

Wall Street Reform and Consumer Financial Protection Act of 2010

Mortgage Servicing Issues

**February 4, 2011
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Financial Reform Legislation

- Dodd-Frank Wall Street Reform and Consumer Protection Act
- Timeline
 - President's White Paper – May 2009
 - Passed by the House – December 11, 2009
 - Passed by the Senate – May 20, 2010
 - Conference Report – June 29, 2010
 - Passed by the House – June 30, 2010
 - Passed by the Senate – July 15, 2010
 - Signed by the President – July 21, 2010
- Public Law No. 111-203
- 16 Titles, 2,300 pages

Introduction

- Focus is on Title XIV of the Dodd-Frank Act, known as the “Mortgage Reform and Anti-Predatory Lending Act”
- Subtitle E – Mortgage Servicing
- Subtitle G – Mortgage Resolution and Modification

Overview

- New responsibilities for servicers, particularly with respect to escrow accounts, force-placement of insurance, responses to borrower inquiries, prompt crediting of payments, and prompt issuances of payoff statements
- New eligibility restrictions on the U.S. Treasury Department's Making Home Affordable Program ("HAMP")
- Greater transparency for HAMP standards and data
- Increased protections for tenants of foreclosed properties
- Changes for servicers are far less dramatic than those for originators
- Legislation will increase the cost of servicing, but is unlikely to result in significant changes to the way that servicers do business
- Effective Dates – see slide 29

Mandatory Escrow Accounts

- Mandatory escrow accounts – where required by other federal or state law, federal loan programs, higher rate loans, or by Federal Reserve Board (“Board”) regulation
- Rule applies to consumer credit transactions secured by first liens on principal dwellings
- Higher Rate Loans:
 - If within the Freddie Mac conforming loan limit, and APR exceeds Average Prime Offer Rate (“APOR”) by 1.5% or more
 - If greater than the Freddie Mac conforming loan limit, and APR exceeds APOR by 2.5% or more

Mandatory Escrow Accounts (Cont'd)

- Currently, Regulation Z imposes a mandatory escrow account requirement for all higher-priced mortgage loans (“HPML”), without regard to the dollar amount of the loans. As currently defined, HPMLs include loans that are greater than the Freddie Mac conforming loan limit where the APR exceeds the APOR by 1.5% or more
 - To conform Regulation Z to the Dodd-Frank Act standard, the Board has proposed to impose a mandatory escrow account requirement for loans that are greater than the Freddie Mac conforming loan limit only where the APR exceeds the APOR by 2.5% or more. All of the other Regulation Z requirements for HPMLs will continue to apply for loans that otherwise qualify as HPMLs
 - A summary of the Board’s proposal is at <http://www.mofo.com/files/Uploads/Images/100818Escrow.pdf>

Exceptions to Mandatory Escrows

- Cooperatives
- In circumstances in which a homeowner's association is obligated to maintain a master insurance policy; escrows still required for taxes and other items
- Board authority to create narrow exception for certain small rural or underserved area lenders

Non-Mandatory Escrow Accounts

- Dodd-Frank Act does not prohibit escrow accounts:
 - On terms mutually agreeable to the parties
 - When creditor or servicer, in its discretion, requires the establishment of an escrow account (subject to state law restrictions and the loan contract)
 - For flood insurance, where required by federal law and regulation

Duration of Mandatory Escrows

- Basic rule: Minimum of five years
- Four exceptions to basic rule:
 - Borrower has sufficient equity in property so that private mortgage insurance is not required
 - Delinquent borrower
 - Other failure of borrower to comply with credit contract, as stated in Board rules
 - Mortgage has been terminated

Administration of Mandatory Escrow Accounts

- Maintain in federally insured account, except as may be otherwise provided by the Board
- Administer in accordance with:
 - Real Estate and Settlement Act of 1974 (“RESPA”) and the U.S. Department of Housing and Urban Development’s (“HUD’s”) Regulation X
 - Flood Disaster Protection Act of 1973 and implementing regulations
 - Applicable state law
- Pay interest, if required by applicable state or federal law
- Duplicative penalties under the Truth in Lending Act (“TILA”) and RESPA to be avoided

Administration of Escrow Accounts (Cont'd)

- Disclosures for mandatory escrow accounts
 - Escrow account required
 - Amount due at closing
 - Escrow obligation amount for escrow items in first year of loan
 - Estimated monthly escrow payment
 - Ramifications of termination of escrow account
 - Other
- Board authority to modify criteria for requiring escrow accounts

