

December 31, 2010

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Federal Issues

Freddie Mac Extends Service Member Foreclosure Protection. On December 17, Freddie Mac announced that it would extend the expiration date of the extended stay of foreclosure protections for service members. This stay was originally provided under the amendments of the Housing and Economic Recovery Act (HERA) to the Servicemembers Civil Relief Act (SCRA). HERA amended the SCRA to temporarily extend the stay of foreclosure and legal proceedings from 90 days to nine months after the service member's release from active duty. The December 17 revision extends the nine-month period to December 31, 2011 and is effective immediately. Freddie Mac emphasizes that mortgage servicers must not initiate or resume foreclosure for at least nine months after a service member is released from active duty when the service member is released from active duty on or before December 31, 2011. For a copy of the press release, please see <http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1032.pdf>.

Federal Housing Finance Authority Issues Final Rules Regarding Minority and Women Inclusion. On December 22, the Federal Housing Finance Authority (FHFA) announced three final rules and one Advance Notice of Proposed Rulemaking (ANPR) for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. The final rules pertain to Fannie Mae and Freddie Mac portfolio holdings, Minority and Women Inclusion, and Federal Home Loan Bank Housing Goals. The Advance Notice of Proposed Rulemaking pertains to membership in Federal Home Loan Banks. The final rule regarding portfolio holdings states that Fannie Mae and Freddie Mac may each hold mortgage assets up to \$900 billion as of December 31, 2009, but that for each subsequent year starting December 31, 2010, each entity is required to reduce its maximum holdings of mortgage assets by 10 percent of the maximum limit in the preceding year until the limit reaches \$250 billion. This rule is effective upon publication in the Federal Register. The final rule regarding Minority and Women Inclusion requires Fannie Mae and Freddie Mac to promote diversity and inclusion by establishing an Office of Minority and Women Inclusion or designating an office responsible for carrying out the requirements. This final rule will be effective 30 days from publication in the Federal Register. The final rule regarding housing goals requires the Director of FHFA to establish housing goals with respect to the Federal Home Loan Banks' purchases of mortgages, if any. The rule also provides that the Federal Home Loan Banks' housing goals are to be consistent with the housing goals established by FHFA for Fannie Mae and Freddie Mac. This rule is effective January 26, 2011. Comments on the ANPR are due by March 28, 2011. [For a copy of the news release please click here.](#)

State Issues

New Jersey Courts Order Lenders and Servicers to Submit Foreclosure Information; Adopt Amended Rules for Residential Foreclosures. On December 20, New Jersey's court system issued a show cause order and a separate administrative order to mortgage lenders and servicers requesting information on the execution of pleadings and documents filed in residential mortgage foreclosures. Under the show cause order, six plaintiffs were ordered to appear before the judge overseeing uncontested foreclosure matters in New Jersey to show cause as to why the court should not suspend the services of the Office of Foreclosure for these six plaintiffs, stay the plaintiffs' sheriff's sales, appoint a special master to investigate the plaintiffs' foreclosure practices, and appoint an attorney to argue for appropriate relief. In the administrative order, other lenders and servicers that filed more than 200 New Jersey foreclosures in 2010 must demonstrate affirmatively that there are no irregularities in their handling of foreclosure documents through submissions to a special master.

Additionally, the New Jersey Supreme Court approved emergency amendments to New Jersey Rules 1:5-6, 4:64-1, and 4:64-2, requiring plaintiff's counsel in residential foreclosure actions to file an affidavit attesting to the accuracy of information in court filings. Under the amended rules, foreclosure counsel must file (i) an affidavit or certification executed by the attorney that the attorney communicated with an employee of the plaintiff who personally reviewed documents for accuracy and confirmed the accuracy of all court filings in the case to date; (ii) the name, title, and responsibilities of the employee of the plaintiff who provided this information to the attorney; and (iii) an affidavit or certification executed by the attorney that all the filings in the case comport with all requirements of Rule 1:4-8(a) relating to the accuracy of documents filed with the court. Plaintiff's counsel must file this new affidavit immediately upon commencement of any new residential foreclosure action, within 60 days in any residential foreclosure action currently pending and awaiting judgment, within 45 days if the residential foreclosure is currently post-judgment but pre-sale, and with the motion to enter judgment. The amended rules took effect on December 20. For a copy of the press release announcing the show cause order, administrative order, and rule amendments, please see <http://www.judiciary.state.nj.us/pressrel/pr101220a.htm>. For a copy of the actual orders and amendments, please see <http://www.judiciary.state.nj.us/documents.htm>.

Vermont Amends Foreclosure Rule to Require Certifications in Court Filings. On December 21, the Vermont Supreme Court amended the foreclosure rule to address inaccuracies in affidavits filed by lenders and servicers in foreclosure cases. Rule 80.1 of the Vermont Rules of Civil Procedure now provides that the court will not issue a judgment or confirm a sale until the plaintiff's counsel certifies to the completeness and accuracy of all documents supporting the claim for foreclosure or sale, using a special form prescribed by the amendment. The rule also provides that an affidavit in support of default, summary judgment, or amount due must set forth the status and authority of the affiant and the affiant's personal review of records and personal knowledge of the facts. The rule also stays all sales of property until the proper affidavits are filed. The amendment applies to all foreclosure actions involving owner-occupied residences of four units or less. The amended rule is effective immediately. For a copy of the amendment, please see <http://bit.ly/mTd7Wy>.

Florida Announces Time Extension for Completion of Mortgage License Applications. The Florida Office of Financial Regulation (OFR) has announced that it will permit licensed mortgage industry professionals who file an application for a new license in the Nationwide Mortgage Licensing System (NMLS) by December 31, 2010 to continue working beyond December 31. The OFR's announcement emphasizes that licenses will expire for mortgage professionals that have not initiated an application in the NMLS by December 31 and that these individuals and entities will be required to discontinue mortgage loan activity. Active licensees that have initiated but not completed an application by December 31 must complete applications by March 31, 2011. [For a copy of the OFR's press release, click here.](#)

Michigan Amends Mortgage Loan Originator Surety Bond Requirements. Recently, Michigan enacted Senate Bill 1525 to modify the surety bond requirements for mortgage loan originators. The bill allows a mortgage company to submit one surety bond to cover all of the company's individual mortgage loan originators, based on the principal amounts of loans originated by all loan originators. Previously, individual bonds for each loan originator were required. The bill is effective immediately. [For a copy of the bill and details on the bond amounts required, please click here.](#)

Firm News

[James Parkinson](#) will be speaking at the web conference "FCPA Compliance: Best Practices for Your Anti-Corruption Compliance Program," hosted by National Constitution Center Conferences on January 19, 2011.

[Donna Wilson](#) will be speaking at the ACI Privacy & Security of Consumer & Employee Information Conference on January 25-26, 2011 in Washington, DC. The topic will be "Responding to the Latest Cyber Threats: Mobile Workforces, Technology, Data Thefts, and Cloud Computing."

[Andrew Sandler](#) will be speaking at the American Conference Institute's 10th Annual Advanced Forum on Consumer Finance Class Actions & Litigation on January 27, 2011 at 11am. The conference is taking place at The Helmsley Park Lane Hotel, 36 Central Park South, NYC. The topic will be Emerging Federal and State Regulatory and Enforcement Initiatives: FTC, DOJ, SEC, FRB, and State AGs Perspectives. Also on the panel with Andy will be Attorney General William Sorrell, AG, State of Vermont and Attorney General Greg Zoeller, AG, State of Indiana.

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