The New York Times

April 19, 2013

More Problems for a Mortgage Deal

By THE EDITORIAL BOARD

A troubled and delayed federal effort to hold big banks accountable for illegal foreclosure practices got off to a poor start this month when some borrowers were unable to cash checks sent to them as part of a $9.3 billion settlement.

Some borrowers who tried to cash the checks, which ranged from $300 to $125,000, were told that the account that the checks were drawn on had insufficient funds, even though the banks were supposed to have set aside $3.6 billion to make the payments. The company hired to process the payments, Rust Consulting, and the Federal Reserve and the Office of the Comptroller of the Currency, which negotiated the settlement, said they did not know how many borrowers were affected. Government officials said the problem, which occurred when bank tellers tried to look up whether the account had enough money in it, was corrected soon after they received complaints about it last week.

If the problem has been solved, so much the better. But the misstep highlights the need for federal authorities to appoint an independent monitor with the power to oversee, analyze and publicly report on the implementation of the agreement. The direct payments are just one piece of the deal. Banks are also supposed to provide $5.7 billion in loan modifications, fee waivers and other aid to borrowers.

It is important that this $5.7 billion, inadequate as it is, given the large number of people affected, be handled properly and go to borrowers who need help the most. Under terms of the deal governing the mortgage aid, banks will receive credits for short sales and loan modifications equal to the unpaid balance owed by borrowers. In other words, if banks help someone with a $500,000 loan, they will get to count that amount against their portion of the $5.7 billion in aid.

This, in turn, will provide an incentive for the banks to help higher-income borrowers, rather than the low-income homeowners who have smaller loans but who have been disproportionately hurt by the housing bust. By publishing data about the kinds and locations of borrowers who receive aid, an independent monitor can help assure that the distribution of aid is not too skewed.

Problems have dogged this settlement at every step. In 2011, policy makers ordered 16 banks to hire consultants to investigate their own foreclosure practices. Not surprisingly, the consultants, which the banks paid $1.5 billion, found little wrongdoing. When regulators realized the process was not working, they settled with 13 banks in January; reviews are continuing at three companies.

The millions of borrowers covered by this deal have waited years for help. Many of them have already lost their home in a foreclosure. In some cases, banks repossessed homes even when borrowers were making the payments they owed, had complied with the conditions of loan modifications, or were awaiting decisions on requests for modifications. Regulators should ensure that those who qualify for and need assistance can get it.

Meet The New York Times's Editorial Board »