BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Mortgages
Reporting Requirements on Mortgage Foreclosure Actions

Proposed New Rules: N.J.A.C. 3:10-9

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; and 46:10B-49.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-184

Submit comments by August 14, 2009 to:

Robert J. Melillo, Chief
Office of Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Mortgage Stabilization and Relief Act, P.L. 2008, c. 127 (the Act), enacted on January 9, 2009, requires the Department of Banking and Insurance (Department) to promulgate regulations to effectuate Section 15 of the Act, N.J.S.A. 46:10B-49. The purpose of the Act is to provide residential mortgage assistance. Section 2 of the Act, codified at N.J.S.A. 55:14K-83, lists the legislative findings and declarations relative to residential mortgage assistance. Those findings and declarations are as follows:

> a. Many thousands of New Jersey homeowners are at risk of losing their homes as a result of mortgage foreclosures.
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> b. Foreclosures involve the loss of a family’s home, often the family’s most valuable financial asset, and foreclosures especially undermine the health and economic vitality of the urban neighborhoods in which a disproportionate share of foreclosures take place.
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> c. Foreclosures result in the loss of millions of dollars in assets, not only those of the homeowners who are the victims of foreclosure, but also adversely affect the property values of homes located in the vicinity of foreclosed properties.
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> d. The loss of a house often results in abandonment of properties, leading to significant costs and lost revenue for local governments, as well as harm to the neighborhoods in which properties are abandoned.
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> e. Many of these foreclosures could be avoided if homeowners had greater access to high-quality, in-person foreclosure prevention counseling, emergency financial assistance, or additional time during which to negotiate loan modifications or obtain refinancing.
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> f. There is a compelling public policy need for the State of New Jersey to provide the means by which homeowners can obtain mortgage related counseling, emergency financial assistance, and time to adjust their finances in order to increase their ability to retain their homes, and to protect local governments and neighborhoods from the negative social, economic, and fiscal consequences of foreclosure and property abandonment.
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> g. New Jersey must ensure that neighborhoods are not adversely affected by properties that are abandoned as a result of foreclosure and become dilapidated eyesores in the community.

> h. The Legislature recognizes that the difficulties encountered by homeowners who are delinquent, or are in danger of becoming delinquent, on their mortgage payment does not lend itself to a "one size fits all" solution and therefore it is necessary to establish a number of programs to assist these homeowners

Section 15 of the Act requires all creditors that institute a mortgage foreclosure action in the Superior Court of New Jersey to report to the Department on a quarterly basis, on a form promulgated by the Department, information about the number of mortgage foreclosure actions filed by the creditor. The proposed new rules define a "mortgage foreclosure proceeding instituted" as the filing of a complaint seeking to foreclose upon a residential mortgage in the Superior Court of New Jersey.

The Department is required to produce a report on a quarterly basis detailing information about the types of mortgages on which foreclosure actions have been instituted by creditors in each county of the State and to make the report available on the Department's website. The Act further requires the Department to adopt regulations to effectuate the purposes of the section.

N.J.A.C. 3:10-9.1(a) states that the purpose of the new rules is to effectuate the reporting and publication of information on the number of foreclosure proceedings instituted on residential mortgages in each county of this State and on the various types of residential mortgages sought to be foreclosed upon in such actions as required by N.J.S.A. 46:10B-49.

N.J.A.C. 3:10-9.1(b) states that the new rules pertain to all creditors who file a residential mortgage foreclosure action in this State. To maintain consistency with the Fair Foreclosure Act, "residential mortgage" is defined as a mortgage in which the security is an owner occupied residential property of not more than four dwelling units as defined by N.J.S.A. 2A:50-55.

N.J.A.C. 3:10-9.2 sets forth the definitions pertaining to the new subchapter. Some of the terms used in this subchapter do not have industry wide definitions. Further, some of the proposed definitions, such as “prime rate mortgage,” and “subprime rate mortgage” are inappropriate for use as definitions except in the limited context of the required report. As the Department stated in its Bulletin 07-01, Statement on Subprime Mortgage Lending, “the term ‘subprime’ refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income (DTI) ratios, or other criteria that may encompass borrowers with incomplete credit histories. ‘Subprime loans’ are loans to borrowers displaying one or more of these characteristics at the time of origination or purchase.” Bulletin page 3.

However, while the means of identifying subprime borrowers or loans consists of complex and variable industry guidelines, N.J.S.A. 46:10B-49 requires the Department to “describe the type of mortgage being foreclosed upon based on the following categories: 1) prime rate mortgages foreclosed upon; [and] 2) subprime rate mortgages foreclosed upon.” Therefore, in order to comply with the statutory mandate, definitions of “subprime rate mortgage” and its corollary, “prime rate mortgage” are proposed as part of these new rules with the clear proviso that their use is limited to this subsection only.

