr. WALZ. Right.

Mrs. PETRAEUS. And we do want to convey that message. And Professor Warren has been hard at work doing that.

Mr. WALZ. Okay. I just know that, you know, that perception is there, just wanted to know.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Thank you to everybody for being here today, those that testified.

Let me assure you if changes need to be made to the SCRA, we will work across the aisle with our colleagues to see that they are done. No servicemember in a fox hole or serving on the front line should have to worry about the roof over their family's head back at home, and we will do everything we can to make sure that they are protected.

With unanimous consent, all Members shall have 5 legislative days to revise and extent their remarks or extraneous material, and I thank all the Members for participating today, and this hearing is adjourned.

[Whereupon, at 1:29 p.m., the Committee was adjourned.]

## A P P E N D I X

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### **Prepared Statement of Hon. Jeff Miller, Chairman, Full Committee on Veterans' Affairs**

Good morning and welcome to the first oversight hearing of the House Committee on Veterans' Affairs of the 112th Congress.

As we begin our important work on behalf of America's veterans and servicemembers, I would like to point out that veterans are well-represented on this Committee. While our members look after the interests of all 23 million U.S. veterans and their families, some 12.2 million—over half of America's veterans—reside in the States we represent. I am especially proud that 110,000 of those heroes reside in Florida's First Congressional District.

And that responsibility brings us to the subject of today's hearing.

I know the Members on both sides of the aisle are concerned about today's topic, but consistent with past practice, I would like to limit opening remarks to myself and the Ranking Member so that we may have more time to hear from our witnesses. Of course, Members are welcome and encouraged to submit their opening remarks for the record.

The Servicemembers Civil Relief Act has existed in various forms since the War of 1812 and each version has shared a singular goal: to protect those who protect us. The 2003 revision, which I cosponsored, and the amendments we have made since, continue that tradition. I am committed to ensuring SCRA remains a relevant and viable tool and I know the Ranking Member and the rest of this Committee share in my commitment.

My goal for this oversight hearing is to determine whether the SCRA afforded our servicemembers and their families are meeting their needs. We are all aware of related matters pending before the court. This is not intended to be a trial of any sort. I am not seeking to prejudice that or any future action in any direction. At the same time, it is important to recognize the obligations that exist under the law, and that this Committee has a duty to ensure that the law is working for active duty servicemembers.

I have said recently, and I will say again now, that our Nation's war fighters—and their families—should not have to fight to keep their piece of the American Dream while they are on foreign ground defending that fundamental right for all of us.

I want to thank our witnesses for appearing before us. First, I thank Captain Jonathon Rowles (ROLLs) and his wife Julia, for their persistence in exercising their rights. Second, I thank JPMorgan Chase for reaching out to us, and more importantly, for admitting its mistakes and then making the efforts it has at rectifying them.

I hope our witness from the Department of Defense will be able to assure us of the effectiveness of their program to educate servicemembers of their rights under SCRA. I also look forward to hearing from the newly established Consumer Financial Protection Bureau about how it can contribute to preventing similar occurrences in the future.

What we have here is what some might call a "teachable moment." For the financial services industry, the lesson is to understand the Servicemembers Civil Relief Act and to undertake the same sort of review as has Chase to ensure compliance. For DoD, it is time to review whether the services' SCRA training programs are getting the job done. Finally, servicemembers are ultimately responsible for understanding their rights and responsibilities under SCRA and holding their financial institutions accountable. Today, we will be asking and listening for ways to ensure that these goals are met.

Before we begin I ask unanimous consent that all Members be allowed to sit at the dais and be permitted to ask questions. Hearing no objection so ordered. I also want to extend a warm welcome to Mr. Brad Miller of North Carolina. Mr. Miller drafted legislation last congress on SCRA and I am happy that he is here today.

I now recognize the Ranking Member, Mr. Filner, for his remarks.

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**Prepared Statement of Hon. Bob Filner,  
Ranking Democratic Member, Full Committee on Veterans' Affairs**

Good morning, everyone. I'm glad you all could join us for this very important hearing today on overcharges by JPMorgan Chase on military families. I would also like to thank the Chairman for holding this hearing today.

I believe this is a very important issue and is something that we should continue to monitor as the foreclosure crisis continues to unfold. I also want to thank all of our distinguished panelists for participating in today's Committee hearing. I know that some of our panelists have traveled far distances to be here today.

Today's hearing seeks to examine why banks such as JPMorgan Chase have overcharged our military families who are actively engaged in defending our country.

While we want to know how these overcharges happened, I also want to know what they are doing to prevent this from occurring again.

As foreclosure filings continue to rise, the effect on Americans has been acute, with California having one of the most affected populations. According to RealtyTrac, California metro areas such as San Diego have been seriously affected by the foreclosures.

Like most Americans, many of our Nation's heroes see homeownership as an integral part of the American dream. Unfortunately, for a number of military families, that part of the American dream became a nightmare when JPMorgan foreclosed on their homes. It is my sincerest hope that JPMorgan Chase is taking immediate corrective steps to restore these families to their home as soon as possible.

I personally have grave concerns for Marine Captain Rowles and his wife. They have been through a 5-year saga with the bank.

It is unconscionable that any family would have to endure this kind of treatment—especially a military family. I strongly urge JPMorgan Chase to move as quickly as possible to do the right thing for them and all of the other military families who are affected.

For many of our returning servicemembers and veterans, the stress of what they have gone through by serving in a war zone may still affect them. This is why the protections under the Servicemembers Civil Relief Act are there to provide protection for all of our military families.

Mr. Chairman, I hope you and everyone else on the Committee will make a commitment today to stand up for veterans and their families by joining me in making these protections permanent for the military families.

I look forward to hearing the testimony of all our panelists so that we may better understand the problem and see what preventive strategies can be implemented to address the overcharges and unnecessary foreclosures on our Nation's military families.

Again, I would like to thank you, Mr. Chairman, for holding this hearing and I thank all of our panelists for being here with us today. Your dedication to our Nation's servicemembers and veterans is extremely important as we seek to identify and improve lending practices to protect military families, while continuing to allow opportunities for home ownership.

Thank you and I yield back my time.

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**Prepared Statement of Hon. Gus M. Bilirakis**

Mr. Chairman, Ranking Member Filner, I want to thank you for promptly holding this hearing to delve into allegations of violations of the Servicemembers Civil Relief Act (SCRA). Those serving in the uniform of the United States Military make tremendous sacrifices in their personal lives. The nature of their service often does not afford them the same opportunities that civilians have in managing their day-to-day lives.

I was distraught to learn that financial institutions were remiss in providing servicemembers with the benefits the law affords to them. It is frustrating to learn of the unnecessary burdens that many servicemembers, such as Captain and Mrs. Rowles, have faced as they have answered the call of service to our Nation.

It is my hope that this hearing will bring light to the overall impact of alleged violations and their prevalence in the financial sector. In addition I hope that sufficient remedies will be implemented and serve as a model to ensure that servicemember's requesting protections under SCRA will be realized without delay. Today's

hearing serves as an opportunity to identify shortfalls in implementation of this law and move forward in a productive manner so that we can better serve those who serve our Nation.

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**Prepared Statement of Hon. John Barrow**

Thank you Chairman Miller and Ranking Member Filner.

This is my first hearing as a Member of the Veterans' Affairs Committee, and I would like to express the honor and humility with which I serve on this Committee. We owe an extraordinary amount of gratitude to those who have served our country, and we still have a lot to do before we can say we have kept the promises we made to our veterans when they first joined up. Better enforcement of the Servicemembers Civil Relief Act is an important step in the right direction to keeping those promises.

Proper adherence to the Servicemembers Civil Relief Act makes our country safer and protects the families of our troops. Servicemembers should be able to devote themselves completely to the defense of the Nation. With the very real dangers they face in war they cannot be distracted by the thought of losing their home while serving and leaving their family on the street. But they will be distracted if the few times they hear from home they discover that their family is in danger of losing their home to an illegal foreclosure. The families of our troops already face undue stress while their loved ones serve abroad on active duty.

I understand that JPMorgan Chase has taken steps to correct the accounting problems that violated the Servicemembers Civil Relief Act, but we have to do better in the future. I look forward to hearing specifically how and why the protections under SCRA were not followed. More importantly, I want to hear specific suggestions on how we can improve the application of SCRA through oversight so that no one has to worry about losing their home because they have been called to active duty.

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**Prepared Statement of Hon. Marlin A. Stutzman**

Thank you, Mr. Chairman. This is my first full Committee hearing and I am very honored to serve on this Committee to serve our veterans who have so honorably defended this Nation.

In addition to the honor of serving on this Committee, I have the additional honor of serving as the Chairman of the Subcommittee on Economic Opportunity. The Servicemembers Civil Relief Act (SCRA) falls under the oversight of my Subcommittee. Over the past few days and weeks I have been learning about SCRA and the benefits and protections it affords to our servicemembers. I commend the work of previous Congresses on this legislation.

With the amount of servicemembers currently deployed, it is of utmost importance that servicemembers and the financial institutions that handle their affairs are fully educated on the intricacies of the SCRA. Servicemembers must be fully focused on the mission abroad, not worrying about their personal affairs at home and wondering if they will come back to a foreclosed home.

It is the duty of financial institutions to serve all their clients with the utmost respect and customer service but there is an increased responsibility to those clients who are serving overseas. Should mistakes be made by the financial institution, in this case JPMorgan Chase, steps must be taken to correct the problem and make it right for the men and women in uniform who were mistakenly charged a higher amount of interest rates and fees, or, in the worst cases, faced foreclosure on their homes while deployed.

While I do not stand here today in judgment of any of the involved parties, I do have a strong interest in identifying any weaknesses in the SCRA and learning more about how servicemembers are informed of the rights and privileges afforded to them by the SCRA. Additionally, I am interested in learning more about the vulnerabilities in JPMorgan Chase's SCRA compliance and the steps they are taking to correct their mistakes for servicemembers involved in wrongful interest charges on their mortgages and home foreclosures.

I would like to thank our witnesses for being here today. Many of you have served our Nation honorably in many different capacities. I look forward to hearing your testimony.

Thank you, Mr. Chairman.

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**Prepared Statement of Hon. Russ Carnahan**

Mr. Chairman, thank you for holding this important hearing on alleged violations of the Servicemembers Civil Relief Act by JPMorgan Chase Bank.

Since the passing of the Soldier's and Sailor's Civil Relief Act in 1940, Congress has continuously recognized the importance of providing protections to servicemembers and their families to help relieve them of the civil and financial burdens they face while on active duty. The Servicemembers Civil Relief Act simply expanded upon that original law by providing a broader range of protections including provisions that would reduce interest rates to 6 percent on mortgage loans and foreclosure projections.

Upon hearing of these allegations, I was deeply troubled to know that one of the Nation's largest financial institutions possibly disregarded the very Act that was put in place to protect our Nation's heroes and their families. Although I am pleased to know that JPMorgan Chase has begun the process of refunding money to the more than 4,000 affected servicemembers that were overcharged and putting 14 families back into their wrongfully foreclosed homes, I remain concerned that there may be more servicemembers and families affected by this matter.

In this climate, in which the housing market is still struggling to stabilize, it is particularly important that all financial institutions adhere to the safeguards put forth to protect those very individuals that sacrifice so much for the good of our Nation. It is my hope that today's hearing gives JPMorgan Chase the opportunity to explain their wrongdoings, to inform the Committee of their plans to quickly resolve these matters and ensure us that they will adhere to the protections under the Servicemembers Civil Relief Act moving forward.

To all the witnesses today—thank you for taking time out of your busy schedules to appear before us. I look forward to hearing your testimony.

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**Prepared Statement of Richard A. "Dick" Harpootlian, Esq.,  
Richard A. Harpootlian, P.A., Columbia, SC**

**EXECUTIVE SUMMARY**

The Committee has invited testimony on the facts and circumstances surrounding the class action lawsuit filed in the District of South Carolina as *Rowles v. Chase Home Finance, LLC*. The testifying witness, Richard A. Harpootlian, is an attorney representing three members of the Armed Forces who serve as putative class representatives representing servicemembers who allegedly were denied benefits to which they were entitled under the Servicemembers Civil Relief Act by Chase Home Finance, LLC and Chase Auto Finance Corp.

Whereas the lawsuit is still in its infancy, all facts are not yet known to the servicemembers. However, in statements to the press JPMorgan Chase has confirmed that at least 4,000 servicemen and servicewoman were denied the 6-percent interest cap on preexisting debts. Also, Chase Home Finance, LLC foreclosed on the homes of numerous servicemen and servicewomen (the exact number of which is not yet known).

The individual plaintiffs in this case are Captain Jonathan Rowles of the United States Marine Corps, whose family was denied the 6-percent interest cap while he was deployed on active duty, Lieutenant Colonel Sarah Letts-Smith of the United States Army Reserve, whose home was foreclosed on while she was serving in Iraq, and Lance Corporal Martin Hupfl, whose automobile installment loan was terminated and placed into collections while he was in basic training.

The damage to the servicemembers as a result of the SCRA violations not only financially harms the soldiers but also negatively affects their ability to serve in the military. Each of the plaintiffs in the *Rowles* case was forced to wrestle with debt collectors and threats of loan acceleration, foreclosure, and/or repossession while he or she was on active duty. This pressure cannot be overstated as it represented a threat not only to the financial well-being of the servicemembers, but to the physical well-being of the families that they left behind.

Whatever facts this lawsuit may reveal, thus far it is clear that a systematic failure to adhere to the requirements of the SCRA has occurred. Congress should consider three areas in which the SCRA may be strengthened to deter future violations: (1) stronger criminal penalties for knowing violations; (2) civil fines for all violations with an incentive discount for self-reporting; and (3) an attorneys' fee provision for

successful plaintiffs seeking to enforce their rights as servicemembers under the SCRA.

Mr. Chairman and Members of the Committee,

I thank you for the invitation to speak on behalf of my clients—Captain Jonathan Rowles of the United States Marine Corps, Lieutenant Colonel Sarah Letts-Smith of the United States Army Reserve, and Lance Corporal Martin Hupfl of the United States Marine Corps. I represent these fine men and women in uniform along with my co-counsel, William Harvey and Graham Newman.

As the Committee is aware, our law firms have filed a class action complaint against subsidiaries of JPMorgan Chase alleging systematic violations of rights guaranteed to our men and women in uniform under the Servicemembers Civil Relief Act that have harmed thousands of our soldiers and their families. This litigation is in its earliest stages. No discovery has been conducted and I am limited by law as to what comments I may offer regarding the merits of these claims or any defenses thereto. I may, however, share with you the facts giving rise to my clients' complaints, the difficulties they have suffered while serving our country, and suggestions that the Committee might entertain in hopes of preventing such occurrences in the future.

The opening words of the Servicemembers Civil Relief Act establish that the purpose of the law is “to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation.” The venerable nature of these goals is undeniable. But to truly grasp the importance of the Act to our Nation as a whole, one must examine the history of the legislation through the last two centuries.

#### **I. History of the Servicemembers Civil Relief Act**

The roots of the Servicemembers Civil Relief Act lie in the Constitution itself. Article I, section 8 of the Constitution expressly grants to Congress the authority to build and maintain our Armed Forces in order to guarantee the security of this Nation. With this in mind, as early as the Civil War Congress recognized the need to enact legislation placing certain restrictions on civil actions that would hinder the abilities of an individual soldier or sailor to dedicate all of his efforts to defending this country. In 1917, as the United States became embroiled in World War I, our government employed the services of Major John Wigmore—then Dean of the Northwestern University Law School and author of the famous treatise *Wigmore on Evidence*—to draft the first modern version of the SCRA, then known as the “Soldiers’ and Sailors’ Civil Relief Act.” This Act instituted many of the regulations that are central features of the modern law, including a stay of civil actions and a prohibition of foreclosures upon the homes of those on active duty.

Major Wigmore’s Soldiers’ and Sailors’ Civil Relief Act expired 6 months after the end of World War I due to a sunset provision included in the initial draft. Thus, in 1940, as conflicts throughout the globe again escalated into World War, Congress reenacted Major Wigmore’s bill with some amendments. At the time, Congressman Overton Brooks of Louisiana reiterated the vital role the Act played in preserving the Nation’s defense and recognized the concerns the Act was intended to address.

This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier receives and what the same man normally earns in civil life.

The Soldiers’ and Sailors’ Civil Relief Act has been in effect since it was reenacted by Congressman Brooks and others in 1940.

In April of 2003, as Operation Enduring Freedom in Afghanistan progressed, this Committee took the lead in the 108th Congress to style a complete restatement of the Act. The bill that originated in this Committee received broad bipartisan support, boasting as its sponsors then-Chairman Christopher Smith of New Jersey and Ranking Member Lane Evans of Illinois. In its Report to the House, the Committee expressly noted the following:

Congress has long recognized that the men and women of our military services should have civil legal protections so they can “devote their entire energy to the defense needs of the Nation.” With hundreds of thousands of

servicemembers fighting in the war on terrorism and the war in Iraq, many of them mobilized from the reserve components, the Committee believes the Soldiers' and Sailors' Civil Relief Act (SSCRA) should be restated and strengthened to ensure that its protections meet their needs in the 21st century.

