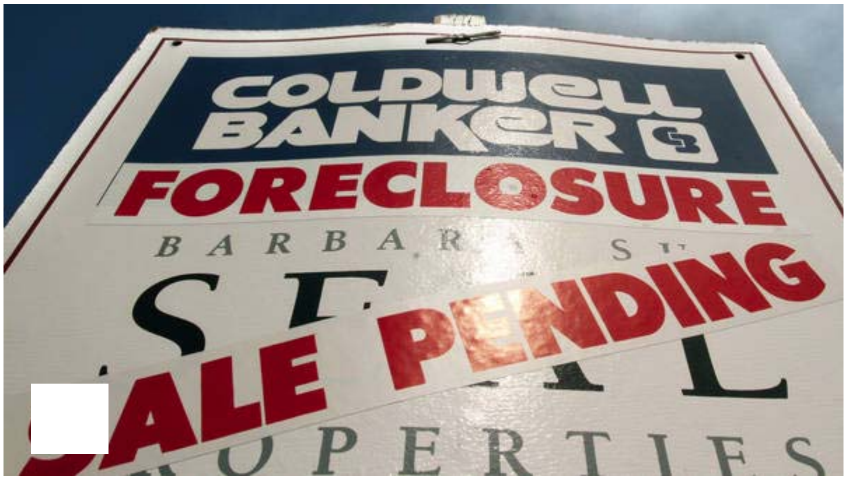
FAIR GAME

Surprise, Surprise: The Banks Win



For Big Banks, a Favorable Settlement: The Times's Gretchen Morgenson talks about the big banks' victory in connection with foreclosure abuses.

By GRETCHEN MORGENSON
Published: January 5, 2013

IF you were hoping that things might be different in 2013 — you know, that bankers would be held responsible for bad behavior or that the government might actually assist troubled homeowners — you can forget it. A settlement reportedly in the works with big banks will soon end a review into foreclosure abuses, and it means more of the same: no accountability for financial institutions and little help for borrowers.

Related

Times Topic: Gretchen Morgenson

Last week, The New York Times reported that regulators were close to settling with 14 banks whose foreclosure practices had ridden roughshod over borrowers and the rule of law. Although the deal has not been made official and its terms are as yet unknown, the initial report said borrowers who had lost their homes because of improprieties would receive a total of $3.75 billion in cash. An additional $6.25 billion would be put toward principal reduction for homeowners in distress.

The possible settlement will conclude a regulatory enforcement action brought in 2011 by the Comptroller of the Currency and the Federal Reserve. Regulators moved against 14 large home loan servicers after evidence emerged of rampant misdeeds marring the foreclosure process.

Under the enforcement action, the banks were required to review foreclosures conducted in 2009 and 2010. They hired consultants to analyze cases in which borrowers suspected that they had been injured by bank practices, such as levying excessive and improper fees or foreclosing when a borrower was undergoing a loan modification. Some 4.4 million borrowers journeyed through the foreclosure maze during the period.

Some back-of-the-envelope arithmetic on this deal is your first clue that it is another gift to the banks. It's not clear which borrowers will receive what money, but divvying up $3.75 billion among millions of people doesn't amount to much per person. If, say, half of the 4.4 million borrowers were subject to foreclosure abuses, they would each receive less than $2,000, on average. If 10 percent of the 4.4 million were harmed, each would get roughly $8,500.

This is a far cry from the possible penalties outlined last year by the federal regulators requiring these reviews. For instance, regulators said that if a bank had foreclosed while a borrower was making payments under a loan modification, it might have to pay $15,000 and rescind the foreclosure. And if it couldn't be rescinded because the house had been sold, the bank could have had to pay the borrower $125,000 and any accrued equity.

Recall that the foreclosure exams came about because regulators had found pervasive problems. A study by the Fed and the comptroller's office found "critical weaknesses in servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys." The United States Trustee, which oversees the nation's bankruptcy courts, also uncovered huge flaws in bank practices.

So if you start to hear rumbling that the reviews didn't turn up many misdeeds, you can discount it as nonsense. One could easily argue that this reported settlement was pushed by the banks so they could limit the damage they would have incurred if an aggressive review had continued.

"We think if the reviews were done right, the payouts would have been significantly higher than they appear to be under this settlement," said Alys Cohen, staff attorney at the National Consumer Law Center. "The regulators will have abdicated their responsibility if the banks end up getting off the hook easily and cheaply."

Let's not forget that this looming settlement will also conclude the foreclosure reviews that were supposed to provide regulators with chapter and verse on how banks abused their customers. Stopping the reviews before they are finished means that the banks will be allowed to claim that abuses were rare and that $10 billion is an adequate penalty.

A spokesman at the Office of the Comptroller of the Currency declined to comment on whether a settlement was imminent or what it might look like. But with no clear details about its terms, many questions remain. First, of course, is how many borrowers will receive the $3.75 billion, and how will that money be shared? And who will ensure that the funds go to the right people? The fact is, most people will not be hiring a lawyer to pursue their cases further against servicers, so this money is all that they will receive.

Another problem is that the money will be doled out to wronged borrowers based on work done by consultants hired by the banks responsible for the improprieties. How can their findings be trusted? What's more, the reviews' conclusions about harm are based on the servicers' side of the story, not homeowners'.

Because the consultants work for the banks, it is also possible that these institutions may use the information gleaned from the foreclosure reviews to profit once again on troubled borrowers. If foreclosed borrowers left a property while owing the difference between the amount of the loan and what the bank received in a sale of the home, the bank may not have known the borrowers' whereabouts until that information was reported in a request for review.

Finally, what if victims of an improper foreclosure didn't receive a review because they didn't know about the program? Letters about the program sent to 5.3 percent of targeted borrowers were returned as undeliverable, regulators said.

And many of those who did receive the mailings may not have understood them. In a study last June, the Government Accountability Office concluded that the initial letter, the request-for-review form and foreclosure review Web site were "written above the average reading level of the U.S. population." What's more, the study said, the materials did not include specifics about what borrowers might receive as a remedy, possibly affecting their motivation to respond.

In any case, as of Dec. 6, 2012, only 322,771 borrowers had requested an independent review, according to the Fed. That's 7.3 percent of the affected borrowers during the period, a figure that does not mirror the widespread problems regulators said they had identified in the foreclosure system.

"The O.C.C.-Fed review is just another flawed outreach program designed to fail," said Ned Brown, a legislative strategist at the marketing consultant Prairie Strategies in

Washington. “The servicers rolled the regulators.”

New year, same story.

A version of this article appeared in print on January 6, 2013, on page BU1 of the New York edition with the headline: Surprise, Surprise: The Banks Win.