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AP IMPACT: Gov't mortgage partners sued for abuses

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Billions of dollars the government is spending to help financially pressed homeowners avert foreclosure are passing through — and enriching — companies accused of preying on the people they're supposed to help, an Associated Press investigation has found.

The companies, known as mortgage servicers, are middlemen who collect monthly payments from homeowners and funnel the money to the banks or investors who hold the loans. As the only link between borrowers and lenders, they're in the best position to rework the terms of loans under the government's \$50 billion mortgage-modification program. The servicers are paid by the government if the changes keep homeowners from falling behind on payments for at least three months.

But the industry has a checkered history. The AP found that at least 30 servicers have been accused in lawsuits of harassing borrowers, imposing illegal fees and charging for unnecessary insurance policies. More recently, the companies also have been criticized for not helping homeowners quickly enough — delays that lead to more fees for homeowners and profits for servicers.

The biggest players in the servicing industry — Bank of America, Wells Fargo & Co., JPMorgan Chase & Co. and Citigroup Inc. — all face litigation, some of which has led to settlements with homeowners. All will receive federal money to modify loans.

But the industry's smaller players, which specialize in servicing riskier subprime loans and loans already in default, face harsher accusations that they systematically abused borrowers.

"The irony is, in essence, the government is paying servicers to do their job, which is to do loan modifications where appropriate," said Kurt Eggert, a law professor at Chapman University in Orange, Calif. "And that's not a part of their job they were ever especially good at."

The government says it has no choice but to partner with the servicers because they are the only link between borrowers and the investors who indirectly own their mortgages through securities. The companies acknowledge there have been abuses in their industry but argue many cases hinge on technicalities. They say borrowers facing foreclosure often sue out of desperation, trying to slow down the foreclosure process with frivolous allegations.

When President Barack Obama announced the plan, called the Home Affordable Modification Program, in March, he said it would help up to 4 million homeowners avoid foreclosure. But only about 200,000 loan modifications are

under way. Last week, 25 mortgage-servicing executives were summoned to the Treasury Department for meetings at which they promised to deliver 300,000 more loan modifications by Nov. 1.

Under the loan-modification program, 38 servicers will earn fees to help reduce the monthly payments of homeowners facing foreclosure. The goal is to modify mortgages so homeowners' payments don't exceed 38 percent of their gross monthly income.

Without government aid, servicers don't have enough financial incentive to modify mortgages. Each year, they earn about one-quarter to one-half percent of the value of the loans they service, so the larger the mortgage, the more they make. They earn less if the loan is modified, usually by lowering the interest rate or principal or adjusting the term.

The servicers also make money through late fees, or by foreclosing. The paperwork necessary to execute a foreclosure can generate hundreds of dollars in fees for some servicers.

Under the Treasury program, the servicers could pocket more than \$5,500 for each loan they modify. But they won't be paid until the homeowners have made timely payments for three months. The servicers will also get government money to give to mortgage investors to compensate them for reducing the loans. How much will depend on what it costs the investors to modify the loan.

The largest mortgage servicing abuse lawsuit was brought against Select Portfolio Servicing, which was accused of imposing illegal fees and charging borrowers for insurance they did not need.

The company paid \$55 million in 2003 to settle charges brought by the Department of Housing and Urban Development and the Federal Trade Commission. It is eligible for up to \$660 million under the Obama plan — some to keep and some to pass on to investors and homeowners.

Most complaints against servicers allege similar abuses. Servicers often dispose of the harshest charges by settling without admitting guilt, as Select Portfolio did in 2003.

Treasury says it has no choice but to work with all servicers, no matter how dubious their records. Refusing to work with a particularly bad player would "deprive homeowners who have mortgages with that servicer from getting modifications," Treasury spokeswoman Jenni Engebretsen said in a statement. "Working with Fannie Mae and Freddie Mac, we have put in place a robust structure to protect against both servicer and borrower fraud and to ensure quality control," she added.

An AP analysis of the 38 servicers the government is paying to help vulnerable homeowners found that:

_ At least 30 face lawsuits from homeowners and advocates claiming they charged illegally high fees, prematurely foreclosed on homes and engaged in illegal collection practices. Most of the suits allege violations of laws that protect homeowners in foreclosure and prevent debt-collection abuse. Treasury's program requires servicers to comply with these laws.

_ At least 14 have been accused of misleading customers before the program began about whether they would qualify for loan modifications or how low their new payments might be. In many such cases, servicers are accused of telling borrowers not to make payments because their applications for modifications were pending — and moving to foreclose anyway.

_ At least three of the companies settled federal predatory collection allegations by pledging to correct their behavior. They have since been sued hundreds of times by homeowners who allege the same illegal practices.

"There is no question that there have been significant abuses by servicers, and a big part of that is there's no one who is carefully monitoring their work to make sure that they're not taking advantage of borrowers," Eggert said.

In the past, loan servicing was a sleepy corner of the mortgage industry. Servicers did little more than open

envelopes containing mortgage payments and forward money to investors.

The business became far more profitable during the housing boom. The proliferation of mortgages sold to risky, or subprime, borrowers created an opening for the servicing business. They specialized in collecting from people less likely to make timely payments, and profited as late fees mounted.

Servicers wanted this business so much that they sometimes bid more than they could reasonably expect to make back for handling a pool of loans, said Daniel Hedges, an attorney with Mountain State Justice Inc., a nonprofit West Virginia law office that represents homeowners facing foreclosure. As a result, some servicers began adding fees that weren't due or otherwise overcharging borrowers, he said.