Among the protections recognized as necessary in modern society were four rights directly implicated in the pending litigation involving my clients: (1) a 6-percent cap of interest chargeable on debts incurred prior to military service; (2) a prohibition of derogatory reports to credit agencies due to eligibility of SCRA protection; (3) limitations upon the ability to foreclose upon servicemembers' homes; and (4) limitations upon the ability to terminate installment contracts or otherwise repossess personal property purchased via installment contract.

Once favorably reported to the House, the bill gained thirty-nine (39) co-sponsors from both parties and was passed by the full House by 425–0. The Senate passed similar legislation with the leadership of Senator Lindsey Graham from my home State of South Carolina and the differences between the two bills were negotiated without need of a conference committee. On December 19, 2003, President George W. Bush signed into law the now-restyled "Servicemembers Civil Relief Act."

## II. EXPERIENCES OF THE ROWLES PLAINTIFFS

The litigation in which we are involved began only after Jonathan Rowles and his wife, Julia, endured several years of frustration regarding their home mortgage with Chase Home Finance, LLC. Our law firms filed this lawsuit on behalf of Captain Rowles in July of 2010. Over the past several months, we have been contacted by numerous military personnel who have experienced similar denials of SCRA protection from Chase's subsidiaries. Last week, we filed an amended complaint, adding allegations on behalf of Lieutenant Colonel Sarah Letts-Smith of the United States Army Reserve and Lance Corporal Martin Hupfl of the United States Marine Corps.

Our research has revealed systematic failures in the maintenance of SCRA protections pertaining to four classes of military men and women: (1) those denied the 6-percent maximum interest rate on debts incurred prior to military service; (2) those who received a blighted credit report as the result of their invocation of SCRA protection; (3) those whose homes were foreclosed upon despite SCRA protection; and (4) those possessing installment contracts that were cancelled or resulted in repossession of personal property such as automobiles despite SCRA protection.

A review of the facts pertaining to each plaintiff is helpful in explaining how these violations came about.

In February of 2004, Jonathan and Julia Rowles entered into a purchase money mortgage with BNC Mortgage, Inc. In May of 2004, Chase Manhattan Mortgage Corporation purchased this loan and, from that point in time, the Rowleses made all payments to Chase. After a year of making payments on this mortgage, Jonathan Rowles executed a United States Marine Corps Reserve contract on August 16, 2005 and received Assignment to Active Duty Orders which became effective on January 22, 2006. Shortly thereafter, Rowles requested in writing that Chase reduce the interest rate on the loan to 6 percent pursuant to the SCRA. In this letter, Rowles specified January 22, 2006 as the date he entered active duty and produced two sets of orders to verify his current status. Again on May 2, 2006, Rowles wrote to Chase to request the 6-percent rate protection under the SCRA. This letter also specified Rowles' active duty date and included additional copies of his orders and a copy of his previous letter.

On May 8, 2006, in response to this series of correspondence, Chase requested that Rowles provide "orders and/or an enlistment agreement showing the date of original call to duty." Again Rowles sent faxes to Chase customer service representatives that included handwritten cover sheets explaining his active duty orders as well as copies of his letters of April 14 and May 2. In a letter dated July 27, 2006—7 months after Rowles received his active duty orders—Chase informed Rowles that because he had qualified for the protection of the SCRA, the company had adjusted the interest rate on the loan to 6 percent effective with his May 1, 2006 payment. However, Chase failed to apply the statutory interest rate to the loan until August 17, 2006, which was the date of the first statement received by Rowles that reflected the 6-percent rate. The July 27 letter also informed Rowles that his "loan is protected against late fees, adverse credit reporting, and default activities. These protections will remain in effect for 90 days following your return from active duty."

Though Rowles' SCRA protection had been in place for less than 4 months, Chase mailed Rowles a letter on December 1, 2007 which it characterized as a "required quarterly verification." The letter included a form which Rowles was instructed to complete and sign in order to continue to receive the protection of the SCRA. Rowles duly completed the form and returned the letter to Chase. Chase sent additional

verification letters on December 17, 2008, March 25, June 22 and December 29 of 2009 and March 22, 2010. In addition to the periodic verification letters, no fewer than four times per year since July of 2006, Rowles has had to call various Chase customer service representatives after being verbally informed or receiving documentation indicating that the interest rate on the loan was going to be adjusted above 6 percent if he failed to do so. In March of 2008, Rowles was forced to request that his commanding officer at Training Squadron Eighty-Six in Pensacola, Florida, write to Chase on his behalf in order to confirm that he was in fact an active duty Marine.

In a letter dated January 16, 2007, Chase again informed Rowles that he had qualified for the protection of the SCRA and that the company had accordingly extended the adjustment on the 6-percent interest rate effective February 1, 2007. On April 2, 2008, Chase informed Rowles in writing that the company was “in receipt” of his “request for relief” under the SCRA and that he should allow 3 to 4 weeks for review of the request. A subsequent letter dated April 25, 2008, again informed him that his rate adjustment would be extended effective October 1, 2008.

From the time that Chase applied the 6-percent interest rate to the loan until April 2009, Chase would send loan statements to the Rowles family indicating the interest rate charged on their loan was, in fact, substantially above 6 percent. On information and belief, during this time Chase would use various formulas and accounting methods to reconcile the higher stated interest rates while effectively only charging Rowles at 6 percent.

Beginning in April 2009, the Rowleses’ loan was to shift from “interest only” to an amortized loan over remaining 25 years per the terms of the original agreement. On Rowles’ April 2009 statement and each subsequent statement, Chase not only failed to accurately characterize the interest rate on the loan as 6 percent but also ceased to employ any formula or accounting method to effectively provide Rowles with the benefit of the 6-percent protection under the SCRA.

Each month between April 2009 and the time of the filing of the lawsuit, Rowles made a payment to Chase in the original contractual amount, which is the last correct amount billed by Chase reflecting interest at 6 percent. Despite this fact, Chase repeatedly failed to credit Rowles for payments made and began to pursue aggressive collection methods for what it characterized as a past-due balance on Rowles’ account.

Chase’s collection methods during this time included repeated phone calls and correspondence to Rowles from Chase debt collection departments in various locations. These calls often came at a rate of three per day and included calls to his mother who lives at a different address and his workplace as well as calls made to his residence after midnight, and as late as 4:00 a.m. In telephone conversations, voice-mails and correspondence during this time, Chase representatives repeatedly threatened to report Rowles to the credit bureaus and to initiate foreclosure proceedings on their house.

This pattern of conduct by Chase caused Rowles to spend considerable time communicating with Chase via telephone, email and written correspondence. This time included leave from his unit which was spent traveling to meet with Chase representatives in an effort to preserve his 6-percent interest rate under the SCRA and to prevent Chase from taking threatened actions which are unlawful under the SCRA. Finally, in June of 2010, Chase denied Rowles electronic access to his account. Thereafter Rowles brought this suit.

#### **United States Army Reserve Lieutenant Colonel Sarah Letts-Smith**

Lieutenant Colonel Sarah Letts-Smith is an intelligence officer with the United States Army Reserve. On July 26, 2005, LTC Letts-Smith and her husband, Rory Smith, jointly purchased a house located in Temecula, California. At the time of the purchase, Lt. Col. Letts-Smith was not on active duty. The purchase was financed by Washington Mutual Bank, FA, popularly known as “WaMu.” For the first 3 years, the Smiths made all mortgage payments on time for the 44200 Sunset Terrace home.

On January 29, 2008, the Department of the Army ordered LTC Letts-Smith to active duty, instructing her to report to Fort Leavenworth, Kansas for a training period of 120 days to be followed by deployment to Iraq. LTC Letts-Smith soon thereafter faxed letters to all of her creditors—including WaMu—informing them of her active duty status and requesting any and all protection afforded under the SCRA.

During the summer of 2008—while LTC Letts-Smith was serving in Iraq—Rory Smith was laid off from his job, leaving his wife as the sole wage earner in the house. On August 5, 2008, Rory Smith sought assistance from WaMu in modifying

the Smith family's mortgage so that payments could continue to be made. Smith informed WaMu in writing that he had been laid off from his job, that his wife was on active duty in Iraq, and that the family was having difficulty making their mortgage payments.

On September 25, 2008, in the largest bank failure in American history, Washington Mutual Bank was closed by the Federal Government's Office of Thrift Supervision and the Federal Deposit Insurance Corporation was named receiver. Regulators simultaneously brokered a deal selling nearly all of WaMu's assets and liabilities to JPMorgan Chase. On October 11, 2008, WaMu—now owned by JPMorgan Chase—responded to Rory Smith's earlier request for "Borrower Assistance" as follows.

This letter is in response to your request for assistance on the above referenced loan. Washington Mutual received and reviewed documentation regarding a potential workout. Based on the financial information received, it does not appear we are able to offer you assistance at this time, therefore your request for a loan workout Modification has been denied.

On the same date, WaMu and Chase informed the Smiths via a separate letter that their line of credit was suspended. In addition to this information, the WaMu/Chase correspondence contained the following warning.

WE MAY REPORT INFORMATION ABOUT YOUR ACCOUNT TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CREDIT REPORT.

Several weeks later on December 1, 2008—and despite the fact that the bank was fully aware of Letts-Smith's active duty status and request for assistance—WaMu/Chase issued a "Notice of Collection Activity" to the Smiths. Contained in this notice was a threat of foreclosure.

Failure to cure the default within the 30-day period may result in Washington Mutual Bank declaring the entire outstanding principal balance, accrued interest and any other fees and charges due under the terms of the Note and Security Instrument to be immediately due ("Acceleration"). If this amount is not immediately paid at such time, Washington Mutual Bank may exercise any and all remedies available under the terms of the Note and Security Instrument and applicable law, including the commencement of foreclosure proceedings which may result in the sale of your property.

On March 26, 2009—with LTC Letts-Smith still stationed in Iraq—WaMu/Chase initiated foreclosure actions against the Smith family. Lt. Col. Letts-Smith was released from active duty on August 4, 2009. Three days later, on August 7, 2009, the foreclosure trustee sold the Smith family's home for \$934,150.00—approximately \$800,000 less than the original purchase price of the home.

#### **United States Marine Corps Lance Corporal Martin Hupfl**

Martin Hupfl is currently a Lance Corporal in the United States Marine Corps stationed at NAS Jacksonville. In July of 2007, Hupfl—while still a civilian—purchased a 1999 Dodge Ram truck. LCpl Hupfl financed the purchase with 72 month installment loan from Defendant Chase Auto Finance Corp. The interest rate on the Chase loan was approximately 12 percent.

In July of 2008, LCpl Hupfl enlisted in the Marine Corps. LCpl Hupfl recruiter informed him of the protections offered by the SCRA. With the recruiter's assistance, LCpl Hupfl completed a SCRA Advice and Statement of Understanding that he signed and faxed to Defendant Chase Auto Finance Corp.

LCpl Hupfl entered boot camp at Parris Island, South Carolina on July 21, 2008. From boot camp Hupfl was transferred to Camp Lejeune, NC for further entry level training. During this period of training, LCpl Hupfl's mother received a letter from Defendant Chase Auto Finance dated December 11, 2008 stating that Chase had finally "processed" his SCRA request and that Chase had "reduced the interest rate to 6 percent and discontinued all fee accruals from the date of your military orders."

LCpl Hupfl completed his entry level training on March 5, 2009 and, from there, was assigned to his first duty station in Philadelphia, Pennsylvania. Hupfl telephoned Chase Auto Finance to resume his loan payments at the original contracted amount. However, Hupfl was advised by Chase Auto Finance that it had terminated the installment loan contract in December of 2008 and therefore was unable to accept any payments from him. Soon thereafter, Chase Auto Finance assigned LCpl

Hupfl's account to a collection agency that began sending him collection letters and making collection calls to his mother's house. Chase Auto Finance also reported to various credit bureaus that Hupfl's account had been "charged off as bad debt."

### III. Practical Effects of the Failure to Recognize SCRA Protections

The immediate effect of SCRA violations on our military men and women are obvious. Unlawful foreclosures force families from their homes. Illegal repossessions strip families of their cars, appliances, and other essential household items. Derogatory reports to credit agencies damage the ability of our soldiers and sailors to enter into future financial agreement. Excessive charges of interest demand monies which are not owed.

Perhaps more damaging than these immediate effects, however, is the financial stress endured by military families while their loved ones serve on active duty. As the stories of Captain Rowles and LTC Letts-Smith show, the spouses, parents, and children of our military men and women are those that inevitably bear the brunt of SCRA violations. While her husband was deployed to Korea, Julia Rowles was forced to negotiate with Chase representatives while caring for a small child and pregnant with another. While his wife was surviving the Iraqi war zone, Rory Smith prepared his children to move from their home as foreclosure crept closer.

I began this written testimony by referring to the stated policy of the SCRA: "to enable [servicemembers] to devote their entire energy to the defense needs of the Nation." Violations such as those suffered by our clients directly defeat this purpose. While on active duty, our soldiers have limited time to so much as contact their families. Sadly, according to public statements made by JPMorgan Chase to the press, it appears that over the past few years several thousand men and women like Captain Rowles, like LTC Letts-Smith, and like LCpl Hupfl were forced to spend what personal time they did have on the phone with banking officials seeking an explanation why their families were being overcharged interest, why their car was being repossessed, or why their home was being foreclosed.

### IV. Suggestions for More Diligent Enforcement of SCRA

The systematic failure of SCRA protections in the *Rowles* litigation is evidence that the enforcement provisions of the SCRA deserve reconsideration. In our review of the law and its application over the last 6 months, we believe that there are three areas Congress may improve to strengthen the SCRA in hopes of preventing such failures in the future.

#### a. Criminal Penalties for Violations of the SCRA

Criminal indictment is the ultimate sanction provided by the SCRA. Yet such punishment is extraordinarily rare as it carries the burden of proving one "knowingly" inflicted upon servicemembers the hardships prohibited by the SCRA. But even if such proof exists, the potential criminal penalties available, for example for intentionally foreclosing upon the home of a soldier serving in Afghanistan, are very limited. Of the sections directly pertaining to the *Rowles* litigation, three prescribe misdemeanor criminal penalties for "knowing" violations (Sections 527 (violation of interest cap), 532 (termination of installment loans and/or repossession), and 533 (foreclosure of mortgages)) and the fourth contains no criminal penalty whatsoever (Section 518 (unlawful report to credit agencies)).

Even without considering the difficulties of proving a "knowing" violation of the SCRA, the realities of criminal sentencing render the potential of a prison term for a misdemeanor "white collar" criminal offense almost nonexistent. In response, Congress should consider stiffening maximum sentences for SCRA violations beyond the current 1-year cap. Doing so will provide the dreaded "felony" label to violations as well as raise the specter of a potential for incarceration for egregious examples of SCRA breaches.

#### b. Imposition of Civil Fines for Violations of the SCRA

None of the SCRA provisions pertaining to interest rates, mortgages, or installment loans contemplate civil fines as a deterrent to SCRA violations. Fines are only contemplated in terms of a criminal violation, and thus the government must demonstrate a "knowing" violation of the SCRA in order for any monetary penalty to attach. Congress should consider the imposition of civil fines for any violation of the SCRA—regardless of the existence of preexisting knowledge or intent.

In order to encourage compliance with the SCRA and discourage additional civil and criminal litigation, Congress should consider offering a discounted fine to SCRA violators that self-report breaches of the law. A 50 percent reduction in civil penalties owed for each violation of the SCRA will provide ample incentive to lenders to monitor their business practices, rapidly correct any breaches, and promptly remedy any damage inflicted upon servicemembers.

### c. Provision Providing for Attorneys' Fees in Conjunction with Civil Relief

In addition to the provision of civil fines, Congress should consider providing for the statutory right of recovery of reasonable attorneys' fees by servicemembers from SCRA violators. Due to the nature of SCRA protections, oftentimes damages suffered by servicemembers will be relatively small. If a servicemember were to retain the services of an attorney to attempt to enforce his SCRA rights, a typical attorney's contingency fee would decimate an already modest recovery by one-third or more—assuming that that servicemember could retain an attorney willing to invest in such a modest potential gain. Likewise, an attorney's hourly billable rate may exhaust a servicemember's recovery all together.

