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FORECLOSURE REVIEW

Lessons Learned Could Enhance Continuing Reviews and Activities under Amended Consent Orders

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Highlights

Highlights of GAO-13-277, a report to congressional requesters

Why GAO Did This Study

Since April 2011, OCC and the Federal Reserve had been overseeing the foreclosure review, a requirement of consent orders entered into by 14 mortgage servicers. This undertaking involved a review of loan files by third-party consultants to identify errors in servicing and foreclosure practices. More than 4 million borrowers were eligible for reviews. In January 2013, the regulators announced agreements with 11 of the servicers that replaced the reviews with a broad payment process to compensate borrowers in a more timely manner. Reviews continue for three remaining servicers. GAO has been reviewing various aspects of the foreclosure review process. This report addresses: (1) challenges to the achievement of the goals of the foreclosure review, (2) transparency of the process, and (3) lessons that could be useful for carrying out activities under the amended consent orders and continuing reviews. GAO analyzed third-party consultants' sampling plans, reviewed regulatory guidance and other documents, and interviewed representatives of third-party consultants and law firms, consumer groups, and regulators.

What GAO Recommends

OCC and the Federal Reserve should improve oversight of sampling and consistency in the continuing reviews, apply lessons in planning and monitoring from the foreclosure review, as appropriate, to the activities of the continuing reviews and amended consent orders, and implement a communication strategy to keep stakeholders informed. In their comment letters, the regulators agreed to take steps to implement the recommendations.

View GAO-13-277. For more information, contact Lawrance L. Evans, Jr. at (202) 512-8678 or evansl@gao.gov.

What GAO Found

Complexity of the reviews, overly broad guidance, and limited monitoring for consistency impeded the ability of the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve) to achieve the goals of the foreclosure review—to identify as many harmed borrowers as possible and ensure similar results for similarly situated borrowers. Regulators said that coordinating among foreclosure review participants was challenging, and consultants said that the reviews were complex. In spite of regulators' steps to foster consistency, broad guidance and limited monitoring reduced the potential usefulness of data from consultants and increased risks of inconsistency. For example, GAO found that guidance was revised throughout the process, resulting in delays. Other guidance did not specify key sampling parameters for the file reviews and regulators lacked objective monitoring measures, resulting in difficulty assessing the extent of borrower harm. Good planning and collecting objective data during monitoring provide a basis for making sound conclusions. Without using objective measures to assess sampling or comparing review methods across consultants, regulators' ability to monitor progress toward achievement of foreclosure review goals was hindered.

Although regulators released more information than is typically associated with consent orders, limited communication with borrowers and the public adversely impacted transparency and public confidence. To promote transparency, regulators released redacted engagement letters and guidance on remediation. In addition, OCC released two interim progress reports. However, some stakeholders perceived gaps in key information and wanted more detailed information about how the reviews were carried out. Regulators stated they considered publicly releasing additional information, but expressed concerns that releasing detailed information risked disclosure of confidential or proprietary information. Further, borrowers who requested reviews experienced gaps in communication. For example, borrowers who submitted requests when the submission period opened waited nearly a year before receiving an update.

The foreclosure review activities to date highlight key lessons related to planning, monitoring, and communication. GAO's prior work shows that assessing and using lessons learned from previous experience can benefit the planning of future activities. The foreclosure review produced lessons in advanced planning and establishing mechanisms to monitor progress toward goals. Without assessing and applying relevant lessons learned, regulators might not address challenges in the continuing reviews or similar challenges in activities under the amended consent orders. In particular, regulators announced the agreements that led to the amended consent orders without a clear communication strategy. Although the regulators plan to release reports on the results of the amended consent orders and the continuing foreclosure reviews, neither regulator had made decisions about what information to provide to borrowers. GAO's internal control standards and best practices indicate that an effective communication strategy and timely reporting can enhance transparency and public confidence. Absent a clear strategy to guide regular communications with individual borrowers and the general public, regulators face risks to transparency and public confidence similar to those experienced in the foreclosure review.