



Mortgage Industry Bulletin

Enforcement Orders Could Be Around the Corner

April 1, 2011 — A meeting with representative states attorney generals, federal government agencies and several large banks took place Wednesday in Washington to discuss the proposed mortgage servicing Settlement and the "[Counter Offer](#)" [1] from the banks. Little progress seems to have been made by the estimated group of 50 people.

According to the American Banker, federal banking regulators are poised to announce enforcement actions against as many as 14 banks, as a result of the lack of an agreement between the banks and the attorneys general. Cease and Desist Orders from federal banking regulators could outline new servicing standards for the mortgage industry and preempt further discussions regarding the Settlement proposed by the 50 state attorneys general.

In a "[Draft Consent Order](#)" [2] made public this week, federal banking regulators target document verification procedures, oversight from third parties and additional legal counsel, limitations for dual tracking foreclosures and modifications simultaneously, and a comprehensive look back to uncover prior mistakes. Also included were information system related modifications that could support a single point of contact for troubled borrowers, as suggested in the mortgage servicing section of the Order. A Cease and Desist Order could become the template for all agencies and introduce new mortgage processing requirements.

This Order is the result of special foreclosure process and procedure examinations that were reported by John C. Walsh, Acting Comptroller of the Currency, on February 17 in a report to Congress that identified the 14 banks. He described details of what regulators uncovered during their investigation of servicer practices and the Order would address these weaknesses.

Not included in the Order or the counter offer from the banks are fines or penalties that might be targeted for principal reductions for borrowers. According to the Banker, the Draft Cease and Desist Order is more modest than the proposed Settlement.

In the counter offer, banks agreed to limit the use of force-placed insurance to circumstances that follow requirements already outlined in the Dodd-Frank Act. Servicers could not obtain force-place insurance unless there was a reasonable basis to believe the borrower failed to comply with their responsibility to maintain property insurance. Written notifications, sent by first-class mail, would be required as described in Section 1463 of the Act. Termination of a forced-place policy would follow a borrower providing proof of existing insurance coverage. Premiums and related fees charged for over-lapping periods would be refunded.

It is expected that whichever solution to the mortgage servicing debate is accepted first by the representative banks will become the new standard for the entire industry. If the federal banking regulators are first to impose a Consent Order, the dynamics will shift away from any additional requirements proposed in the 50 states attorney generals Settlement. Stay tuned.

[1] <http://cdn.americanbanker.com/media/pdfs/ServicingStandardsDraft.pdf>

[2] <http://cdn.americanbanker.com/media/pdfs/040111CandD.pdf>

This information offers speculative insight into possible controls impacting the mortgage servicing industry. Loan Protector will provide additional information as it becomes available. Links are provided to both the Draft Uniform Servicing Standards and a Draft Consent Order via their respective URL.

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