In contrast, the statutory provision for a recovery of reasonable attorneys' fees will enable servicemembers to seek counsel for the protection of their SCRA rights while vesting in the Federal judiciary the power to ensure that the servicemembers' attorneys are fairly compensated while prohibiting windfall fee awards. A successful example of such a statutory fee scheme may be found in civil rights litigation, more specifically that related to 42 U.S.C. 1983. Recognizing that a successful suit over a violation of civil rights may produce little or no financial reward, Congress enacted the accompanying authority of 42 U.S.C. 1988 that provides for "reasonable attorneys' fees" to be awarded to a successful plaintiff by the defendant adjudged liable for the violation. This statute has enabled victims of civil rights violations to have access to the civil justice system and civil counsel while preventing the award of excessive fees.

### CONCLUSION

I would again like to thank the Committee for the opportunity to speak on behalf of our clients and on behalf of the thousands of servicemen and servicewomen who have fallen victim to SCRA violations in the last several years. As the SCRA recognizes, its protections are essential to our national defense. It is my hope that Congress will take all steps necessary to ensure the continued vitality of this law.

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**Prepared Statement of Stephanie B. Mudick, Executive Vice President,  
Office of Consumer Practices, JPMorgan Chase & Co., New York, NY**

#### Executive Summary

Chase has discovered mistakes in our compliance with the Servicemembers Civil Relief Act (SCRA), and we are committed to fixing them. We deeply regret that servicemembers have been overcharged and in some cases faced foreclosure because of these errors. We are acting to make these customers whole as soon as possible and enhancing our safeguards to prevent such mistakes going forward. Chase is determined to get this right.

Chase has identified two problems: First, based on our review to date, some 4,500 servicemembers were charged interest rates and fees above SCRA's 6-percent cap. We have begun paying back those overcharges. Second, to date, we have found 18 cases where servicemembers were improperly foreclosed upon. For 12 of these borrowers, we have rescinded the sale or reached a settlement, and we will work to resolve the other cases.

Our review is on-going and these numbers could change. SCRA also applies to other types of consumer loans, and we are actively reviewing all our businesses to ensure they comply with the SCRA.

**Weaknesses in Chase's SCRA Compliance.** Our ongoing review of SCRA compliance has identified several operational problems that led to mishandling of SCRA loans. In some cases, Chase employees misinterpreted military orders and the length of time servicemembers were on active duty, affecting fees and interest rate charges. In other cases, errors on our part resulted in some loans not being identified as SCRA-protected, which resulted in overcharges, and in some cases, improper foreclosures.

**Enhancements to Our Processes to Prevent Further Problems.** Chase has made significant enhancements to our SCRA compliance protocols. We have centralized SCRA loan set-up in a single unit in Florence, South Carolina, where employees get special training in interpreting military orders and key decisions are reviewed by managers or other employees. Chase now checks SCRA loans daily to verify that the law's protections remain in place on Chase's system. We have added new controls to prevent foreclosures on borrowers covered by the SCRA.

***Military Initiatives.*** Chase is expanding our outreach to customers who may be in the military, advising them of SCRA's protections. This outreach will be automatic when a customer has a military address. We have set up a new customer service hotline for servicemembers, staffed by 30 Chase employees in Monroe, Louisiana. We are providing SCRA training to 2 employees in each of our 51 existing Chase Homeownership Centers created to help borrowers struggling with their mortgages. By this summer, these centers will be in 27 States and the District of Columbia.

Chase deeply regrets our errors in SCRA compliance. We are committed to correcting them, and making changes that will prevent such problems in the future.

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### **Introduction**

Chairman Miller, Ranking Member Filner, and Members of the Committee, thank you for inviting me to appear before you today. My name is Stephanie Mudick, and I am the Head of Consumer Practices at JPMorgan Chase & Co. I appreciate the opportunity to appear before you today to discuss errors that Chase discovered in its compliance with the Servicemembers Civil Relief Act (SCRA), the steps Chase is taking to compensate servicemembers mistakenly overcharged or improperly foreclosed upon as a result of those errors, and the enhancements that Chase has implemented in its controls related to SCRA compliance going forward. I will also discuss several new initiatives that Chase is implementing to ensure that Chase customers who are servicemembers have reliable information about their rights and receive the very best customer service we can provide.

Before I go further, I'd like to acknowledge to you that we clearly made mistakes here, and that we are working very hard on fixing them.

The SCRA provides vitally important financial protections to the men and women of our armed forces during active duty—a period of personal sacrifice for themselves and their families. I want to express to the men and women serving our country and to the Members of this Committee Chase's deepest regret over the mistakes we made in applying those protections. I also commit to you that Chase is determined to get this right. My focus today will be on mistakes in our mortgage business, where we first became aware of these issues. We are also reviewing all of our lines of business that are subject to the SCRA to ensure that they are in compliance. And if and wherever we find a mistake, we will fix it.

### **SCRA Compliance Errors**

We have identified two problems in our home lending business with respect to certain mortgages, including home equity loans, held by servicemembers who are eligible for SCRA protection.

*First*, under the SCRA, servicemembers who are on active duty and who took out a mortgage loan prior to the start of that duty are entitled to have the interest rate and fees on their mortgages capped at 6-percent interest for the period of their active duty, and 12 months afterward, by providing the lender with the orders calling them to active duty. In many instances, Chase charged SCRA-eligible borrowers who had provided Chase with their active duty orders interest and fees that raised their effective interest rate above the 6-percent cap for at least some part of the SCRA-covered period. We are in the process of calculating the refunds and credits for any interest that we charged SCRA-eligible borrowers above 6 percent, as well as fees (which do not include tax and insurance payments) charged to SCRA-eligible borrowers. To date, the amount we have identified equals approximately \$1.8 million. We have added to the refunds 7.25 percent interest from the date of the overcharge, which comes to approximately \$600,000, for a total of approximately \$2.4 million. The total number of affected servicemembers we have identified is approximately 4,500, and the median payment is approximately \$70, plus interest. We already sending an initial batch of checks to some of these servicemembers this week and intend to send additional checks over the coming weeks as we finalize and double-check the amounts they are due.

*Second*, the SCRA protects a servicemember from foreclosure judgment or sale while the servicemember is on active duty and, since SCRA was amended by the Housing and Economic Recovery Act (HERA) of 2008, that protection is extended for the 9 months after completing active duty. We are scrutinizing our files closely and to date we are aware of 18 servicemembers who were on active duty or otherwise within the SCRA/HERA protection period at the time of foreclosure sale. In 12 of these cases, we have either rescinded the sale or entered into a settlement with the borrower. We will attempt to make the remaining borrowers whole as quickly

as possible. We are continuing to review our files to make sure that we have identified all borrowers affected by these issues. If we find problems involving additional servicemembers protected by the SCRA, we will fix them.

#### **Weaknesses in Chase's SCRA Compliance**

We routinely review all of our businesses for compliance with applicable laws and regulations, including the SCRA. As part of that process, we became aware of weaknesses in our SCRA compliance.

We have identified several operational problems that caused us to mishandle SCRA loans. Chase's handling of military loans involved significant manual processing and complexity, which led to (i) human errors, including in the review and interpretation of military orders, the identification of the protected period from those orders, and the interest rate and fee calculations; and (ii) errors relating to the coding of these servicemember loans on our system, which resulted in certain loans not being properly identified as SCRA-eligible. For example, in certain instances, we misinterpreted the military orders, recording the protection period on the servicing system as commencing 2 weeks after the actual active duty date, leading to an interest rate overcharge for several weeks. In other instances, the coding on the system did not identify the account as SCRA-protected, leading to a longer period of overcharges and fees and, in some instances, to an improper foreclosure. We did not check the Web site maintained by the United States Department of Defense, called the Defense Manpower Data Center (DMDC) Web site, with sufficient frequency or consistency.

We understand that Mr. Harpootlian, the lawyer for Captain Rowles and his family, accompanied by the Rowleses, will testify before this Committee about the family's dealings with Chase in connection with their mortgage. We have reviewed the history of their account, and we clearly made mistakes in how we serviced their mortgage and how we dealt with them in trying to resolve those mistakes. The customer service that we provided to Captain Rowles and his wife was unacceptable, and the fact that this was a servicemember makes our mistakes all the more inexcusable. We deeply regret any hardship or distress we caused the Rowles family. We've communicated to Captain Rowles through his attorney our commitment to resolve this matter and our genuine desire to make him and his family whole as quickly as possible.

#### **Enhancements to Our Process to Prevent a Recurrence**

Recognizing the causes of the errors in SCRA-eligible accounts, Chase now has made significant enhancements to its processes to ensure that loans are properly categorized on the servicing system as SCRA-eligible loans, that SCRA protection periods are properly identified, that interest and fees are calculated correctly, and that several verifications are done and documented prior to any foreclosure sale to confirm that borrowers are not SCRA-eligible.

- **Enhanced Controls on SCRA Setup and Protection Period Determinations.** We have centralized SCRA loan set-up in a single unit located in Florence, South Carolina. The members of this group receive enhanced training on interpreting military orders, and every single determination of the protected period under military orders is subject to quality control by another employee. In addition, any determination by a member of this group that a borrower is not eligible for SCRA protection requires manager review and sign-off.
- **Enhanced Controls on SCRA-Eligible Loans.** Chase has instituted a daily review and reconciliation of the entire list of SCRA-protected loans to ensure that the SCRA codes blocking foreclosure of those loans remain in place, and a periodic review to ensure that the aggregate interest and fees on these loans are capped at 6 percent.
- **Enhanced Controls on Interest Rate Calculation.** The calculation of the 6-percent interest rate cap now is subject to 100 percent quality control review by another employee every billing cycle.
- **Enhanced Controls on Foreclosure Referrals and Sales.** Chase has implemented enhanced controls on foreclosure referrals and sales through repeated checks on military status at different points in the process. First, before any loan is referred for foreclosure, an Independent Foreclosure Review team reviews each loan for military status by checking Chase's own system and the DMDC Web site. Second, before the first legal filing to start a foreclosure, Chase policy requires its local foreclosure counsel to check the DMDC Web site and then upload evidence of that check onto Chase's servicing system. Third, 2 to 3 weeks before foreclosure sale, the Independent Foreclosure Review team again reviews the servicing system for military coding and checks the DMDC

Web site. Finally, 96 hours before a foreclosure sale, a Pre-Sale Review team reviews the loan again for military status.

To summarize, today when a servicemember calls to tell us he or she is going on active duty, a special unit of Chase reviews the military orders and codes the account to reflect the start date for SCRA coverage. Once the system is coded, the account is capped at 6-percent interest and fees until 1 year following the end of the active duty period. We have created a hotline—staffed by employees who have received training on SCRA—to handle borrower questions. And Chase or its outside counsel checks the DMDC Web site at least three times before moving to a foreclosure sale.

We are committed to addressing effectively the issues that we found with our SCRA compliance. Therefore, the current processes are being reviewed by Chase Internal Audit and by Chase's Operational Risk unit, with the assistance of outside advisors, to ensure that they are effective in identifying SCRA-eligible servicemembers and ensuring that these servicemembers receive the protections provided under the SCRA.

#### **Student Loans**

We would like to explain our deferral policy with regard to student loans. Several years ago, we began deferring all student loan payments for active duty servicemembers, in addition to lowering the interest rate and fees to 6 percent. This policy went beyond the requirements of SCRA. However, as part of a broader review of our forbearance policies in our student lending business, last December we stopped offering deferments for new participants. When some servicemembers expressed concern, we decided to reinstitute the deferment option and offer them a choice: continue paying at 6 percent, or defer the payments.

#### **Military Initiatives**

In addition to these enhancements to our controls, we also are taking certain other proactive steps to better support our servicemember customers.

First, we are enhancing our communications with military personnel about their SCRA rights. Chase already has a specific Web page dedicated to military personnel ([www.chasemilitary.com](http://www.chasemilitary.com)), and we plan to provide a prominent link to a Web site recommended by the Department of Defense (DoD).<sup>1</sup> We will also send a letter to borrowers whom we believe may be military personnel based on information that comes to our attention. Our letter will alert them to the existence of SCRA protections and direct them to the DoD-recommended Web site for further information. We would welcome the opportunity to work with the government to provide additional information to servicemembers about their rights.

Second, to improve our ability to identify military personnel to whom such a letter should be sent, we are following the suggestion of Holly Petraeus, the newly appointed Team Lead of the Office of Servicemember Affairs of the Consumer Financial Protection Bureau Implementation Team, that we identify servicemembers by setting up a process for identifying when a borrower has changed his or her home address from a standard street address to an APO or FPO. When we are alerted to such a change of address, we will reach out to the servicemember to alert them to the existence of SCRA protections.

Third, we also believe it is critical to ensure that our servicemember customers have access to customer service representatives who understand their unique issues and can provide top quality service. Therefore, we have created a hotline (877-469-0110) that is staffed by approximately 30 Chase employees based in Monroe, Louisiana who are trained on SCRA coverage. These customer service personnel also will be able to liaise directly with Chase personnel involved in the system setup of SCRA protection periods to ensure that any issues with those protection periods are quickly resolved.

We are also training two people in each of our existing 51 Chase Homeownership Centers (CHOCs) in SCRA matters so that servicemembers and their families can have local access when they would like to speak to a Chase representative face to face. Chase Homeownership Centers are local offices devoted exclusively to serving families struggling with their Chase mortgages, and CHOC counselors will help customers understand the full range of options available that could allow them to stay in their homes. We recently announced we will soon open an additional 25 CHOCs. This expansion will bring Chase Homeownership Centers to a total of 27 States and the District of Columbia, reaching the vast majority of borrowers with Chase mortgages.

<sup>1</sup> <http://www.militaryonesource.com/MOS/FindInformation/Category/Topic/Issue/Material.aspx?MaterialID=15924&MaterialTypeID=9>.

In closing, I would like once again to express Chase's deepest regret to Captain Rowles and his fellow servicemembers for our errors in SCRA compliance. I hope that my testimony has made clear that we are committed to correcting past mistakes and that we will continue to improve processes and controls to ensure that we are in full compliance with the SCRA.

I would be happy to answer questions from the Committee.

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**Prepared Statement of Hollister K. Petraeus, Team Lead,  
Office of Servicemember Affairs, Consumer Financial Protection Bureau  
Implementation Team, U.S. Department of the Treasury**

Chairman Miller, Representative Filner, and distinguished Members of the Committee: thank you for the opportunity to speak with you today about the Servicemembers Civil Relief Act as well as the Consumer Financial Protection Bureau (CFPB) Implementation Team's work to establish the Office of Servicemember Affairs (OSA). First of all, I'd like to thank this Committee for its continuing efforts to protect servicemembers, veterans, and their families from predatory financial practices. As many of you know, I've been a member of the military community my entire life, and I feel that it's very important that our military has strong advocates working on its behalf. And it's my intent that the Office of Servicemember Affairs be one of those strong advocates, educating and looking out for military personnel and their families.

First, I'd like to tell you a bit about my background, especially my work on military financial education issues during the last 6 years. Next, I'll provide some background on the Consumer Financial Protection Bureau and the Office of Servicemember Affairs (OSA). Finally, I'll touch on the alleged violations of the Servicemembers Civil Relief Act (SCRA) that are the subject of today's hearing.

**My Background**

I come from a military family, one that has a tradition of service going back to the Revolutionary War. My father served in the Army for over 36 years, fighting in both World War II and Vietnam. Two of my brothers also served in Vietnam, and, of course, my husband is currently serving. And I'm a military mom, as well. The military is in many ways a separate community in our Nation, and it's one that I have the privilege to know very well.

The last time I testified before Congress was over 6 years ago, when I spoke about deployment-related issues at a joint hearing of two Senate Subcommittees: The Subcommittee on Children and Families from the Committee on Health, Education, Labor & Pensions, and the Subcommittee on Personnel from the Committee on Armed Services. At that time, my husband had just begun the second of three deployments to Iraq and I was a longtime volunteer in the military community. As a volunteer, I had the opportunity to serve as a senior Family Readiness Group advisor during deployment and to work with local, State and national legislators on issues affecting Army families. Five months after that testimony, I became the Director of BBB Military Line, a program of the Council of Better Business Bureaus (BBB) providing consumer education and advocacy for servicemembers and their families—a position that I held for 6 years. In that role, I oversaw a national program that worked with the Department of Defense (DoD) as a partner in the DoD Financial Readiness Campaign and fostered outreach from the 120 local Better Business Bureaus to military communities across the United States.

While with the BBB, I made on-site visits to many military installations, learning about the consumer issues that impacted them, giving presentations on consumer scams, and working to establish local BBB-military relationships. I guided development of teen and adult financial education curricula taught to over 10,000 individuals in military communities around the United States, and wrote a monthly consumer newsletter addressing issues of interest to the military.

Last fall, I was one of a number of people who offered advice to Professor Warren when she first began her task of setting up the Consumer Financial Protection Bureau. And when she offered me the opportunity to be in on the ground floor of building the Office of Servicemember Affairs, I couldn't resist this new opportunity to serve as an advocate for military personnel and their families.