To maintain consistency with certain reporting standards already in place, the definitions of “subprime rate mortgage” and “prime rate mortgage” are patterned after definitions used by the Federal Housing Finance Agency (FHFA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) in their Mortgage Metrics Reports. In using this criteria, the FHFA acknowledges that there is no industry standard for "subprime" and states "so like OCC and OTS, we define prime as FICO scores of 660 or higher and categorize all other loans as nonprime," (Federal Housing Agency Mortgage Metrics Report Second Quarter 2008 p. 4.) Accordingly, for purposes of these reporting requirement rules only, prime rate mortgages are defined as mortgages given to borrowers with a FICO score of 660 or higher and subprime rate mortgages are defined as mortgages given to borrowers with a FICO score of 659 or lower.

In a further effort to maintain consistency with established reporting parameters, the United States Department of Housing and Urban Development's Glossary was also used as a guide in writing some of the additional definitions.

The terms defined in this section also include "adjustable rate mortgage," "conforming mortgage," "creditor," "FHA mortgage," "FICO score," "fixed rate mortgage," "interest only mortgage," "mortgage foreclosure proceeding instituted," "nonconforming mortgage," "reporting quarter," "residential mortgage," "servicer,“ "USDA Rural Development Loan" and "VA mortgage."

N.J.A.C. 3:10-9.3 sets forth the reporting requirements, including the type of information to be reported and the time periods for the collection and reporting of data by creditors and also for the issuance of the report by the Commissioner. The rule requires each creditor filing a complaint seeking to foreclosure upon a residential mortgage during a calendar quarter to report to the Department within 30 days of the end of that calendar quarter. The effective date of the statute was April 1, 2009. Given that some time must be provided to creditors to implement systems to capture the required data, the first period for which creditors must report data will be July 1, 2009 through September 30, 2009. Therefore, creditors must electronically file with the

Department a report consisting of that calendar quarter's data between October 1, 2009 and October 30, 2009.

Creditors shall report the data by county and municipality of the mortgaged property and the year in which the mortgage was executed. As Section 17 of the Act requires creditors to serve a notice of intention to foreclose on the public officer of the municipality, locality information is readily available. The data shall reflect the number of residential mortgages on which foreclosure proceedings were instituted in each of the following categories: fixed rate mortgages; adjustable rate mortgages; conforming mortgages; non-conforming mortgages; VA mortgages; FHA mortgages; USDA rural development mortgages; prime rate mortgages; subprime rate mortgages and interest only mortgages.

These are not exclusive categories and it is expected that many mortgages will fall into several categories. A single mortgage must be reported for each of the categories applicable to it. For instance, a single mortgage could be a non-conforming, fixed rate, prime rate mortgage and therefore be reported as a non-conforming mortgage as well as a fixed rate mortgage and additionally as a prime rate mortgage.

The individual electronically submitting the data online shall certify as to their being authorized by the creditor to do so and that, to the best of their knowledge, the data which they submit is truthful and accurate.

The data submitted in the quarterly reports will be compiled by the Department and published in the report to be posted on its website.

N.J.A.C. 3:10-9.4 sets forth data retention requirements. Creditors shall retain copies of the information reported to the Department for at least three years from the date reported.

Production of the retained information may be requested by the Department at any time during that period for audit purposes.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.JA.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

These rules will have a positive social impact on the public due to the quarterly posting of the data on residential mortgage foreclosures. Easy access to such data will increase awareness of the types of mortgages which generate foreclosures and assist elected officials and other policymakers in devising strategies to mitigate the frequency of future foreclosures.

Economic Impact

The rules will have a negative economic impact on the Department due to the costs of collecting, compiling and reporting the data concerning the numbers of mortgage foreclosure actions instituted in each New Jersey county. The Department will also incur expenses in creating the form to be used to report the data and the information systems technology necessary to implement the reporting process.

There will be a similar negative economic impact on the creditors who file the quarterly reports. The costs of compliance for the creditor include the costs for the personnel who will collect, compile and enter the information required each quarter and any initial costs incurred for implementation. While the initial implementation may be performed by in-house staff, it is possible that professional services may be utilized.

There may ultimately be a favorable economic impact on the general public as the reports to be generated may assist policymakers in mitigating the number and effects of future foreclosures.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not expect any jobs to be gained or lost due to the proposed new rules. While some limited professional services may be needed in order to comply as stated in the Economic Impact statement above, the Department believes that the ongoing compliance will be handled in house by those already reporting such data to other agencies and governmental bodies.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rules.

Regulatory Flexibility Analysis

The rules proposed impose reporting, recordkeeping and other compliance requirements on “small business.” The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated and is not dominant in its field. Some of the entities affected by the proposed new rules may be small businesses. The Department believes that the reporting, recordkeeping and compliance requirements in the proposed rules are necessary in order to comply with the statutorily mandated quarterly reporting requirement. Compliance costs are discussed in the Economic Impact above. As stated, professional services may be need in order to comply. In order to comply with the statute and create a report as accurate and complete as possible, no differing requirements based on business size can be made.

Smart Growth Impact

The rules proposed will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan because the proposed rules concern the reporting of data on mortgage foreclosures which have already been instituted.

