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Highlights

Highlights of GAO-11-433, a report to congressional requesters

May 2011

MORTGAGE FORECLOSURES

Documentation Problems Reveal Need for Ongoing Regulatory Oversight

Why GAO Did This Study

Mortgage servicers—entities that manage home mortgage loans—halted foreclosures throughout the country in September 2010, finding that documents required to be provided to courts in some states may have been improperly signed or notarized. In addition, academics and court cases are raising questions over whether foreclosures are being brought properly because of concerns over how loans were transferred into mortgage-backed securities (MBS). GAO was asked to examine (1) the extent to which federal laws address mortgage servicers' foreclosure procedures and federal agencies' past oversight, (2) federal agencies' current oversight and future oversight plans, and (3) the potential impact of these issues on involved parties. GAO reviewed federal laws, regulations, exam guidance, agency documents, and studies, and conducted interviews with federal agencies, mortgage industry associations, investor groups, consumer advocacy groups, and legal academics.

What GAO Recommends

GAO recommends that banking regulators and the Consumer Financial Protection Bureau (CFPB) develop plans for overseeing mortgage servicers and include foreclosure practices in any servicing standards that are developed. GAO also recommends that regulators assess the risks that documentation problems pose for their institutions. The agencies generally agreed with the recommendations.

View GAO-11-433 or key components. For more information, contact A. Nicole Clowers at (202) 512-5837 or clowersa@gao.gov.

What GAO Found

Federal laws do not specifically address the foreclosure process, and federal agencies' past oversight of servicers' foreclosure activities has been limited and fragmented. State laws primarily govern the foreclosure process and specify what, if any, documentation is required to foreclose on a property. Several federal laws include mortgage servicing provisions, but they largely are focused on consumer protection at mortgage origination, not specific foreclosure requirements. Although various federal agencies have authority to oversee most mortgage servicers, past oversight of their foreclosure activities has been limited, in part because banking regulators did not consider these practices as posing a high risk to banks' safety and soundness, and some servicers have not been under direct federal oversight. Federal housing and other agencies typically do not monitor servicers' foreclosure activities.

In response to the disclosed documentation problems, federal agencies have recently increased attention to servicing activities. Banking regulators conducted a coordinated review of 14 mortgage servicers and identified pervasive problems with their document preparation and oversight of foreclosure processes, although they did not find widespread instances of foreclosures that should not have proceeded. The regulators issued enforcement actions requiring servicers to improve these practices and plan to assess their compliance, but have not fully developed plans for the extent of future oversight. Further, regulators are considering the need for uniform servicing standards, but whether such standards will address foreclosure activities is yet unclear. Federal housing and other agencies are also reviewing servicer foreclosure practices and considering corrective actions. In July 2011, the newly created CFPB also will have responsibility for mortgage servicing, including over certain nondepository firms currently without federal oversight. How regulators and CFPB will interact and share responsibility for ongoing oversight of servicers is yet unclear, leaving the potential for continued gaps and inconsistency in oversight until final plans are developed.

Foreclosure documentation problems have slowed the pace of foreclosures across the United States, but most entities GAO interviewed indicated that such errors were correctable and that affected foreclosures would proceed. Delays in the pace of foreclosures as servicers correct and refile cases and implement more rigorous processes may benefit borrowers by providing more time to modify loans, but communities may be negatively affected as any vacant properties in foreclosure remain unoccupied for longer periods. Some foreclosures are also being delayed because of allegations that practices commonly used for transferring loans when creating MBS were not completed properly, which some commentators argue may affect whether servicers can prove legal authority to foreclose. Regulators did not always verify these transfer practices during their reviews or assess the potential risks of transfer problems to institutions. The potential financial costs resulting from these issues for investors, institutions that create MBS, and the overall financial system likely will remain uncertain until sufficient numbers of courts render decisions on the appropriateness of these practices.