**Functions and Structure of the CFPB**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which was signed into law on July 21, 2010, established the CFPB as an independent bureau within the Federal Reserve System and charged it with ensuring that consumers have the information they need to make financial decisions that are

best for them and their families. The CFPB will work to promote fairness, transparency, and competition in the markets for mortgages, credit cards, and other consumer financial products and services. The CFPB will set—and enforce—clear, consistent rules that allow banks and other consumer financial service providers to compete on a level playing field and that allow consumers to see clearly the costs and features of financial products and services.

Under the Dodd-Frank Act, the Secretary of the Treasury has responsibility for standing up the CFPB until a Director of the CFPB is in place. In September, the Secretary asked Elizabeth Warren to serve as a Special Advisor leading the effort to stand up the CFPB. The CFPB implementation team, currently housed within the Treasury Department, is hard at work putting in place the building blocks for the CFPB.

The CFPB Implementation Team is divided into several teams that are standing up the various functions of the CFPB, including: Bank Supervision, Nonbank Supervision, Enforcement, Financial Education, Rulemaking, Consumer Response, Fair Lending, Research and Markets, etc. On July 21st of this year, many consumer financial protection functions that are currently with other agencies will transfer to the CFPB—I have to point out, however, that responsibilities relating to the Servicemembers Civil Relief Act, the focus of this hearing, will remain with the prudential regulators and the Justice Department. Eventually, the CFPB will grow into a fully operational financial regulator and supervisor, and it will be the primary place where members of the public—including servicemembers—can come with questions and complaints about consumer financial products and services.

#### **Functions and Structure of the Office of Servicemember Affairs**

Professor Warren asked me to join the implementation team at the end of last year. I started a little less than a month ago, and we are hard at work building the Office of Servicemember Affairs.

The Dodd-Frank Act authorizes the OSA to work in partnership with the Pentagon to see that military personnel and their families receive strong financial education, to monitor their complaints about consumer financial products and services—and responses to those complaints—and to coordinate efforts by Federal and State agencies to improve consumer financial protection measures for military families. We are authorized to enter into agreements with the Department of Defense to carry out OSA's work and to make sure that we achieve those goals.

Within the CFPB, our job is to make sure that every division of the CFPB understands the unique military community and the financial issues that impact it. I plan to work with our examiners to ensure they are current on military-specific issues, to encourage our enforcement team to take action against financial providers who break the law to harm servicemembers and to work with the consumer response unit to be sure that it is attuned to the military community and responsive to its concerns. We also plan to work closely with the consumer financial education team at the CFPB. History has shown us that best practices developed in support of the military can translate to the larger U.S. community—and that the military can be a great test bed for innovative financial education products that could have an application to the population at large.

According to our current draft organizational chart, the Office of Servicemember Affairs will eventually fit under the Associate Director for Education and Engagement, along with financial education and other offices that focus on particular segments of the population. Although education and engagement will be our primary responsibilities, our reach will go beyond our box on the organization chart; the goal is for the OSA to work closely with all parts of the CFPB to make sure that they keep the needs of the military community in mind in all of their work.

#### **Outreach Activities**

Right now we are focused on planning and scheduling visits to military bases and other meetings that will help us identify the problems and determine where we can make the biggest difference. I have already met with senior DoD officials, including Robert Gordon, the Deputy Assistant Secretary of Defense for Military Community and Family Policy. It's clear to me that the people at the Pentagon are very supportive of our mission, and we are working closely with them to plan our future activities. In addition, I have met with senior staff from the Department of Justice's Civil Rights Division, headed by Assistant Attorney General Tom Perez. The Justice Department is also supportive of our mission and eager to work with the CFPB to protect the rights of servicemembers. I was pleased to hear about the scope of DOJ's enforcement activities on behalf of servicemembers, which includes authorized lawsuits against 3 nationwide lenders and several active investigations involving both foreclosures issues and failure to lower the interest rate to 6 percent. We are plan-

ning to coordinate closely with DOJ in light of its enforcement responsibilities under the SCRA.

This past Tuesday, I sent a letter to the chief executive officers of the 25 largest banks that provide mortgage servicing. This was prompted by the recent news reports alleging that major financial institutions had violated the Servicemembers Civil Relief Act, which provides financial protections for our military. I urged the chief executive officers to take steps to ensure that their institutions are in compliance with the law.

### **Military Outreach**

We've already started a conversation with the military community. Professor Warren and I have been to Joint Base San Antonio, where we had two roundtable discussions. The first was with military service providers, including lawyers, financial counselors, mental health professionals and chaplains, as well as the base's leadership. We asked questions about what scams and other financial problems these service providers were seeing, and how they thought those financial problems might be dealt with. The second roundtable was with military personnel and spouses from the Air Force, Army and Navy. They felt strongly about the need for mandatory financial training, not just in basic training, but on a continuing basis. The military spouses in the room also brought up the challenges of deployment for dual-career couples, and the difficulties and temporary loss of income when moving a spouse's civilian career job, as well as the basic financial strains of frequent moves. I could certainly relate to that, as I have moved 23 times in 36 years of marriage! We plan to do more roundtables, and have a tentative travel schedule mapped out through the spring that includes about one base visit per month.

### **Servicemembers Civil Relief Act**

Protecting our servicemembers from suffering devastating financial repercussions for answering the call to service is not only the right thing to do—it is also important to our National security. Military personnel who are distracted by financial problems cannot do their jobs to the best of their abilities. In fact, hundreds of people in the military have their essential security clearances revoked each year due to financial problems, which then means they can't do the job they were trained for. A recent Department of Defense survey found that servicemembers consider their finances to be the second largest source of stress in their lives, behind career concerns but ahead of deployments, health, family, and war.

The SCRA provides important safeguards for our military families who do so much for our country. It protects military personnel who are called to active duty by lowering the interest rate to 6 percent on certain debts incurred before entering active duty, including mortgage and credit card loans. Additionally, the SCRA provides certain protections from foreclosure for the home of a servicemember on active duty.

In light of the importance of protecting our servicemembers, I was dismayed to learn about the recent allegations of mortgage-related violations of SCRA. I hope that the recent attention to this issue will cause all lenders to take steps to educate their employees about the financial protections that the SCRA provides and to take appropriate proactive steps to ensure compliance. This law was put in place to enable our soldiers to focus on their jobs, and it's important that it be adhered to. Servicemembers should not have to struggle to get the provisions that are due to them under law. A National Guard wife once told me that her husband had been activated three times, and each time she had had to fight with their bank for months to get the SCRA applied.

As you know, a foreclosure is devastating for any American family to experience, but it can be especially painful for military families. Both the family back home and the servicemember abroad, who feels helpless to take action to prevent the foreclosure, are put in a terrible situation. That's why it is so important that servicemembers receive all the protections afforded to them under the SCRA. Again, I would hope that the recent problems will be a wake-up call for all banks and other financial companies to be especially careful to comply with the SCRA.

### **Conclusion**

Last month, I attended the White House announcement of the "Strengthening Our Military Families" initiative. The President, First Lady and Dr. Biden all spoke at that event, affirming their commitment to military families, and almost the entire cabinet was in attendance as well. There is currently a very positive feeling in this country toward the service and sacrifice of military families, and a desire to support them. One way to help is to enforce the laws that are already on the books to protect them, and to hold to account those who ignore them. Another is to write new rules when needed. It's also important to educate the military about their fi-

financial protections and about best financial practices. That will all be a big part of the mission of the CFPB and the Office of Servicemember Affairs.

**Prepared Statement of Colonel Shawn Shumake (USA), Director,  
Office of Legal Policy, Office of the Deputy Under Secretary  
of Defense, U.S. Department of Defense**

Chairman Miller and Members of the Committee, thank you for extending the invitation to the Department of Defense to comment on the Servicemembers Civil Relief Act (SCRA) and explain how we educate our servicemembers, their families, and private industry about it. The Department recognizes the fundamental importance of the SCRA. No other statute provides the breadth of benefits and protections for servicemembers as are found in the SCRA. It protects those who have dropped their own affairs and taken up those of the Nation.

*Purpose and Importance of the SCRA*

The purpose of the SCRA is no less lofty than to provide servicemembers' peace of mind, knowing that while they put their lives at risk to protect this great Nation, their personal affairs and economic interests will be protected. They and their families will be relieved from many of the day-to-day strains and pressures that the rest of us are more easily able to handle.

The SCRA's protections are broad and diverse. It protects servicemembers from evictions, default judgments, and foreclosure. It allows them to delay judicial proceedings and to cap their interest rates. It provides them and their spouses certain tax relief. It does more for our servicemembers than any other single law by shifting—at least temporarily—some of the burdens associated with military service from the servicemember to others more capable of bearing those burdens.

*Congressional Efforts to Strengthen Enforcement of the SCRA*

Congress continues to play the most critical role in protecting our servicemembers and their families. To ensure that the SCRA could be aggressively enforced by those it is designed to protect, the 111th Congress passed the Veterans' Benefit Act of 2010.<sup>1</sup> This law could have the most broad-reaching effect of any single change to the SCRA since the overhaul and update of the SCRA in 2003. The Veterans' Benefit Act of 2010 clarified that servicemembers and others that it protects could seek civil enforcement through the courts and receive monetary damages and attorneys' fees. It also clarified that the Attorney General has similar enforcement authority on behalf of servicemembers and other aggrieved persons.

Although many courts had found that such a private right of action was implied, others have resisted this interpretation, leading to the almost unconscionable conclusion that servicemembers had benefits and protections that could not be enforced. In *Hurley v. Deutsche Bank Trust Co. Americas*,<sup>2</sup> which recently received front page coverage on the New York Times,<sup>3</sup> the court initially ruled that a Michigan National Guardsman whose home was illegally foreclosed on and sold to a third party while the Guardsman was deployed to Afghanistan, had no legal remedy. Only through expert legal counterattacks by the servicemember's attorneys was the court persuaded to reverse its position—but only after adding 6 months to the already protracted litigation. Just the danger of such daunting impediments to the enforcement of smaller claims could leave servicemembers wronged, and without remedy. The Veterans' Benefit Act of 2010 ended such worries.

*Substantive Changes to the SCRA*

Congress has for the last several years recognized the burdens that military service places on servicemembers through a number of substantive changes to the SCRA designed to relieve some of the burdens associated with military service.

The 110th Congress recognized these burdens and amended the SCRA in 2008 to extend the 6-percent interest rate cap for pre-service *mortgage* obligations. This interest rate cap, which had been in effect for decades, had previously only applied

<sup>1</sup> Section 303 of the Veterans' Benefit Act of 2010, Public Law 111-275, October 13, 2010, amended the Servicemembers Civil Relief Act (50 USC App. § 501 et seq) by adding at the end new title VIII, Civil Liability. This title contains new sections of the Servicemembers Civil Relief Act: 801, Enforcement by the Attorney General; 802, Private Right of Action, and 803, Preservation Of Remedies. These have been codified as sections 50 USC App §§ 597, 597a and 597b.

<sup>2</sup> *Hurley v. Deutsche Bank Trust Co. Americas, et al.*, 2008 WL 4539478 (W. D. Mich., 9/30/2008, Case No. 1:08-cv-361), *vacated by* 2009 WL 701006 (W.D. Mich. 3/13/2009).

<sup>3</sup> <http://www.nytimes.com/2011/01/27/business/27foreclose.html?scp=1&sq=John+Odom&st=nyt>

for actual periods of active duty. This amendment extended the interest rate cap for pre-service *mortgage* obligations for an additional year after leaving active duty.<sup>4</sup>

At the same time, Congress also temporarily amended the SCRA to extend protections from foreclosure on pre-service mortgage obligations from 90 days to 9 months after the servicemember leaves active duty. Under these conditions and during this time, no servicemember can be foreclosed on absent a court order.<sup>5</sup> This extension to 9 months would have reverted by law to the previous 90 days on January 1, 2011. In one of its last acts, the 111th Congress extended this sunset provision for 2 years.

#### *Additional Statutory Protections Addressing the Burdens of Service*

In February 2009, the 111th Congress provided \$555 million in the American Recovery and Reinvestment Act to expand the pre-existing Homeowner's Assistance Program (HAP) benefits to address unique economic pressures faced by military personnel who are required to relocate during adverse housing market conditions. Congress added another \$300 million for HAP in 2010.

HAP seeks to minimize the amount of financial harm—including risk of foreclosure, credit damage, or bankruptcy—that servicemember and civilian beneficiaries may experience when they are compelled to relocate under military orders. As of January 27, 2011, HAP has assisted 4,483 homeowners at a program cost of \$674 million. Another 4,643 homeowners are currently being evaluated for eligibility.

On May 20, 2009, the 111th Congress recognized that because most servicemembers are not homeowners, but rather are renters, they faced particular difficulties when their landlords were foreclosed on. The Helping Families Save Their Homes Act of 2009,<sup>6</sup> provides significant protections when such servicemembers face possible displacement. Although the above two statutes do not directly amend the SCRA, they recognize that servicemembers face challenges with their housing that puts them at greater risk than the rest of the country.

#### *The Education Process*

These amendments to the SCRA and the other powerful statutory provisions discussed above, show Congress clearly recognizes the difficulties of military service. Of course, the protections and benefits from these and other laws mean little if our servicemembers do not know about them.

The Service secretaries are directed to ensure that their Members know about the benefits and protections of the SCRA and of other similar laws. This educational process involves coordinated and overlapping efforts to alert the servicemembers and their commanders of these benefits and protections and then to ensure that the proper counselors are there to help the servicemember fully understand the nuances of the laws and receive everything the laws promise their full benefits and protections. The Department has worked closely with the Department of Justice, which has enforcement authority under the SCRA. Together DoD and DOJ have trained attorneys in the military legal assistance program so they are well prepared to answer servicemembers' questions and identify potential violations of the SCRA. The military legal assistance program provides the first line of defense for our servicemembers; however, if they are unable to resolve the matter, the servicemember may be referred to private counsel or seek representation through any number of State and local pro bono programs. The DoJ has also intervened on behalf of servicemembers when necessary to protect servicemember's rights and interests.

The Department's efforts to educate servicemembers and their families center around the installation and the various reserve component mobilization and demobilization processing centers. These reserve component processing centers are particularly critical because two of the most important economic protections and benefits—the 6-percent interest rate cap and the extension of foreclosure protections—only apply to *pre-service* obligations. Accordingly, those most likely to benefit from these protections are Reservists and National Guardsmen called to active duty.

Because each of the Services has the authority to best determine how to provide the necessary training and counseling, the Department has asked the Services to set out how they educate their members about the SCRA. The timing of the Committee's request did not allow time to gather the data and then organize it to show the many ways the information is presented to the servicemember; therefore, that information will be submitted separately to the Committee as soon as possible.

<sup>4</sup>P.L. 110-289, The Housing and Economic Recovery Act of 2008, § 2203(b).

<sup>5</sup>P.L. 110-289, The Housing and Economic Recovery Act of 2008, § Section 2203(a).

<sup>6</sup>P.L. 111-22, Title VII, the Protecting Tenants at Foreclosure Act of 2009, §§ 701-704.

**Statement of Colonel John S. Odom, Jr., USAF (Ret.) Esq.,  
Jones & Odom, LLP, Shreveport, LA**

Honorable Jeff Miller  
Chairman  
House Committee on Veterans Affairs  
335 Cannon House Office Building  
Washington, DC 20515

Honorable Bob Filner  
Ranking Member  
House Committee on Veterans Affairs  
2428 Rayburn House Office Building  
Washington, DC 20515

Re: February 9, 2011 Hearing on Alleged violations of the Servicemembers Civil Relief Act

Mr. Chairman, Ranking Member Filner, Members of the Committee:

I am grateful to the Committee for its invitation for me to present testimony on alleged violations of the Servicemembers Civil Relief Act (SCRA) by financial institutions and related matters. Cases arising under the SCRA occupy a substantial amount of my law practice and I appreciate any opportunity to share with the Members of Congress information about violations I have observed and suggestions I have for improvements to the SCRA.

By way of introduction, I am a practicing attorney in Shreveport, Louisiana. From 1973 to 2005, I served as a judge advocate in the United States Air Force. Although I retired in 2005 in the grade of Colonel, I was recalled from retirement in 2010 and served for 6 months in the Office of Legal Policy, Undersecretary of Defense for Personnel & Readiness in the Pentagon. During that tour of duty, I was the principal author on a Report to Congress concerning certain child custody matters related to the SCRA. For over 20 years, I have lectured extensively on the topic of the Soldiers' and Sailors' Civil Relief Act (SSCRA), and the SCRA at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama, the Army Judge Advocate General's Law Center and School at Charlottesville, Virginia and the Naval Justice School at Newport, Rhode Island. I have also lectured for local, State and national bar associations, judges' conferences and judicial colleges, consumer advocacy groups, bankruptcy trustee associations and financial service groups around the country concerning the SSCRA and the SCRA. I have recently completed writing a Bench Book on the SCRA which will be published by the American Bar Association later this year. I have represented countless servicemembers in a variety of claims under the SCRA, both in negotiations which led to out of court settlements and others that resulted in successful litigation.