Notice Re: Escrow Account Waiver

- Notice required in two situations:
 - Where escrow account not established for consumer credit transaction secured by real property
 - Where such an escrow account was set up, but consumer is cancelling it
- Disclosure requirements:
 - Fees or costs for non-establishment or subsequent closure of escrow account
 - Clear and prominent disclosure of duty to directly pay non-escrowed items in addition to regular mortgage payment, and that the cost of non-escrow items can be substantial

Notice Re: Escrow Account Waiver (Cont'd)

- Consequences of non-payment of non-escrowed items. This includes force-placed insurance and the potentially higher costs (including servicer commissions) and/or reduced coverage of force-placed insurance
- Other information required by the Board

Servicer Prohibitions

- No force-placement of insurance unless there is a reasonable basis
- No fees for Qualified Written Requests (“QWR”)
- Timely action to respond to borrower requests to correct errors re:
 - Allocation of payments
 - Final balance for purpose of loan payoffs
 - Final balance for purpose of avoiding foreclosure
 - Other standard servicer’s duties

Servicer Prohibitions (Cont'd)

- Respond to requests for identity, address, and other relevant contact information on the owner or assignee of loan within 10 business days
 - Note: Section 131(g) of TILA, effective 5/20/2009, requires a creditor that is the new owner or assignee of a mortgage loan to provide written notice to the consumer within 30 days of the sale, transferor assignment of the loan. An interim rule to provide guidance on §131(g) was issued by the Board on 11/20/2009. A final rule, set forth as §226.39 of Regulation Z, became mandatory on 1/1/2011. A summary of the final rule is at <http://www.mofo.com/files/Uploads/Images/100823FinalRule.pdf>
- Comply with other obligations imposed by the Bureau of Consumer Financial Protection (“Bureau”)

Force-Placed Insurance

- Requirement of first written notice to borrower:
 - Reminder of duty to maintain hazard insurance
 - Service has no evidence of insurance coverage
 - Procedures that borrower must follow to demonstrate insurance coverage
 - Threat to force-place if borrower does not timely demonstrate insurance coverage
- Requirement of second written notice to borrower:
 - Same items required
 - Send at least 30 days after mailing of first written notice
- If no demonstration of insurance coverage within 15 days after second written notice mailed, servicer may force-place

Force-Placed Insurance (cont'd)

- Demonstration of insurance coverage:
 - Any reasonable form of written confirmation
 - Existing policy number together with the identity and contact information of agent or insurer is sufficient
- Servicer must terminate force-placed insurance within 15 days of receipt of confirmation of insurance coverage. Servicer must return all premiums and fees from period of duplicative coverage
- Simultaneous or concurrent notices under Flood Disaster Act okay
- Force-placed hazard insurance charges must be bona fide and reasonable
 - Rule does not apply to charges subject to state regulation as business of insurance
 - Risk of litigation

Increase in RESPA §6 Penalties

- §6 of RESPA covers the servicing disclosure statement, notice of transfer of servicing, QWRs, force-placed insurance, correction of error requests, contact information requests, and other obligations imposed by the Bureau
- Statutory damages for violations of §6 of RESPA have been increased:
 - Individual actions – from \$1,000 to \$2,000
 - Class actions – from \$1,000 to \$2,000 per class member, with a maximum of \$1,000,000 (increased from \$500,000), but not more than 1% of servicer's net worth

Qualified Written Requests

- Decrease in response times for QWRs:
 - Written acknowledgement of QWRs – from 20 days to 5 days
 - Response to QWRs – from 60 days to 30 days
 - Extension of 30-day period by up to 15 days, which requires a notice to borrower within the 30-day period, with an explanation for the delay

Refund of Escrow Accounts

- Servicer must refund escrow account balance within 20 business days of loan payoff
- Alternatively, servicer may credit those funds, in the same time frame, to a new escrow account for a new mortgage from same lender to same borrower
- Compare: Under Regulation X, a 30-day time period for refunding or crediting after escrow analysis discloses a surplus

Prompt Crediting of Payments

- Payments on home loan must be credited as of date of receipt
- Rule applies to a consumer credit transaction secured by principal dwelling
- Exception applies where delay does not result in a charge to consumer or negative report to credit bureau
- If servicer specifies reasonable payment requirements in writing, and consumer pays in some other way, servicer to credit payment as of 5 days after receipt