As borrowers fell behind on their loans, the servicers pocketed more late fees, foreclosure fees and negotiation fees. Some even profited from foreclosures.

In February 2005, Janet Simmons was more than \$30,000 behind on her mortgage. Bayview Loan Servicing began foreclosure proceedings on her home, located on 3.1 acres in rural Rockingham County, Va., between Washington and Charlottesville.

But Bayview — which stands to receive up to \$44.3 million from Treasury's loan-modification program — foreclosed without providing required written notice, the Virginia State Supreme Court found. Bayview never sent Simmons a letter by certified mail, as required under her loan.

Unbeknownst to Simmons, the home was sold at auction in July 2005. She didn't find out she had lost the house until the new buyer asked why she was doing yard work on a home she no longer owned, said her lawyer, Kevin Rose.

The courts awarded Simmons \$156,809 — the difference between what her home was worth and what it had received in a foreclosure sale.

Simmons could not be reached for comment. A spokesman for Bayview did not return repeated phone calls requesting comment.

Rose said he gets "a lot of calls where it's clear something was done wrong (by the servicer) and it's clear you could reverse the foreclosure."

But Rose and other housing lawyers said many cases of servicer abuse go unreported and unpunished — regardless of the evidence. In many states, there are no clear laws awarding legal fees to borrowers' attorneys when servicers have acted improperly, Rose said.

"Servicers have flown under the regulatory radar," said Julia Gordon, senior policy counsel with the Center for Responsible Lending, a Durham, N.C.-based advocacy group.

For six years, Jerry Turner made payments to Select Portfolio for a Charleston, W.Va., house he no longer owned.

In 2000, Turner was promised a loan modification in a court settlement. His mortgage belonged to a bank-owned pool of loans eventually serviced by Select Portfolio. Instead of lowering Turner's payments as the court had ordered, the bank foreclosed on Turner's home, court documents show. The bank then took the house back at auction.

Select Portfolio never told Turner his house had been sold. Instead, it continued sending him monthly invoices and cashing his checks. He didn't find out he had lost the house until it was sold a second time, at auction — because Select Portfolio hadn't paid property taxes on the home.

"I had excellent credit at one time," Turner said. "Now, I can't borrow money on the house, I can't leave it, and it's been tied up so much I don't know what to do."

Turner's case against Select Portfolio is pending in West Virginia state court.

Borrowers facing foreclosure often don't know who holds their mortgage. They have few options other than to sue their servicers for mishandling collections or failing to give adequate notice before foreclosing.

Servicers sometimes face frivolous lawsuits. But many servicers in line for government money are accused of ongoing, systematic abuses.

As part of its 2003 settlement with regulators, Select Portfolio, promised to end practices including collecting illegal fees and forcing borrowers to buy insurance. But the company, now owned by the investment bank Credit Suisse Group, has since been named in dozens of lawsuits alleging similar violations. A 2008 complaint in West Virginia state court, for example, alleged that the company charged homeowners thousands of dollars in unauthorized late fees and other charges.

Select Portfolio spokesman Craig Bullock said the company doesn't comment on inquiries "about our practices and so forth."

Another servicer, Ocwen Financial Corp., was found in 2004 to be engaged in illegal, unsafe and unsound collection practices. Ocwen settled with regulators by promising to comply with laws on foreclosure and debt collection and to try to find out if homeowners had insurance before charging them for its own, costlier insurance.

Ocwen, which is in line to receive up to \$553.4 million from the Treasury, faces a federal class-action complaint for harassing homeowners with excessive phone calls, charging illegal fees and adding unnecessary insurance premiums to borrowers' bills.

Ocwen engaged in "a nationwide scheme of illegal, unfair, unlawful, and deceptive business practices," the complaint contends.

Paul Koches, Ocwen's general counsel, disputed the allegations and noted the court has rejected one part of the lawsuit concerning illegal fees. "We have a deep and continuing commitment to foreclosure prevention," he wrote in an e-mail.

The charges against Select Portfolio and Ocwen are unusual in their scope and severity. But at least 28 other companies on Treasury's list also have been charged with, and in many cases settled, similar accusations.

AP Real Estate Writer Alan Zibel contributed to this report.



In this photo made Friday, June 5, 2009, Jerry Turner stands in the living room of the Charleston W.Va. home his mortgage servicer, Select Portfolio, collected payments on for six years before he found out that it had been foreclosed on and later auctioned off. Turner still lives at the home while his case against Select Portfolio is pending in West Virginia state court. (AP Photo/Bob Bird)



In this photo made Friday, June 5, 2009, a stack of paperwork related to his case sits on Jerry Turner's dining room table at the Charleston W.Va. home his mortgage servicer, Select Portfolio, collected payments on for six years before he found out that it had been foreclosed on and later auctioned off. Turner still lives at the home while his case against Select Portfolio is pending in West Virginia state court. (AP Photo/Bob Bird)



In this photo made Friday, June 5, 2009, Jerry Turner stands in front of the Charleston W.Va. home his mortgage servicer, Select Portfolio, collected payments on for six years before he found out that it had been foreclosed on and later auctioned off. Turner still lives at the home while his case against Select Portfolio is pending in West Virginia state court. (AP Photo/Bob Bird)



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