At the present time, I am lead counsel for Sergeant James Hurley in his suit against Deutsche Bank Trust Co. Americas, Saxon Mortgage Services, Inc. and Orleans Associates, P.C., currently pending in the Western District of Michigan (Case No. 1:08-cv-361). As of February 4, 2011, over 300 pleadings had been filed in that case and the attorneys representing Sergeant Hurley have expended over 5,000 hours trying to recover damages for a National Guardsman whose home was illegally foreclosed upon, his family evicted and the property sold to a third party while he was deployed to Iraq. The case presents the worst case scenario for any servicemember—answering the call to duty only to find that when you returned home, everything you valued most in the way of property was irrevocably gone and nothing you did could recover it. The most amazing aspect of *Hurley* is the fact that after nearly 3 years of litigation, the Court granted summary judgment in favor of Sergeant and Mrs. Hurley against the mortgage company, the mortgage servicing company and the law firm that had carried out the illegal foreclosure—and still there has been no monetary settlement to compensate this family 2 years after the defendants lost by summary judgment.

The Chairman's invitation to present testimony asked that I inform the Committee of information I had on (1) financial institution compliance with SCRA; (2) how to best educate servicemembers as to their protections and responsibilities under SCRA; and (3) how to best inform the industries affected by SCRA as to their obligations. I was also asked to include any suggested changes or clarifications I believe need to be made to improve the SCRA.

I want to thank this Committee and the entire Congress for the significant improvements made to the SCRA near the end of the 111th Congress. Specifically, the amendments to the SCRA contained in the Veterans' Benefit Act of 2010, Public Law 111-275, amended section 305 of the Act (50 U.S.C. App. § 535) to specifically prevent any early termination fees for leases of premises or motor vehicles being terminated under the Act. It also revised section 305a (50 U.S.C. App. § 535a) to make termination of cell phone service contracts easier for servicemembers who are transferred to an area where their contract carrier does not offer service. Finally, and most importantly, Public Law 111-275 established a new Title VIII for the SCRA, comprised of sections 801 through 803 (50 U.S.C. App. § 597, 597a and 597b)

that clarify that the Attorney General has enforcement authority and that a private cause of action exists for damages plus costs and attorneys fees to sue violators of the SCRA. Those amendments are invaluable and I express my sincere appreciation for that action. When the President signed the law on October 13, 2010, he took action that will eliminate the need for future litigants to prove, as was the case in Sergeant Hurley's case, that they had a right to bring an action for damages against violators of their SCRA rights. That exercise in *Hurley* alone took nearly 2 years and countless hours of legal work to convince a Federal judge that Sergeant Hurley had a right to be in court.

### **1. Financial Institution Compliance with SCRA**

After handling hundreds of SCRA issues related to financial institutions, I am convinced that many of the financial institutions in our country, including some of our largest banks and mortgage companies, have a fundamental misunderstanding of the SCRA. Specifically, with regard to pre-service obligations, the financial community is well aware of the procedures necessary for a servicemember to request interest rate relief under 50 U.S.C. App. § 527. If a servicemember has a pre-service obligation that bears interest at a rate above 6 percent per annum, they can make written demand to the creditor for reduction in the interest rate to no more than 6 percent. Per the terms of the SCRA, the servicemember must submit to the creditor a copy of their military orders. That demand for interest rate relief can be made at any time during the period of service, or within 180 days after release from active duty and any reduction would be retroactive to the first date of active duty. We refer to that as a section 527 request and the banks and other financial institutions know precisely how to administer such demands.

The complete disconnect comes when the situation moves from demands for interest rate relief under section 527 to the protections against non-judicial foreclosures of mortgages under 50 U.S.C. App. § 533. The existing mortgage foreclosure protection—regardless of whether the default on the mortgage occurs prior to or during the period of active duty—provides that no sale, foreclosure or seizure of property for a breach of a mortgage protected by the SCRA (that is, a pre-service mortgage) is valid if made during or within 9 months after the period of service *except upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court*. In other words, if a mortgage is protected by the SCRA, no self-help, or non-judicial foreclosure is allowed. There are 23 States in which some form of non-judicial foreclosure is ordinarily allowed. In those States, the mortgage companies will have obtained a waiver of any legal proceedings in the event of a default in the mortgage documents themselves. However, such a waiver is invalid under 50 U.S.C. App. § 517. When the mortgage companies want to foreclose on mortgage protected by the SCRA, they must file an ordinary lawsuit and get service on the defendant-servicemember. The servicemember is then entitled to a hearing before a judge, who has the power to stay the foreclosure, adjust the obligations between the parties and basically do just about anything the judge wants to do to protect the servicemember and his or her family from foreclosure. The mortgage companies have a hard time accepting the fact that the SCRA alters the terms of conventional contracts—but that is precisely what the Act does.

In my experience, the mortgage companies do not understand that they cannot foreclose on an SCRA-protected mortgage except judicially. I am aware of any number of cases, *Hurley* being a prime example, in which the mortgage company stubbornly demanded copies of the servicemembers' individual orders before according them SCRA protection. That may be appropriate in a section 527 interest rate relief case, but it is completely improper in a section 533 case involving protection from a non-judicial foreclosure. The creditors have the burden of ascertaining the military status of debtors before exercising any non-judicial foreclosure rights. Congress shifted the burden from the servicemember (where the burden falls in a section 527 interest rate relief situation) to the creditor (where it falls in a section 533 mortgage foreclosure situation). The creditors have no right to try and shift that burden back to the servicemembers.

Banks and mortgage companies cannot have a "one size fits all" SCRA compliance policy. A policy that may be valid for compliance with Section 527 interest rate relief requests is probably useless for section 533 mortgage foreclosures if the creditor is insistent on receiving copies of orders before granting SCRA protection from non-judicial foreclosures.

The *Hurley* case is illustrative of the problem. During the run up period prior to his actual reporting for active duty, Sergeant Hurley received his unit mobilization orders at the weekend drill in September 2004. He knew he was being mobilized and from the point he received those orders, he was protected under Titles I, II and III of the SCRA (*see* 50 U.S.C. App. § 516. His mother, holding a power of attorney

from him, contacted the mortgage servicing company on his loan a total of six separate times informing Saxon Mortgage Services that Sergeant Hurley was being mobilized and would go on active duty effective 25 October 2004. The notifications included having Sergeant Hurley's commanding officer fax a letter to Saxon indicating "this soldier is trying to claim his SCRA rights." Saxon already had Hurley's name, Social Security Account Number and unit information from earlier orders he had sent to them. The fax from the commanding officer included a letter advising that Sergeant Hurley would be on active duty beginning 25 October 2004 for a period of up to 18 months, and included a copy of the First Army unit mobilization orders. Sergeant Hurley's individual orders were not issued until 12 October 2004. Despite all of those notices (which the Federal judge on the case has determined provided more than enough information for Saxon to know Sergeant Hurley was protected by the SCRA), Saxon referred the file to a Michigan foreclosure firm, Orleans Associates, P.C., which initiated a non-judicial foreclosure on Sergeant Hurley's property on 14 October 2004. In the referral of the file, Saxon failed to notify Orleans that Hurley's case might involve protections under the SCRA. Obviously, the Hurley file must have been referred to Orleans Associates for foreclosure at some time prior to 12 October 2004 (the date of Hurley's orders). In other words, Saxon was demanding Hurley submit something that did not exist—his individual orders and refusing to follow the SCRA's prohibition against non-judicial foreclosures under *they*—not Congress—felt like granting Hurley SCRA protection.

As the court in *Hurley* ultimately ruled, it was Sergeant Hurley's status as a mobilized member of the National Guard that provided the SCRA protection—regardless of Saxon Mortgage Services' illegal policy demanding that orders—that did not even exist—be submitted before protection would be accorded him. Saxon continually attempted to impose on the servicemember a requirement from one section of the SCRA (Section 527's requirement to submit a copy of the orders) in a case arising under another section of the Act (Section 533). The Supreme Court in *Conroy v. Aniskoff*, 507 U.S. 511 (1993) has ruled that the Act is a "carefully reticulated" statute. Congress is presumed to know what it enacts and requirements of one section of the Act cannot be superimposed on another section of the Act. If Congress wants to amend the law, fine—but the creditors do not get to decide when a servicemember is protected. The Congress has already made that decision.

One simple illustration suffices to show why an SCRA compliance policy that requires submission of orders before section 533 protections are accorded is invalid. Suppose a servicemember had a mortgage that had an interest rate below 6 percent. In such a case, the servicemember would not be entitled to any relief from his or her mortgage company and might go off to war without ever notifying the mortgagee of anything. Thereafter, if the mortgage obligation went into default (the reason for the default is completely immaterial), it would be preposterous for a mortgage company—claiming that it could foreclose non-judicially because the mortgagor had never sent in a copy of his or her orders—to conduct a non-judicial foreclosure and then sell the property. Such a violation of 50 U.S.C. App. § 533 would be viewed as a travesty, and would have taken place because the creditor failed to take the minimal time required to ascertain the active duty status of the mortgagor.

The Department of Defense, through the Defense Manpower Data Center, maintains a publically accessible Web site (<https://www.dmdc.osd.mil/appj/scra/scraHome.do>) where anyone can check the active duty status of a person with only a name, Social Security number and date of birth (or just a name and either a Social Security number or a date of birth). Every creditor is going to have a Social Security number on a mortgage debtor to issue the certification of the amount of interest paid at year end for income tax returns. It takes only a few seconds to type in the necessary search data and about 5 seconds for a certificate to pop up on the computer screen advising if the person is on active duty and, if so, what branch, the initial date of active duty and, if the person has been released from active duty within the past 366 days, the date of last active duty. The process is so simple that there is no excuse whatsoever for a creditor not ascertaining the military status of a debtor before any non-judicial mortgage foreclosure proceeding is commenced.

I have permission from several clients to mention their names and briefly describe their battles with mortgage companies. I represented Sergeant John Savage of North Carolina several years ago in a suit against a major lender that had lowered his interest rate on his request and sent him a letter advising him of the new, lower monthly payment. He left for Iraq and every month his wife sent in the new payment, the payment center returned the check with a notation that they did not accept partial payments. After several months, the mortgage company posted a notice of non-judicial foreclosure on the door of their home. When Mrs. Savage came home from her job at Wal-Mart, she found their teenage son curled up on the front porch inconsolable after he had seen the foreclosure notice and believed the family was

about to become homeless—all because their father had answered his country's call to arms. While we got the foreclosure stopped, the bank did not clean up Sergeant Savage's credit and when he returned—injured and partially disabled—he was unable to borrow any money to restart his small business. All because the payment center of the bank did not get the word from the legal department.

Chief Warrant Officer 2d Class Chip Pickett of Arizona had me on his speed dial from Iraq. When he was not flying helicopter missions in combat, he was doing battle with Bank of America which, although they had coded his mortgage as SCRA protected, for unknown reasons kept referring it to a non-judicial foreclosure four different times over an 8-month period. Every time Chip would call, I would have to stop everything I was doing and contact Bank of America to get the same wrong answer—"The house is not going to be foreclosed upon. Uh-oh, wait a minute. We'll need to contact that law firm and stop the foreclosure sale set for tomorrow." Frustrating does not begin to describe how the process made me feel. To think that anyone deployed overseas could handle these types of problems is ridiculous. Moreover, Chip's mind was diverted from the one thing we really wanted him to be concentrating on—flying his aircraft safely and effectively. This is a combat effectiveness issue if ever there was one.

The banks are going to have to improve their internal communications and implement SCRA compliance policies that actually comply with the law. If regulators are going to audit SCRA compliance, this Committee must make sure the auditors understand what they are supposed to be looking for. Most regulators came from the banking industry, and I have low confidence in their understanding of what "non-judicial foreclosures" actually means.

## **2. Education of Servicemembers on Rights and Responsibilities**

The SCRA already requires education of all new servicemembers on their rights and responsibilities under the SCRA. However, young people tend to hear what they want to hear. They hear about 6-percent interest rate caps and tune out the part about "pre-service obligations." They hear "SCRA-protected" and some of the troops mistakenly think that means they can stop making their monthly payments.

The sources of good, reliable information on the SCRA are almost too many to count. Within the DoD, the Military OneSource Web site has accurate and understandable information about SCRA and specifically how to deal with mortgage problems available within two clicks of the mouse when on their site. I have reviewed the materials and they are quite good.

Every post, base and station with a Legal Office has trained Legal Assistance officers available for assistance. Through the training these judge advocates, civilian attorneys and paralegals receive at the Service JAG Schools, they are able to assist in contacting creditors, drafting correspondence and giving advice to servicemembers on SCRA matters. Financial counseling is available at most of the larger installations, and those counselors know to send the servicemembers to the Legal Office when the situation calls for it.

The American Bar Association's Legal Assistance to Military Personnel Committee holds quarterly meetings at military installations around the country. Generally, a 1-day continuing legal education seminar, always featuring SCRA instruction, is conducted for local members of the bar as well as military attorneys. Through the ABA's *Military Pro Bono* Program, hundreds of qualified attorneys around the country have volunteered to assist servicemembers (E-6 and below) in civilian legal matters in court, including SCRA issues.

Since many of the SCRA's protections apply primarily to Reserve and Guard members (who generally have more pre-service obligations than active duty servicemembers), the judge advocates for those units are especially well aware of the SCRA's protections and their members' responsibilities. Many of those units draft the notices to creditors required by section 527 for the members and have form letters available for that purpose.

## **3. Training for the Banking and Credit Industry on SCRA**

I am not aware of what types of seminars bank compliance officers conduct or attend to ensure compliance with the SCRA. Based on depositions we have taken in the *Hurley* case, the two compliance officers offered as experts by one of the defendants were simply not competent to interpret the SCRA. The SCRA specialists with the mortgage servicing company demanded copies of Sergeant Hurley's orders and did not afford him SCRA protection when he did not submit orders (which did not then exist). In their depositions, they acknowledged that they had never read the SCRA, did not understand how it worked, and only knew that they had a compliance policy that started with the words "the member is responsible for submitting his orders and no SCRA protection will be granted until the bank has reviewed the

orders and determined that SCRA protections should be in effect,” or words to that effect.

Bank regulators should receive training in the SCRA and then devise audit criteria for the banks under their supervision and control to ensure that the Act—both as to requests for interest rate relief and as to protection of servicemembers from non-judicial foreclosure and default judgments—was being followed. A “one size fits all” SCRA compliance policy does not exist. Different sections of the Act require different efforts by the banks to provide SCRA compliance.

#### **4. Recommendations for Amendments to the SCRA**

I recommend the following technical amendments to the SCRA:

1. Amend 50 U.S.C. App. § 597a of the SCRA to provide that no action brought to enforce a member’s rights or obtain damages as a result of SCRA violations shall be subject to a mandatory arbitration clause in the contract or other obligation that gives rise to the suit.
2. Amend section 305 of the SCRA (50 U.S.C. App. § 535) to (a) clarify that an order to a servicemember to move from off-base into on-base quarters qualifies as a grounds to terminate a lease earlier than its term, and (b) that the term “permanent change of station” has the definition found in the Joint Federal Travel Regulations (which would include ETS moves, and retirement moves).
3. Further amend section 305 of the SCRA (50 U.S.C. App. § 535) to delete subparagraph (i), and move that language to section 101 (50 U.S.C. App. 511). The broader definition of “military orders” should apply to all sections of the SCRA in which a servicemember is required to submit copies of military orders to a creditor or other obligee. Many times, the individual servicemember’s orders are not cut and published until he/she has either actually gone on a deployment or is so close to departure that other matters are more pressing than getting copies of orders to creditors. If the general definitions in the SCRA of “military orders” and “CONUS” were included in section 101, commanders would be able to write letters certifying the upcoming active duty status of a member of the Guard or Reserve (or active force) so that creditors’ demands for copies of military orders could be deemed satisfied. This has been a huge issue in *Hurley v. Deutsche Bank Trust Co. Americas*, since the bank’s defense was that Sergeant Hurley did not supply a copy of his individual military orders to the mortgagee and the bank therefore did not extend to him SCRA protection against non-judicial foreclosure of his mortgage. Of course, Congress has differentiated between a case in which the soldier requests interest rate relief under 50 U.S.C. App. § 527 (and is required to submit a copy of his military orders) and a situation in which a mortgagee wishes to proceed non-judicially to seize property and foreclose on a mortgage (in which case under 50 U.S.C. App. § 533, there is no obligation on the part of the servicemember to do anything to be protected). However, the vast majority of banks have one SCRA compliance policy and it is geared to interest rate relief requests. Therefore, anything Congress could do to satisfy the requirement of submission of military orders (including changing the definition of what qualifies as “military orders” under the SCRA) would be helpful.
4. Amend section 203 of the SCRA (50 U.S.C. App. § 523) to clarify that an early pre-payment penalty on a mortgage is included within the coverage of that section and providing that if it is necessary for a servicemember to obtain a court order to force a creditor to waive an early pre-payment penalty for a mortgage when the pre-payment is a result of either a deployment in excess of 180 days or a PCS move, the creditor shall be liable for the reasonable attorneys fees and costs incurred by the servicemember to obtain such a court order.
5. Amend the SCRA to clarify that the Act applies to the debts and obligations of limited liability companies and Subchapter S corporations, including property taxes owed by those entities, when the company/corporation is wholly owned by the servicemember or the servicemember and a spouse and, in the case of debts other than taxes, the servicemember is personally liable on the debt, either as a co-maker or as a guarantor. (Property taxes will never be a personal liability of the servicemember who owns the business, but loss of the business due to a tax sale will obviously adversely impact the servicemember, so the protections of the SCRA should be extended to tax debts of businesses wholly owned by the servicemember.)
6. Amend section 201(b)(2) of the SCRA (50 U.S.C. App. § 521(b)(2)) to provide that the reasonable fees of the attorney appointed by the court to represent the servicemember shall be taxed as costs of court.
7. Amend the SCRA to add a provision that the expiration dates of any license or certification issued by any State or Federal agency (including driver’s li-

censes, nurses' licenses, contractors' licenses, etc.) shall be extended to a period that is 90 days after the release from active duty of a servicemember. Additionally, add a provision to exempt from the requirements of continuing legal or medical education levied by any State or Federal agency, bar or medical association any servicemember who is serving in a legal or medical billet and is deployed outside the CONUS for 180 days or more during the year.