Housing Affordability Impact

The proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed rules concern the reporting of data on mortgage foreclosures which have already been instituted. Such data may be considered when future actions are taken by policymakers with respect to residential mortgage foreclosures, which actions might, depending on a variety of factors including market conditions and credit availability, have some indirect impact on costs associated with housing.

Smart Growth Development Impact

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning

Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules concern the reporting of data on mortgage foreclosures which have already been instituted.

Full text of the proposed new rules follows:

SUBCHAPTER 9. REPORTING REQUIREMENTS ON MORTGAGE FORECLOSURE ACTIONS

3:10-9.1 Purpose and scope

(a) The purpose of this subchapter is to implement the requirements imposed by N.J.S.A. 46:10B-49 regarding the reporting to and publication by the Department of information on the number of residential mortgage foreclosure proceedings instituted by creditors in each county of this State and on the types of residential mortgages sought to be foreclosed upon in such actions.

(b) This subchapter shall pertain to all creditors who file a mortgage foreclosure action in this State.

3.10-9.2 Definitions

The following words and terms shall have the following meaning for purposes of this subchapter:

“Adjustable rate mortgage” means a mortgage loan that does not have a fixed interest rate or on some other basis. During the life of the loan the interest rate will change based on a specified index rate or on some other basis. Also known as adjustable mortgage loans or variable rate mortgages.

"Conforming mortgage" means a mortgage with a loan amount that does not exceed the loan limits set by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) or their successors.

"Creditor" means a mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court of New Jersey seeking to foreclose upon a residential mortgage.

"FHA mortgage" means a mortgage insured by the Federal Housing Administration.

"FICO score" means a borrower's credit score calculated using methodology developed by Fair Issac Corporation.

"Fixed rate mortgage" means a mortgage with payments that remain the same throughout the life of the loan because the interest rate and other terms are fixed and do not change.

"Interest only mortgage" means a mortgage where the borrower has the option of paying only the interest for a limited period of time.

"Mortgage foreclosure proceeding instituted" means the filing of a complaint in the Superior Court of New Jersey seeking to foreclosure upon a residential mortgage.

"Nonconforming mortgage" means a mortgage with a loan amount that exceeds the loan limits set by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), or their successors.

"Prime market rate mortgage" means a residential mortgage given to a borrower with a FICO score of 660 or more.

"Reporting quarter" means the calendar quarter immediately prior to the month in which the data is being inputted in accordance with this subchapter.

"Residential mortgage" means a mortgage in which the security is an owner occupied residential property of not more than four dwelling units as defined by N.J.S.A. 2A:50-55.

"Servicer" means a business that collects mortgage payments from borrowers and manages the borrower's escrow accounts.

"Subprime market rate mortgage" means a residential mortgage given to a borrower with a FICO score of less than 660.

"USDA Rural Development Loan" means a mortgage insured by Rural Development Office of the United States Department of Agriculture.

"VA mortgage" means a mortgage insured by the Veteran's Administration.

3:10-9.3 Reporting requirements

(a) Within 30 days of the end of each calendar quarter, each creditor shall file electronically on a form prescribed by the Commissioner a report containing information pertaining to the number of residential mortgage foreclosure actions instituted by that creditor in the aforementioned quarter.

(b) Such reports shall include the following information:

1. The name of the servicer or the name of the mortgagee if there is no servicer;

2. The name of the individual submitting the data;

3. The total number of residential mortgages upon which a mortgage foreclosure proceeding was instituted by the creditor in the State of New Jersey during the reporting calendar quarter;

4. The total number of residential mortgages on which a mortgage foreclosure proceeding was instituted during the reporting calendar quarter in each municipality in which a property being foreclosed upon is situated;

5. The following information with respect to the residential mortgages on which foreclosure actions were instituted on properties situated in the respective municipalities referenced in (b)3 above:

i. The number of such mortgages executed in the respective years prior to the filing of the report, with a general category to capture the oldest mortgages reported upon, for example “mortgages executed prior to 2002”;

ii. The number of such mortgages that were fixed rate mortgages;

iii. The number of such mortgages that were adjustable rate mortgages;

iv. The number of such mortgages that were conforming mortgages;

v. The number of such mortgages that were non-conforming mortgages;

vi. The number of such mortgages that were VA mortgages;

vii. The number of such mortgages that were FHA mortgages;

viii. The number of such mortgages that were USDA Rural Development Loans;

ix. The number of such mortgages that were prime rate mortgages;

x. The number of such mortgages that were subprime rate mortgages; and

xi. The number of such mortgages that were interest only mortgages; and

6. A mortgage shall be reported for every pertinent category.

(c) The individual submitting the data shall certify to their being authorized by the creditor to do so and to the truthfulness of the reported data to the best of their knowledge.

(d) On a quarterly basis, the Department shall post on its website a report detailing the information reported by creditors as set forth above on residential mortgage foreclosure actions instituted in the State.

3:10-9.4 Retention requirements

(a) All creditors shall retain copies of the information they report to the Department as set forth in N.J.A.C. 3:10-9.3 for at least three years from the date reported.

(b) The Commissioner may, during the aforesaid retention period, request the production of a readable copy of the reported information for audit purposes.

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