Requests for Payoff Amounts

- Payoff amount must be provided within a reasonable time after receipt of written request, but no more than 7 business days
- Applies to any “home loan”
- Request may come from or on behalf of consumer
- Compare: High-cost mortgage loans, where a more stringent 5-day period applies for responding to payoff amount requests

Escrows Included in Payments

- The Regulation Z payment schedule for a loan secured by a first lien on a principal dwelling must include periodic escrow payments where escrows are required
- Rule inapplicable to open-end credit plans and reverse mortgages
- Escrow payments to be calculated under RESPA §10(a)(2)
- Payments to be based on taxable assessed value of real property security and replacement costs of property for hazard insurance in initial year after the transaction
- Compare: Other Dodd-Frank Act provisions for ARMs require disclosure of initial and fully-indexed payment schedules with, and without, escrows

Escrows Included in Payments (Cont'd)

- Note: Two interim rules issued by the Board require the use of a rate and payment summary table in the standard closed-end Truth-in-Lending disclosure statement. The table replaces the detailed payment schedule that previously was required. Compliance with the original interim rule became mandatory on 1/30/2011. The subsequent interim rule, which clarifies the original rule, also became effective on 1/30/2011, but compliance is not mandatory until 10/1/2011. Summaries of the two interim rules are at <http://www.mofo.com/files/Uploads/Images/100820InterimRule.pdf> and <http://www.mofo.com/files/Uploads/Images/101229-Mortgage-Disclosure.pdf>

Multifamily Mortgage Resolution

- HUD to establish program to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible
- Focus is on multifamily mortgages at risk of foreclosure
- Criteria may include:
 - Creating sustainable financing for these properties
 - Maintaining level of government subsidies in effect at time of enactment of the Dodd-Frank Act
 - Providing funds for rehabilitation
 - Facilitating transfer of the properties to responsible new owners and ensuring affordability of the properties
- HUD may coordinate with other federal agencies

Exclusion of Criminals from HAMP

- A person cannot begin to receive assistance from HAMP or other programs under that act if he/she has been convicted, within the last 10 years, in connection with a mortgage or real estate transaction of:
 - Felony larceny, theft, fraud, or forgery;
 - Money laundering; or
 - Tax evasion
- Prohibition effective 9/19/2010. This provision is self-executing
- On 9/21/2010, the Treasury issued Supplemental Directive 10-11 for the HAMP, which provides guidance on a new borrower certification for non-GSE loans relating to compliance with this provision
- Treasury Secretary to report to Congressional committees

Increased HAMP Transparency

- Treasury Secretary to require servicer to provide borrower, whose HAMP modification request has been denied, with all borrower-related and mortgage-related data that was inputted into any Net Present Value (“NPV”) analysis. Data to be provided at time of the denial
- Treasury Secretary to establish and maintain web site with NPV calculator based on Treasury’s NPV methodology
- Treasury Secretary to make publicly available the methodology, computer model (including all formulas), and non-proprietary variables used in NPV analysis
- Treasury Secretary to require data submitted by HAMP servicers to be made public in the form of aggregate reports and loan level data
- Copy of reports to be submitted to Congress

Increased Protection of Tenants

- Amendments to Protecting Tenants at Foreclosure Act of 2009
- New rule protects all bona fide tenants, regardless of when they became bona fide tenants, which includes a bona fide tenant who assumes a lease after notice of foreclosure
- A bona fide lease entered into at any time before “complete title” is transferred to successor in interest to property is now protected
- The sunset date for the Protecting Tenants Act has been extended from 12/31/2012 to 12/31/2014

Effective Dates

- Provisions of Title XIV to take effect on dates stated in final regulations
- Except as otherwise provided in Dodd-Frank, required regulations under Title XIV to be issued in final form no later than 1/21/2013, and to take effect within 12 months of issuance in final form. Some regulations to be issued sooner
- If, for any reason, regulations for any section of Title XIV are not issued by 1/21/2013, the section itself will become effective on 1/21/2013

Additional Information

- See Mortgage Servicing User Guide at http://www.mofo.com/files/Uploads/Images/100830User_Guide_Mortgage_Servicing.pdf
- See Consumer Financial Protection User Guide at <http://www.mofo.com/files/Uploads/Images/101111-Dodd-Frank-Consumer-Financial-Protection.pdf>
- See other Dodd-Frank Act and regulatory reform materials at <http://www.mofo.com/resources/regulatory-reform/>

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