8. Amend section 303 of the SCRA (50 U.S.C. App. § 533(b) and (c)) to extend the protection against non-judicial foreclosures from 9 months to 12 months. That would bring the SCRA mortgage protection provision in line with the extension of the interest rate cap of 6 percent for mortgage debt found in Section 207 of the SCRA (50 U.S.C. App. § 527). As it is now, the protection against non-judicial mortgage foreclosure extends for 9 months but the interest rate protection extends for 12 months after release from active duty. Making the two periods different by 3 months makes no real sense. The extension periods should be the same.

There is one other action this Committee could recommend that would be invaluable in trying to promote understanding of and compliance with the SCRA. When the SCRA was enacted in 2003, the Government Printing Office printed the entire text of the Act in a single document. Since that date, because of numerous minor and some major amendments, the GPO has not reprinted the SCRA in a single document. It would be most helpful for servicemembers, practitioners and those responsible for compliance with the Act to have access to a single document (that did not require a subscription to LEXIS-NEXIS or Westlaw to obtain) where the complete text of the Act, current through the end of the 111th Congress, could be found in readily available format.

I appreciate the opportunity to have submitted this testimony to the Committee and would be happy to entertain any questions the Members or their staffs might have. Please address any questions to me at john.odom@jodplaw.com.

Respectfully submitted,

John S. Odom, Jr.,  
*Colonel, USAF (Ret.)*

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**Statement of Hon. Silvestre Reyes,  
a Representative in Congress from the State of Texas**

I want to thank Chairman Miller and Ranking Member Filner for calling this hearing and bringing this important issue before the Committee. Since the Civil War we have recognized the importance of providing financial protection to the men and women who serve our great Nation. Our Soldiers, Sailors, Airmen, and Marines risk their lives protecting our freedom; the least we can do is protect them from the financial hardships that may result from their time in combat.

As a veteran of the Vietnam War, I saw firsthand the financial uncertainty that comes with being deployed. Every day that a servicemember is away, their loved ones worry about their safety. Equally concerning to the deployed servicemember is the financial wellbeing of the family they left behind. It is imperative that we provide them protections that ensure their fiscal security.

It is deeply concerning to me that we are here today because some of our Nation's largest financial institutions have failed to afford these great men and women the protections provided by this Congress—this is both unpatriotic and shows a lack of respect for their service. It is my hope that the information provided in today's hearing will allow us to ensure that this does not occur again in the future.

**MATERIAL SUBMITTED FOR THE RECORD**

Committee on Veterans' Affairs  
 Washington, DC.  
*February 15, 2011*

Naomi Gendler Camper  
 Managing Director and Head of Federal Government Relations  
 JPMorgan Chase  
 601 Pennsylvania Ave., NW  
 Washington, DC 20004

Dear Naomi:

In reference to our Full Committee hearing entitled "Allegations Regarding the Servicemembers Civil Relief Act," that took place on February 9, 2011, I would appreciate it if you could answer the enclosed hearing questions by the close of business on April 1, 2011.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for materials for all full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively and single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Debbie Smith by fax at 202-225-2034. If you have any questions, please call 202-225-9756.

Sincerely,

BOB FILNER  
*Ranking Democratic Member*

JL:ds

Debevoise & Plimpton LLP  
 New York, NY.  
*April 1, 2011*

The Honorable Bob Filner  
 Ranking Democratic Member  
 House Committee on Veterans' Affairs  
 335 Cannon House Office Building  
 Washington, D.C. 20515

**Hearing Questions Regarding the Servicemembers Civil Relief Act**

Dear Congressman Filner:

I am writing on behalf of JPMorgan Chase ("Chase"), in response to your letter to dated February 15, 2011, enclosing questions arising out of the February 9 hearing on the Servicemembers Civil Relief Act ("SCRA").

**1. How often does the bank perform audits to check for this type of problem?**

Chase Home Lending has recently enhanced its processes to attempt to ensure that: (1) the correct interest rate and fees are applied to SCRA-protected loans; and (2) no foreclosures against SCRA-protected servicemembers go forward. A number of these enhancements involve frequent reviews and quality checks to ensure that Chase's processes comply with the SCRA. So, for example, there are now daily reviews of the entire set of SCRA-protected loans to ensure fee, subsidy and rate protections are in place. Similarly, Chase now conducts several checks at various stages prior to and subsequent to foreclosure referral to determine whether a borrower is protected by the SCRA.

Chase's Internal Audit department will periodically review Chase's procedures for compliance with SCRA requirements. The Internal Audit department is currently conducting a review of the existing processes, and will conduct a full audit of the enhanced processes in the coming year.

**2. How many families have not received a refund yet?**

Chase Home Lending has now sent approximately 6,000 refund checks to SCRA borrowers. In almost all of these cases, Chase paid the servicemembers more than double the amounts of the estimated overcharges or fees. The review of borrowers' files is ongoing, and Chase expects that it may identify additional accounts where it mistakenly overcharged servicemember borrowers or charged SCRA-protected bor-

rowers fees. However, Chase has now sent refund checks to all servicemembers it has identified as being entitled to a refund for overcharges or fees, with the exception of a small number of borrowers with whom it is in active litigation.

**3. In what situations does JPMorgan Chase deny access to a borrower's account?**

It is Chase policy to discontinue account statements to borrowers with whom it is in litigation.

**4. You recently established a team dedicated to servicing home loans to military personnel in South Carolina. How will their training differ from your previous training? What type of checks and balances are you establishing to prevent this from happening again?**

One of the issues with Chase Home Lending's SCRA processes was that there were errors in the reading of military orders. To address this, the initial set-up of SCRA loans has now been consolidated in a single unit in Florence, South Carolina; new personnel have been installed to manage this process; and enhanced training has been given to these employees. Former members of the military are involved in this process to assist Chase in interpreting military orders from each branch.

The majority of the Special Loans SCRA team was initially trained in October/November 2009 when the SCRA function for the combined Chase mortgage portfolio was transitioned to Florence, South Carolina. Additional training was conducted in March and April 2010. In addition, during weekly staff meetings, review and training for unique military orders or nuances in order interpretation is a standing agenda topic. On average, each individual on this team has reviewed hundreds of military orders over the last 12 months.

The review of the orders, which is a manual process, also is now subject to additional quality control; an additional Chase employee reviews each order to ensure that the protection periods have been properly identified. In addition, when SCRA protection has been claimed, denial of SCRA protection requires senior manager sign off.

Another issue with Chase's SCRA processes was the calculation and accounting for the SCRA interest rate. Now, 100 percent quality control has been put in place around the calculation of and accounting for the interest rate.

To address the customer service issues, Chase has created a dedicated hotline for military customers staffed by personnel trained on SCRA compliance issues. This customer service hotline is open 24 hours a day, 7 days a week. These same personnel will provide customer service to any military borrower who calls Chase's general customer service line.

**5. Under protections against foreclosure of mortgages under title 50, section 533, the SCRA does not require that servicemembers provide military orders. Does JPMorgan Chase require servicemembers to submit military orders to provide these protections?**

Chase does not require servicemembers to submit military orders before Chase provides the protections of SCRA section 533 against foreclosure. Chase now has procedures in place to check the Department of Defense Web site to verify military status at multiple stages of the foreclosure process to ensure that it does not foreclose on a servicemember who is protected by SCRA or the Housing and Economic Reform Act ("HERA").

**6. There have been a number of families who were foreclosed. Does JPMorgan Chase correct their damaged credit reports?**

Chase Home Lending is currently assessing and correcting the credit reporting of servicemembers to whom it sent refund checks and those upon whom it wrongfully foreclosed. Currently, all credit reporting is suppressed for SCRA loans during the SCRA protection period.

**7. Please state how many executive vice presidents there are at JPMorgan Chase.**

JPMorgan Chase has 20 Executive Vice Presidents at the corporate level. Stephanie Mudick is one of these Executive Vice Presidents, and is a member of JPMorgan Chase's Executive Committee, which comprises 55 senior officers who lead its businesses and functions.

Please do not hesitate to contact me at (212) 909-6947 if you have any additional questions.

Sincerely yours,

Andrew J. Ceresney

cc: Chairman Jeff Miller

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Committee on Veterans' Affairs  
Washington, DC.  
*February 15, 2011*

The Honorable Robert M. Gates  
Secretary  
U.S. Department of Defense  
The Pentagon  
Washington, DC 20301-1155

Dear Mr. Secretary:

In reference to our Full Committee hearing entitled "Allegations Regarding the Servicemembers Civil Relief Act," that took place on February 9, 2011, I would appreciate it if you could answer the enclosed hearing questions by the close of business on April 1, 2011.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for materials for all full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively and single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Debbie Smith by fax at 202-225-2034. If you have any questions, please call 202-225-9756.

Sincerely,

BOB FILNER  
*Ranking Democratic Member*

JL:ds

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**Hearing Date: February 09, 2011**  
**Committee: HVAC**  
**Member: Congressman Filner**  
**Witness: Colonel Shumake**

***SCRA Protections***

**Question 1:** When did you become aware that JPMorgan Chase was violating protections afforded under the SCRA?

**Answer:** I received a call from a Senate Veterans' Affairs staffer on January 13, 2011, asking if I had heard about a class action lawsuit involving JPMorgan Chase, one that may have involved interest rate cap issues. I had not, but indicated I would check with my contacts in the American Bankers Association. I did and soon received a call indicating that representatives from JPMorgan Chase would be contacting me shortly. I received a call from JPMorgan Chase on January 14, 2011. They explained the law suit and admitted that they had incorrectly calculated interest rate rates for many servicemembers. They also indicated they had improperly foreclosed on the homes of 15-20 servicemembers. They outlined the steps they were taking to correct their errors and provided a hotline number established for servicemembers.

***Information Flow***

**Question 2:** Did JPMorgan Chase reach out to inform you of these violations or did you become aware through the various media outlets?

**Answer:** I received a call from JPMorgan Chase officials on January 14, 2011. This was the Friday before the Today show reported the story the next Monday morning.

*Financial Institutions Violating the Law*

**Question 3:** Are you aware of any other financial institutions that may be currently violating the law?

**Answer:** Although the Department of Defense is aware of allegations, and provides legal assistance to servicemembers and their families regarding their rights under the SCRA, the Department does not investigate private companies' compliance with the SCRA.

The Department of Justice may have more specific information on violations of the SCRA.

I have attached a complaint in an ongoing class action suit against Citibank alleging violations of the interest rate cap provision of the SCRA. The Department does not take a position about the merits of this case.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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<p>Ms. Lyndsey M.D. Olson, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>Citibank (New York State), A New York state chartered bank,</p> <p>Citibank, N.A., a Nevada commercial bank, and</p> <p>Student Loan Corporation, a Delaware corporation,</p> <p style="text-align: center;">Defendants.</p>	<p>Court File No. 10-2992 (PAM/JKK)</p> <p><b>FIRST AMENDED COMPLAINT</b></p>
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*INTRODUCTION*

1. Intrinsic to military service is sacrifice. Part of the sacrifice made by America's servicemen and women is financial sacrifice. Leaving behind family, friends and the comforts of civilian life to answer our country's call to duty inherently includes leaving behind careers, jobs, and financial security. The Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. §§ 501-596 was enacted in recognition of this sacrifice.
2. Both the letter and spirit of the SCRA acknowledge the sacrifice made by our military men and women so as "to provide for, strengthen, and expedite the national defense through protection—to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation. . . ." 50 U.S.C. App. § 502.
3. Defendants, regrettably, have failed to honor the active duty status of America's fighting forces. Despite the prohibitions of SCRA, 50 U.S.C. App. §§ 501-596, Defendants have charged excess interest on servicemembers' loans as well as imposing a forbearance status as a pre-condition to receiving the interest reduction. Defendants have illegally capitalized interest resulting from the mandatory forbearance they imposed on servicemembers' loans. They charged interest on the capitalized interest which raised the effective interest rate on the loan.
4. Ms. Lyndsey M.D. Olson brings this class action on behalf of herself and other similarly situated servicemembers who have been or will be injured by Defendants' failure to promptly and fully comply with the requirements of SCRA without added pre-conditions.

*PARTIES*

5. Ms. Lyndsey M.D. Olson (f/k/a Ms. Lyndsey M.D. Kimber, f/k/a Lyndsey Margaret Davis) is a Minnesota resident and a Captain in the Minnesota Army National Guard. She began a period of active duty on March 1, 2005. One year of her active duty service was spent in Iraq, from June 2008 to May 2009.

6. Defendant Citibank, N.A. (“Citibank”) is a national commercial bank, with its principal place of business at 3900 Paradise Road, Suite 127, Las Vegas, Nevada, 89109.
7. Defendant Citibank (New York State) (“CNYS”) is or was a New York State chartered bank, with its principal place of business at 99 Garnsey Rd., Pittsford, New York, 14534. Upon information and belief, it merged with Citibank, N.A. in August of 2003.
8. Defendant The Student Loan Corporation (“Student Loan”) is a Delaware corporation, with its principal place of business at 750 Washington Blvd., Stamford, Connecticut, 06901. Upon information and belief, Defendant CNYS owned 80 percent of Student Loan’s shares until its merger with Citibank, N.A. Also upon information and belief, Citibank and/or Citigroup sold its interest in the Student Loan Corporation at the end of 2010.
9. At all relevant times, and at least until the end of 2010, all of the Defendants were wholly owned or controlled by Citigroup, Inc., a Delaware corporation with its principal place of business at 399 Park Avenue, New York, New York, 10043.
10. Monthly statements and other correspondence received by Ms. Olson illustrate the closely intertwined relationship between the Defendants. For example, Ms. Olson’s monthly statements were jointly captioned “Citibank” and “The Student Loan Corporation.” Payments, in turn, were sent to “Student Loan Corporation, c/o Citibank (Nevada), N.A.” Letters to Ms. Olson were typically sent on Citibank letterhead, but stated “CitiAssist student loans are originated by Citibank, N.A. and assigned to The Student Loan Corporation.” See Exh. 1. Pay Online statements referred to “Citi.com,” and indicated that all copyrights were held by Citigroup, Inc. (parent company of Student Loan and Citibank, N.A.).

#### JURISDICTION AND VENUE

11. Ms. Lyndsey Olson is a “servicemember” as defined in the SCRA, 50 U.S.C. App. § 511(1), and is in “military service” as defined in § 511(2)(A)(i).
12. Defendants are “creditors” for purposes of the interest rate limitation provisions of the SCRA, 50 U.S.C. App. § 527.
13. Plaintiff and each class member have a qualifying “obligation or liability” to Defendants within the meaning of the SCRA, 50 U.S.C. App. § 527(a).
14. Defendants have systematically violated the interest rate limitation provisions of the SCRA, 50 U.S.C. App. § 527, by overcharging interest or by not crediting back correct amounts when they receive notice of military service status after the commencement of the military service and/or active duty period (the phrases “military service” and “active duty” are used interchangeably throughout this Complaint to mean the period of time to which § 527 applies).
15. Defendants have systematically violated the SCRA by unilaterally placing Plaintiff’s and each class member’s loans in forbearance status as a pre-condition to receiving the SCRA interest rate reduction.
16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
17. Venue in the United States District Court for the District of Minnesota is proper under 28 U.S.C. § 1391 because all Defendants routinely conduct business in the State of Minnesota, and thus can be said to “reside” here, and because a substantial part of the events or omissions giving rise to the claims in this action occurred in the State of Minnesota.

