

BofA's \$10.3 billion mortgage settlement seen as best way out

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The \$10.3 billion settlement that Bank of America Corp. has reached with Fannie Mae may have been intended to induce other financial institutions to come in from the cold regarding wrongdoing linked to the home-mortgage meltdown.

"There is something for everybody in the settlement," said **Lawrence Rimmel**, a Pryor Cashman partner not directly involved in the case.

"The regulators are probably thinking, 'We're not dealing with bad citizens, but we want them to look back and act accordingly' " in regard to the financial crisis, he said. "They are happy to reach something the bank can live with. From the bank's point of view, they probably look back with some regret on the acquisition [of Countrywide]."

Bank of America agreed on January 7 to resolve claims related to alleged irregularities in the sale of home mortgages by its Countrywide unit. In a separate deal, 10 lenders agreed to an \$8.5 billion settlement with federal regulators of claims of abuse related to foreclosure processing and mortgage loan servicing.

The second deal involved Aurora Financial, Bank of America, Citibank, JPMorgan Chase & Co., MetLife Bank, PNC, Sovereign, SunTrust, U.S. Bank and Wells Fargo & Co. Those banks will make \$3.3 billion in direct payments to borrowers plus \$5.2 billion in additional assistance in the form of loan modifications and the forgiveness of deficiency judgments. The settlement will help some 3.8 million borrowers who lost homes to foreclosure from 2009 to 2010. The Office of the Comptroller of the Currency and the Federal Reserve Board negotiated the deal.

Under the terms of the settlement with the Federal National Mortgage Association, popularly known as Fannie Mae, Bank of America will pay the government-sponsored enterprise \$3.55 billion and repurchase 30,000 loans valued at an additional \$6.75 billion. The loans were made through Countrywide Financial Corp. from January 2000 through December 2008 and totaled \$11.2 billion in unpaid principal balance as of September 30.

Partners at major law firms, many representing financial institutions facing similar legal woes, declined to discuss the situation. But according to Remmel, other banks likely would view the settlement as an inducement to forgo litigation. "If you don't want to settle, you can do that [litigate], but there is a reasonable settlement that lets this put it behind you and move on," he said.

Bank of America chief executive officer Brian Moynihan released a written statement that appeared to underscore Remmel's point. "As we enter 2013, we sharpen our focus on serving our three customer groups and helping to move the economy forward," Moynihan said. "Together, these agreements are a significant step in resolving our remaining legacy mortgage issues, further streamlining and simplifying the company and reducing expenses over time."

Remmel noted that Bank of America acquired Countrywide at the height of the crisis at the urging of government leaders attempting to stabilize the financial sector.

"The real problems were not the banks, but the Countrywide-type entities," he said. "Banks have an historic culture of compliance and of working with their regulators. Nobody could have perceived what would happen if the wheels came off."