#### FACTUAL BACKGROUND

##### **The Servicemembers Civil Relief Act:**

18. The Servicemembers Civil Relief Act was signed into law by President George W. Bush on December 19, 2003. The SCRA is a revision of the Soldier’s and Sailor’s Civil Relief Act of 1940 (“SSCRA”), and was intended, in part, to ease the economic and legal burdens on military personnel called to active-duty status in Operation Iraqi Freedom.
19. National Guard and National Air Guard personnel on duty for training or other duty authorized by 32 U.S.C. § 502(f) at the request of the President, for or in support of an operation during war or national emergency declared by the President or Congress are also covered by the SCRA, 50 U.S.C. App. § 511(2)(A)(ii).
20. Among the protections granted to active-duty servicemembers under the SCRA is a 6 percent per year cap on most interest-bearing debts incurred before the start of active duty. Thus, for example, if a new active-duty service-

member has pre-existing credit card debt incurring interest at an annual percentage rate (“APR”) of 21 percent, the SCRA would require the credit card issuer to lower the APR on that debt to 6 percent per year throughout that servicemember’s time of active duty. Interest must be forgiven in excess of 6 percent per year, not just deferred, pursuant to SCRA, 50 U.S.C. App. § 527(a)(2).

21. The servicemember must give written notice of the active duty status in order to obtain the 6 percent per year interest rate. The written notice, however, can be given anytime up to 180 days after the end of the servicemember’s active duty period. SCRA § 527(b)(1). If the notice is given after the start of the active duty period, then the creditor must apply the 6 percent per year retroactively to the start date of active duty service. *Id.* at § 527(b)(2).
22. The United States Supreme Court has held that the SSCRA must be read “with an eye friendly to those who dropped their affairs to answer their country’s call.” *Le Maistre v. Leffers*, 333 U.S. 1, 6, 68 S. Ct. 371, 373 (1948).
23. The SCRA limits the interest rate to be charged to a maximum of 6 percent per year. Nowhere does the language of the Act permit capitalization of interest (i.e. adding unpaid accrued interest to the principal balance and then charging interest on the total). Also, nowhere does the language of the Act permit compounding interest (i.e. charging interest upon previously accrued interest).
24. Federal courts have long recognized that compounding results in a higher effective interest rate.
25. Federal courts have long recognized that capitalization of interest also leads to a higher effective interest rate.
26. § 527 of the SCRA limits the interest that can be charged to “6 percent per year,” which means the interest must be calculated based on the simple interest method.
27. In the absence of explicit language in a statute authorizing compounding of interest, the creditor is limited to simple interest.
28. Similarly, contract law also follows the rule that the contract must specifically authorize compounding, and in the absence of explicit contract language, the creditor can only use a simple interest calculation.
29. In the alternative, even if SCRA were silent as to method of interest calculation, which it is not, if the underlying note does not explicitly provide for compounding or capitalization, the creditor cannot, unilaterally, compound or capitalize interest.
30. Also, where a loan contract does not specifically authorize (1) placing the loan in forbearance, and (2) capitalization of interest accrued during the forbearance period, the creditor may not unilaterally change the loan terms and impose mandatory forbearance or capitalize interest accrued during the forbearance period.
31. When a servicemember does not specifically agree to placement of his or her loan into forbearance status, the creditor may not unilaterally place the loan into forbearance status and then capitalize interest accrued during the forbearance period.
32. The SCRA does not allow a creditor to unilaterally impose mandatory forbearance status on a servicemember’s loan and then capitalize the unpaid interest simply as a result of the servicemember exercising his or her right to the 6 percent per year interest rate cap. Furthermore, such actions by the creditor violate the spirit of the SCRA, a law that must be read liberally and with an eye friendly toward servicemembers.

**Ms. Olson’s Loan:**

33. Ms. Olson first joined the Minnesota Army National Guard in January 2001. In 1998, she had earned a bachelor’s degree from Stephens College, in Columbia, Missouri, majoring in philosophy, law, and rhetoric. In order to finance her final year of college, Ms. Olson applied for an \$8,000 private student loan through Defendant Citibank’s CitiAssist program. On July 16, 1997, Ms. Olson received notice that her application had been approved, and she received her loan funds in two equal distributions, one on July 16, 1997, and the other on August 25, 1997. *See* Exh. 2.
34. Ms. Olson began making regular payments on her student loan in December 1998, and has never incurred a late payment fee. The interest rate on her loan is variable, and has fluctuated between 4.25 percent and 9.25 percent. As Ms. Olson sought further education, her loan periodically went into forbearance while she was in school. During these periods of forbearance, the interest payments on her loan were capitalized, meaning the interest that ac-

- crued during these periods of forbearance was ultimately added to Ms. Olson's principal balance.
35. In 2000, Ms. Olson enrolled in Hamline University School of Law in St. Paul, Minnesota with the hope of serving as a Judge Advocate ("JAG") in the United States Armed Forces after graduation. When Ms. Olson graduated in 2003, she was primary editor of the Hamline Law Review. Following graduation, she attended the U.S. Army Judge Advocate General School in Charlottesville, Virginia.
  36. Ms. Olson began her active duty on March 1, 2005. On May 6, 2008, Ms. Olson received orders deploying her to Iraq in support of Operation Iraqi Freedom. She was stationed in Balad, Iraq, where she served as International Law Officer and Brigade Trial Counsel to the 34th Combat Aviation Brigade. She returned from Iraq in June 2009 and was stationed at the U.S. Army Judge Advocate General School in Charlottesville, Virginia to obtain her LLM degree. She finished her degree in May, 2010.
  37. On May 26, 2006, Ms. Olson notified Defendants in writing that she had been called to active duty, and enclosed copies of her orders. *See* Exh. 3. Approximately 5 months later, Defendant Citibank notified her by letter that it had received her correspondence and would limit her interest to 6 percent per year as required by the SCRA. The letter went on, however, to state that an (unrequested and mandatory) forbearance was also being "granted" on her loan, and that any accrued interest during this time would be capitalized when her forbearance ended. *See* Exh. 4. Defendants took the above actions unilaterally. Ms. Olson did not agree to the forbearance or the capitalization of interest.
  38. When Ms. Olson informed Citibank of her active duty status, she did not request that her account be placed in forbearance status. *See* Olson letter dated May 26, 2006, Exh. 3. Instead, contrary to the SCRA, Citibank placed it in forbearance status on its own without her request or consent. When she called Citibank to advise them that she did not want her account placed in forbearance status, she was told it was Citibank's policy to place accounts in forbearance status in order for the servicemember to receive the SCRA interest rate reduction, and that Citibank would not give her the rate reduction without that status change.
  39. Ms. Olson requested to speak to a manager regarding this policy and was told the same thing.
  40. The SCRA does not allow any conditions, other than what is stated in the statute, to be placed on an active duty servicemember's right to receive an interest rate reduction.
  41. The vast majority of servicemembers deployed overseas and in combat zones, have limited, or no, access to the Internet for purposes of going online and making payments on their account, and instead rely on "auto pay" to have their bills paid on a monthly basis while they are on active duty. Ms. Olson's loan was on the automatic student loan payment service prior to being placed on this mandatory forbearance.
  42. The consequences of a servicemember's loan being placed in mandatory forbearance status include: (a) being denied access to the autopay option, through which the servicemember could have made payments in order to continue reducing principal during the active duty period, (b) the servicemember no longer receives monthly account statements in the mail while in forbearance, (c) both of which result in most active duty servicemembers not making regular payments while they are deployed because of the added effort they must commit to making a payment.
  43. Fewer payments being made during the forbearance period leads to a larger amount of interest capitalized and added to the principal balance at the end of the servicemembers' active duty and when the forbearance status is lifted by Defendants. This results in higher compounded and/or effective interest rates, to the servicemembers' detriment and to the Defendants' benefit.
  44. Defendants are aware that requiring active duty servicemembers to go into forbearance status in order to receive their SCRA interest rate reduction will result in Defendants being able to capitalize higher amounts of interest at the end of the active duty period, compared to if forbearance status were not a requirement.
  45. If Defendants wished to offer forbearance status for neutral reasons, they could have simply made it optional, rather than a pre-condition to obtain the benefits of the SCRA.
  46. Although Ms. Olson sent her notice of active duty status to Citibank on May 26, 2006, and despite Citibank's duty under the SCRA to cap her interest at

6 percent per year, statements sent by Defendants Citibank and The Student Loan Corporation plainly show that Defendants continued to charge interest in excess of 6 percent. For example, Ms. Olson's statement from November 2006 showed that Defendants were charging interest at an annual percentage rate of 9.25 percent. *See* Exh. 5.

47. Citibank eventually changed the interest rate to 6 percent on the December 2006 statement and stated that it kept the interest rate at 6 percent (or lower based on the market rate, since Ms. Olson's loan carried an adjustable rate), thereafter. Pursuant to the SCRA, Citibank was required to credit back to Ms. Olson the excess interest it charged her, going back to the beginning of her active duty period, i.e. March 1, 2005. However, the online statements for the months following Defendants' November letter (Exh. 4) do not show Defendants credited back any interest to Ms. Olson's account for the previous months of overcharges. There is no evidence in the online account information that the interest was credited back. In the alternative, if Defendants credited back any interest, the amount of excess interest it credited back to Ms. Olson's account was insufficient to remedy the overcharges for the prior months.
48. In the years prior to filing this action, Ms. Olson requested a copy of her account history on several occasions to determine whether Citibank had charged the correct interest on her loan pursuant to the SCRA and/or whether it credited back overcharged interest. Citibank sent Ms. Olson a payment history at two different times. *See* Exh. 6 and Exh. 7. The two account histories do not match each other. In fact, the histories contain inconsistent entries. *See e.g.* the "Interest decrease for servicemembers" entry dated 11/08/2006 for the amount of \$733.30 on Exh. 6, and compare with the entries for the same time period on Exh. 7, where such an interest decrease is missing.
49. Furthermore, the two account histories described above do not match the loan information on her monthly statements. *See e.g.* The monthly statement for November 2006, Exh. 5, shows a principal balance of \$9,789.05, and the loan history, Exh. 6, for 11/08/2006 shows a principal balance of \$8937.49. These and other inconsistencies made Ms. Olson's efforts to ascertain the exact amounts Defendants were charging her (or crediting back, as the case may be) very difficult. These inconsistencies also make it easier for Defendants to disguise excess interest being charged despite the SCRA prohibitions.
50. On several occasions prior to the filing of this action, Ms. Olson also requested, by telephone and in writing, a copy of her note or loan agreement to be sent to her. Citibank (South Dakota), N.A. sent her a copy of her application rather than a formal note or contract. *See* Loan Application ("Application") attached as Exh. 8.
51. She later wrote to Citibank to specifically request the "Note" referenced in the copy of the Application it sent her. *See* Exh. 9. By letter dated December 30, 2009, Citibank stated there was no "Note," and that her entire agreement was the Application. *See* Exh. 10. ("Thank you for your recent correspondence to Citibank, N.A. regarding your CitiAssist loan(s). The copy of the application is also a copy of the promissory note. They are one in [sic] the same."). Plaintiff, therefore, assumes the Application is the only remaining existing agreement for repayment of this loan. *See* Loan Application attached as Exh. 8.
52. The Application does not contain any provision allowing Defendants to compound interest on her loan, which means that her loan agreement is for simple interest. Furthermore, Defendants' own monthly statements confirm on the back of the statements that interest is calculated based on the "simple daily interest" method.
53. Likewise, the Application does not contain any provision allowing Defendants to capitalize interest.
54. Defendants took Ms. Olson's loan off mandatory forbearance status sometime in early 2010. After Defendants took her loan off forbearance, they capitalized accrued interest (added it into her principal balance) and began charging her monthly interest on the new, inflated principal balance. Ms. Olson is still making monthly payments on a balance that reflects and includes the capitalized interest resulting from the mandatory forbearance imposed on her account. Also, as a result of the capitalized interest, and thus higher principal balance, the amount Ms. Olson owes Citibank is higher than it would have been had the interest not been capitalized. Therefore, due to the combination of mandatory forbearance and resulting capitalized interest, Ms. Olson paid (and is still paying) a higher effective interest rate due to Defendants' violation of SCRA.

55. Upon information and belief, Defendants have been and are capitalizing and/or compounding interest on servicemembers' loans where a SCRA rate reduction was requested, thus resulting in effective interest rates in excess of 6 percent per year.

**CLASS ACTION ALLEGATIONS**

56. Ms. Olson brings this action pursuant to Fed. R. Civ. P. 23(a), b(2), and b(3), on behalf of the following Class:
- All servicemembers who, within the statute of limitations, were in military service, as defined in 50 U.S.C. App. § 511(2), and who (a) carried obligations or liabilities to Defendants bearing interest in excess of 6 percent; (b) provided the written notice to Defendants regarding their period of military service before 180 days after the end of their military service; and (c) who were overcharged interest in contravention of 50 U.S.C. App. § 527(a), and/or were put into forbearance status as a condition of receiving the interest rate cap under 50 U.S.C. App. § 527(a).
- Plaintiffs specifically exclude from the class:
- a. Defendants' employees, officers, directors, or heirs.
  - b. Loans of servicemembers for whom Defendants successfully proved the servicemember's financial ability to repay loan did not change as a result of active duty status, pursuant to SCRA § 527(c).
  - c. This Court, this Court's direct family members, and this Court's personnel.
57. This class action satisfies all requirements of Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), including, but not limited to numerosity, commonality, typicality, adequacy, and predominance.
58. **Numerosity:** Consistent with Fed. R. Civ. P. 23(a)(1), the proposed class "is so numerous that joinder of all members is impracticable." At present, the United States of America has approximately 1.4 million active-duty servicemembers. Defendants comprise some of the largest lending institutions in the country. Class members will number in at least the thousands. Detailed information on the Class can be ascertained through the review of account records maintained by Defendants, publicly available records, and appropriate discovery. Joinder of the numerous active-duty servicemembers who carry obligations or liabilities to Defendants and who Defendants violated their SCRA rights would be impracticable.
59. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the class and predominate over any questions affecting solely individual class members. These questions include:
- Whether Defendants are improperly processing military service notices received from active-duty servicemembers;
  - Whether Defendants are failing to reduce to at least 6 percent the annual rates on servicemembers' interest-bearing obligations or liabilities, or failing to forgive the correct amounts of such excess interest;
  - Whether Defendants are improperly compounding interest on servicemembers' loan obligations;
  - Whether the SCRA allows compounding of interest;
  - Whether Defendants are improperly requiring servicemembers' loans to be put into forbearance status as a condition of receiving the SCRA interest rate reduction;
  - Whether Defendants are improperly capitalizing excess interest on accounts that it places into forbearance; and,
  - Whether Defendants' capitalization of unpaid accrued interest from the mandatory forbearance period violates the spirit or letter of the SCRA.
60. **Typicality:** The claims of Plaintiff, the proposed Class Representative, are typical of the class claims, in that (a) Plaintiff incurred an obligation or liability to Defendants bearing interest in excess of 6 percent per year; (b) Plaintiff requested in writing that her rate be reduced to at least 6 percent per year pursuant to the SCRA; (c) Defendants instead put her loan into mandatory forbearance status, failed to reduce her interest rate to at least 6 percent per year, and instead overcharged interest (or did not credit back the correct amount of interest); and (d) Defendants capitalized unpaid accrued interest at the end of the mandatory forbearance period.
61. **Adequacy:** Consistent with Fed. R. Civ. P. 23(a)(4), Plaintiff "will fairly and adequately protect the interests of the class." Plaintiff has no adverse or conflicting interests to the proposed class members. She has retained counsel

competent and experienced in complex class action litigation who possess the necessary financial resources to adequately and vigorously litigate this class action.

62. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Prosecution of separate actions by individual class members would create an inherent risk of inconsistent and varying adjudications, with the concomitant risk of the establishment of incompatible and conflicting standards of conduct for Defendant. Furthermore, the damages suffered by individual class members are relatively small, such that the expense and burden of individual litigation makes it impossible for members of the class to individually redress the wrongs done to them. In addition, servicemen and women who are class members should not be devoting time, energy and attention away from service to this Country in being bogged down by tracking the amount of interest charged on their accounts while on active duty, or by litigation of same. Moreover, due to the vastly unequal market power between the parties, and the fact that many class members are in ongoing lending relationships with Defendants, a class action may be the only way, as a practical matter, that their claims will be adjudicated. Plaintiff knows of no difficulty that would make a class action in this case unmanageable.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **DECLARATORY AND INJUNCTIVE RELIEF**

63. Plaintiff re-alleges all other paragraphs of this Complaint.
64. Defendants' policy requiring class members' loans to be put into forbearance status is an illegal pre-condition to the servicemembers receiving the SCRA interest rate reduction.
65. The SCRA does not allow such a pre-condition.
66. As a result of the mandatory forbearance status, the servicemembers have additional burdens placed on them if they wish to continue making payments on their loans while on active duty.
67. These additional burdens include: (a) being denied access to the autopay option, through which the servicemember could have made payments in order to continue reducing principal during the active duty period, (b) the servicemember no longer receives monthly account statements in the mail while in forbearance, (c) both of which result in most active duty servicemembers not making payments while they are deployed because of the added effort they must commit to making a payment, (d) more active duty servicemembers having increased interest to pay at the end of their active duty period as a result of making no, or few, payments while they are deployed, and (e) higher likelihood of having a larger amount of interest capitalized and added to their principal at the end of their active duty when the forbearance status is lifted.
68. Defendants' mandatory forbearance policy should be declared an illegal pre-condition to receiving the benefits of the SCRA, and Defendants should be enjoined from continuing said policy.
69. Defendant's policy of compounding and/or capitalizing interest on the obligations of the Plaintiff and other servicemembers entitled to the benefits of the SCRA is not allowed by the SCRA.
70. Defendants' interest compounding and/or capitalization should be declared illegal, and Defendants should be enjoined from doing so on those obligations protected by the SCRA.
71. Defendants' practice of capitalizing unpaid accrued interest into the servicemember's principal loan balance when combined with the practice of mandatory forbearance is in violation of the spirit and letter of the SCRA and should be declared illegal. Furthermore, Defendants should be enjoined from engaging in such illegal practice.

#### **COUNT II**

#### **CHARGING INTEREST IN EXCESS OF THE SIX PERCENT PER YEAR LIMITATION IMPOSED BY THE SERVICEMEMBERS CIVIL RELIEF ACT**

72. Plaintiff re-alleges all other paragraphs of this Complaint.
73. The Servicemembers Civil Relief Act, 50 U.S.C. App. § 527(a)(1) provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military

- service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.”
74. Ms. Olson’s private student loan is an “obligation or liability” which qualifies for an interest rate reduction under the SCRA, 50 U.S.C. App. § 527(a).
  75. Plaintiff made a written request for an interest rate reduction to Defendants, and enclosed a copy of the orders calling her to active duty.
  76. Despite written notice, Defendants nonetheless charged interest on Ms. Olson’s student loan in excess of 6 percent per year, in violation of the SCRA.
  77. Upon information and belief, when Defendants do decrease the interest rate to 6 percent sometime after the military service period has begun, the amount of interest credited back to the servicemember’s account (as required by the SCRA) is incorrect, resulting in an interest overcharge.
  78. The capitalization of interest raises the effective interest rate on the servicemember’s loan.
  79. When a servicemember requests the 6 percent per year cap per SCRA, Defendants place the servicemember’s loan into mandatory forbearance and then capitalize any unpaid interest that is accrued during the servicemember’s military service period. The mandatory forbearance and resulting capitalization of such interest violates the spirit and letter of the SCRA protections afforded to the servicemembers of this country.
  80. Servicemembers, including Ms. Olson, are damaged by the capitalized interest resulting from the mandatory forbearance, as well as the interest Defendants charge on that capitalized interest for the remainder of the life of the loan.

**COUNT III  
UNJUST ENRICHMENT AND MONEY HAD AND RECEIVED**

81. Plaintiff re-alleges all other paragraphs of this Complaint.
82. Defendants’ conduct alleged in this Complaint results in an unjust enrichment and gives rise to a claim for money had and received. Defendants have taken undue advantage of Plaintiff and the other members of the Class.
83. Defendants are indebted to the Plaintiff and the Class in a certain sum “for money had and received by the Defendant for the use of the Plaintiff.”
84. Defendants have collected sums of money from Plaintiff and the Class members under such circumstances that in equity and good conscience it cannot retain, which in justice and fairness belongs to the Plaintiff and the Class. The excess interest above the amount allowed by the SCRA retained by Defendants is illegal and does not belong to Defendants.
85. In an unjust enrichment claim, the emphasis is on the wrongdoer’s enrichment, not the victim’s loss. In particular, a person acting in conscious disregard of the rights of another should be required to disgorge all illegal amounts retained because disgorgement both benefits the injured parties and deters the perpetrator from committing the same unlawful actions again.
86. As a result of Defendants’ actions, described above, they have unjustly enriched themselves at the expense of Plaintiff and the Class.
87. As a result of the foregoing, Plaintiff and the Class were deprived of money and suffered the loss alleged above.

**RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests the following relief from this Court:

1. Certify this case as a class action on behalf of the proposed Class as defined herein;
2. Appoint Plaintiff Ms. Lyndsey M.D. Olson as class representative;
3. Appoint the undersigned counsel as counsel for the Class;
4. Grant judgment on Count I in favor of the Plaintiff and Members of the Class declaring Defendants’ policy of mandatory forbearance as a pre-condition of obtaining the lower SCRA interest is illegal, and enjoin Defendants from continuing to impose it as a mandatory policy.
5. Grant judgment on Count I in favor of Plaintiff and Members of the Class declaring illegal Defendants’ practice of compounding interest on obligations protected by the SCRA and enjoin Defendants from continuing such practices.
6. Grant judgment on Count I in favor of Plaintiff and Members of the Class declaring illegal Defendants’ practice of capitalizing interest on obligations protected by the SCRA in combination with their policy of mandatory forbearance, and enjoin Defendants from continuing such practices.

7. Grant judgment on Count I in favor of Plaintiff and Members of the Class and enjoin Defendants from discontinuing their automatic payment service option when servicemembers exercise their rights to SCRA protections.
8. Grant judgment on Count I in favor of Plaintiff and Members of the Class and enjoin Defendants from discontinuing their mailed monthly statements when servicemembers exercise their rights to SCRA protections.
9. Grant judgment against Defendants on Count II in favor of the Plaintiff and Members of the Class finding that Defendants violated the SCRA and awarding damages in an amount to be determined;
10. Grant judgment against Defendants on Count II in favor of the Plaintiff and Members of the Class and recast and recalculate Plaintiffs' loans as if interest had not been capitalized at the end of the mandatory forbearance period.
11. Grant judgment against Defendants on Count III for the amount in which Defendants were unjustly enriched by way of their illegal actions;
12. Enter an injunction prohibiting Defendants from placing servicemembers' loans into mandatory forbearance and then capitalizing unpaid accrued interest from the period of military service.
13. Enter an injunction prohibiting Defendants from charging and collecting illegal interest in the future;
14. Award the Class prejudgment interest at the applicable rate;
15. Award the Class all direct and consequential damages allowed by law;
16. Award the Plaintiff Class all appropriate equitable and injunctive relief;
17. Award the Plaintiff Class their reasonable costs and attorney fees; and
18. Grant any other further relief that the Court deems appropriate.

***DEMAND FOR JURY TRIAL***

Plaintiff and the Plaintiff Class demand a jury trial in this action for all claims so triable.

Respectfully Submitted,

Dated: January 11, 2011

Crowder Teske, P.L.L.P.

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William H. Crowder (MN # 0020102)  
 Vildan A. Teske (MN # 0241404)  
 Marisa C. Katz (MN # 0389709)  
 222 South Ninth Street, Suite 3210  
 Minneapolis, Minnesota 55402  
 Telephone: (612) 746-1558  
 Fax: (651) 846-5339

Richard J. Fuller (MN # 0032669)  
 Attorney at Law  
 4005 Fourth Street South, Suite 202  
 Minneapolis, Minnesota 55415  
 Telephone: (612) 294-2600  
 Fax: (612) 294-2640

Martin A. Carlson (MN # No. 0299650)  
 Law Offices of Martin A. Carlson, Ltd.  
 247 Third Ave. S.  
 Minneapolis, Minnesota 55415  
 Telephone: (612) 359-0400  
 Fax: (612) 341-0116

**ATTORNEYS FOR PLAINTIFF LYNDSEY M.D. OLSON,  
 AND THE CLASS VERIFICATION**

Lyndsey M.D. Olson being first duly sworn on oath, states that she has read this Complaint, that she understands the same, that the matters herein are true and accurate, and to those matters pled upon information and belief, they are accurate to the best of her information and belief.

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 Lyndsey M.D. Olson

Signed and sworn to before me  
 this \_\_\_\_ day of \_\_\_\_\_, 2011.

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 Notary Public

#### ***SCRA Protections Education***

**Question 4:** Does the Department of Defense work with financial institutions to educate them on the SCRA protections?

**Question 4(a):** If yes, how?

**Answer:** Yes, as noted below:

The Department of Defense (the Department) has no statutory or regulatory responsibility for training the credit or banking industry or any other entities on the SCRA. The Department has no enforcement mechanisms in this area either. That responsibility lies with the Department of Justice, Civil Rights Division.

Nevertheless, important informal ties are in place and significant efforts are made to reach out to the business and legal communities to inform them about the laws that impact servicemembers.

The Office of Legal Policy has also reached out to industry and taught at seminars for the Association of Military Bankers and the Association of Defense Credit Unions. These seminars have focused on new developments in the SCRA and the Homeowner's Assistance Program. Members of the Department of Defense's Financial Readiness organization in the office of the Assistant Secretary of Defense for Military and Community Policy also regularly participate in these same seminars.

The American Bankers Association has regularly invited the Director of Legal Policy to participate in a live Webcast on the SCRA. This same program has also featured presentations by a representative from Military Community and Family Policy who have discussed military payday lending restrictions and other programs impacting the financial wellbeing of servicemembers.

It was the informal ties between the Department and the American Bankers' Association that alerted the Department to the recent litigation involving JPMorgan Chase and allowed the Department to disseminate information about the lawsuit, including the JPMorgan Chase hotline for servicemembers, even before the story broke on national news.

**Question 4(b):** Have any of these financial institutions ever included JPMorgan Chase?

**Answer:** JPMorgan Chase had one registered listener for a September 2007 Webcast that I presented through the American Bankers Association.

#### ***Rowles Situation***

**Question 5:** What role did the Department of Defense play in the Rowles situation?

**Answer:** The Department played no role in this private litigation, and was not aware of it until January 13, 2011. The Department has, however, been involved with passing along information through legal assistance and financial counselor channels concerning the efforts of JPMorgan Chase to establish a hotline number for its military customers.

#### ***Foreclosure Statistics***

**Question 6:** Does the Department of Defense have any numbers of the families that face foreclosure issues?

**Answer:** The Department of Defense does not have access to the numbers of servicemembers or their families facing foreclosure. However some data suggests trends.

Despite what would seem to be aggravating factors of military life such as frequent moves, mobilizations and deployments, and fluctuating housing market conditions in areas where members might reside, recent statistical and anecdotal evidence does not show an increase in foreclosures or inability to make payments on primary residences:

#### ***Financial Information***

**Question 7:** Is the Department of Defense open to simplifying military orders or adding an extra page in easy to read language for financial institutions?

**Answer:** Yes, the Department would be open to looking to see how this might be done and to working with the Committee to explore possible legislative authority that would simplify the process for financial institutions.

- The percentage of servicemembers responding to Department of Defense Status of Forces Assessment surveys from 1999 to 2010 who reported falling behind in their rent or mortgage in the past 12 months has consistently ranged from 3 to 5 percent.
- Military Services Personal Financial Managers have reported no significant increase in requests for foreclosure assistance.
- Military One Source reports that foreclosures are not in the top five reasons for requesting financial counseling, although information on “home buying or renting/mortgages/refinancing” is #5.
- The Department’s Personal Financial Counselors have reported that less than 2 percent of servicemembers seeking direct support requested help with foreclosure.

If indeed servicemembers are not suffering from foreclosure issues as acutely as might be expected based on nationwide trends, this might be explained in several ways. As of 2008, home ownership was at about 67 percent nationwide, but only 25–34 percent of servicemembers owned homes. Thus homeownership across the military is about half that of the general population.

Also, the Homeowners’ Assistance Program (HAP) (42 USC § 3374) appropriated \$555M in 2009 as part of the American Recovery and Reinvestment Act to assist, among others, servicemembers relocating under permanent change of station (PCS) orders dated September 30, 2010, or earlier. Another \$300 was appropriated as part of the Fiscal Year 2010 National Defense Authorization to supplement the HAP. As of February 23, 2011, the program has assisted 4,825 claimants (the vast majority being servicemembers with PCS orders) at a cost of \$725M (some of this money will flow back into HAP when the houses purchased by the government are resold to third party buyers). Another 4,580 claims are being evaluated for payment.

Committee on Veterans’ Affairs  
Washington, DC.  
*February 15, 2011*

Elizabeth Warren  
Assistant to the President and Special Advisor  
to the Secretary of the Treasury  
The Consumer Financial Protection Bureau  
1500 Pennsylvania Ave., NW  
Washington, DC 20220

Dear Elizabeth:

In reference to our Full Committee hearing entitled “Allegations Regarding the Servicemembers Civil Relief Act,” that took place on February 9, 2011, I would appreciate it if you could answer the enclosed hearing questions by the close of business on April 1, 2011.

In an effort to reduce printing costs, the Committee on Veterans’ Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for materials for all full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively and single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Debbie Smith by fax at 202-225-2034. If you have any questions, please call 202-225-9756.

Sincerely,

BOB FILNER  
*Ranking Democratic Member*

JL:ds

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**Committee on Veterans' Affairs  
U.S. House of Representatives  
Post-Hearing Questions for Holly Petraeus  
From the Honorable Bob Filner**

**Allegations Regarding the Servicemembers Civil Relief Act  
February 9, 2011**

**1. What actions will the Consumer Financial Protection Bureau take when a servicemember makes a complaint about possible SCRA violations?**

The CFPB will create a process to refer SCRA complaints to the agencies that are authorized to enforce that law, which are the Department of Justice Civil Rights Division and, if the entity that is the subject of the complaint is a financial institution, the relevant prudential regulator. The CFPB will also create a system to inform the Department of Defense (DoD) of the complaint. Our policies for handling and referring SCRA complaints will continue to evolve as we work with other agencies to improve protections for servicemembers.

**2. What are some of the initiatives the Consumer Financial Protection Bureau has in place to provide financial education to servicemembers?**

The CFPB is still under construction and does not assume many of its powers until July 21, 2011. At this time we are focused on hiring staff and organizing the various divisions within the CFPB, one of which will be Consumer Education and Engagement. The Office of Servicemember Affairs (OSA) will be part of that division. At the moment the OSA is engaging the military community, to hear their thoughts on what the most effective financial education would be, through a series of roundtables and meetings at various military installations. We are also meeting with the DoD to learn what they already have in place. We are authorized to enter into agreements with the DoD and will work with them to be sure that they are reaching troops at "teachable moments" with the best financial education possible.

In addition, while we are working on building the Consumer Education and Engagement division, we have posted links on our Web site to some of the best consumer financial education resources, under Get Help Now ([www.consumerfinance.gov/get-help-now/](http://www.consumerfinance.gov/get-help-now/)).

**3. When do you expect your agency to be fully functioning?**

The CFPB will assume many of its powers on July 21, 2011. We are doing everything we can—in a thoughtful, deliberate way—to ensure that we are in a position to assume and exercise those powers in a responsible manner and to execute a smooth transition and startup. Once it is fully operational, the CFPB will be able to offer unique resources that will be able to assist servicemembers—particularly in regard to financial education—and it will work closely with DoD, DOJ, and other agencies to ensure compliance with the SCRA.

**4. What relationship do you expect to have with the Justice Department regarding SCRA?**

We intend to work closely with the Civil Rights Division at the Department of Justice (DOJ). Although the DOJ enforces the statute, the CFPB can help raise awareness of the law and its protections, both within the military community and within the financial community. In fact, we have already met with DOJ personnel to discuss their procedures for enforcing the SCRA. As noted above, we also plan to refer consumer complaints that allege a violation of the SCRA to the DOJ as well as any appropriate prudential regulator.

**5. What role should the Department of Defense play in SCRA violations?**

The DoD has an important role to play, as its legal assistance attorneys (Judge Advocates or JAGs) are often the first to hear about SCRA violations. JAGs can and

should refer their clients to the DOJ and the U.S. attorneys who often handle the cases locally. DoD can also inform the OSA and DOJ about ways in which the law might be improved to better serve the military population.

**6. Do you believe that the [penalties for] SCRA violations should be strengthened? If yes, how?**

Whether the penalties or other remedies for SCRA violations should be increased is a question for Congress and legal experts.

**7. Do you believe that JPMorgan Chase is the only bank with SCRA violations?**

While there have been a number of financial companies subject to lawsuits or public investigations regarding alleged SCRA violations, it is not possible to anticipate the results of those proceedings.

