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What the week's big mortgage moves mean for consumers

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This week brought three big developments to the nation's beleaguered mortgage landscape. For consumers, the complex moves have been mostly mystifying, but experts say they all aim at turning the page.

"There is a strong desire to put behind us all this period of time — the aftermath of the darkest period in American finance. All these things [announced this week] are intended to do that," said John Taylor, president and CEO of the National Community Reinvestment Coalition, a Washington, D.C.-based community advocacy group. "There are good and bad things in it for consumers.''

A new rule issued Thursday by the Consumer Financial Protection Bureau aims to prevent lenders from making the sort of toxic mortgages that forced many unsuspecting borrowers into ruin. Yet the new "qualified mortgage" rule, according to some lenders, also could perpetuate the nation's tight credit problem and keep many would-be homebuyers on the sidelines.

Meanwhile, two settlements unveiled Monday with big banks should resolve some lingering issues from the mortgage meltdown that have kept banks focused on past errors instead of getting back to the business of lending.

Here is a quick primer on the week's developments and some likely implications for consumers.

OCC Settlement

The Office of the Comptroller of the Currency, which regulates nationally chartered banks, Monday unveiled an $8.5 billion settlement with 10 giant banks that service mortgages.

As part of the controversial settlement, the OCC is scrapping its Independent Foreclosure Review, which was aimed at identifying victims of robo-signing and other improper foreclosure tactics by banks, but soon proved to be a badly flawed effort.

Instead, under the OCC's new approach — which will be spelled out in enforcement actions in a couple of weeks — more than 3.8 million borrowers who faced foreclosure between Jan. 1, 2009 and Dec. 31, 2010 stand to get some payment regardless of whether they actually suffered any harm.

The mortgage servicing banks covered are Bank of America, Wells Fargo, Citibank, JPMorgan Chase, SunTrust, PNC, Sovereign, U.S. Bank, MetLife Bank and Aurora.

The agreement provides for $3.3 billion to go directly to borrowers. Another $5.2 billion is earmarked for loan modifications and the forgiveness of deficiency judgments.

The OCC said the amount that eligible borrowers get will range from a few hundred dollars up to $125,000, depending on the type of error that possibly occurred in their mortgage servicing.

“If a borrower went through foreclosure with one of those 10 lenders, they should receive a couple hundred bucks, whether they deserve it or not,” said Guy Cecala, publisher and CEO of Inside Mortgage Finance Publications in Bethesda, Md., which tracks news and statistics in the residential mortgage industry. “The odds of getting $125,000 is the odds of winning the lottery. It would have to be a false foreclosure or where they were thrown out of their house illegally.”

The OCC will look to 13 broad categories of errors outlined in the Independent Foreclosure Review launched in April 2011.

Those include a litany of bumblings and misdeeds by the mortgage servicers, ranging from foreclosing on a homeowner who was following the rules during a trial period of a loan modification, to failing to offer a loan modification as mandated under a government program, to failing to follow up with a borrower to obtain needed documents under a government program.

OCC spokesman Bryan Hubbard said borrowers will be compensated based on which category of possible error they fit without delving in to the facts of their situation.

“It’s not being determined on harm anymore — just the category that may have occurred, that possibly occurred,” Hubbard said. “They’ll receive a check based on the type of error that may have occurred.”

“Some people will receive a check who had no error. That is absolutely true,” Hubbard said.

He acknowledged: “There may be people who are undercompensated. But they give up nothing by accepting the money and they may pursue whatever other remedies are available to them.”

As of the Dec. 31, 2012 deadline for applying for the Independent Foreclosure Review, some 495,000 borrowers had applied out of more than 3.8 million estimated to have been eligible to seek a review. OCC said those borrowers who asked for a review will get higher payouts than peers who didn’t.

Borrowers and consumer advocates have been mostly skeptical about the OCC deal.

“The settlement took my hope away,” said Carol, a Fort Lauderdale woman who applied for the Independent Foreclosure Review because she was forced to do a short sale on her home after Citibank initiated a foreclosure action in June 2009.

Carol, a former mortgage professional who asked that her last name not be used, said she doubts the settlement will help consumers much. “I’m very disappointed in the government. Where is the watchdog? Where is the transparency?” she said.

Fueling consumers’ skepticism: A $25 billion settlement last spring between 49 state attorneys general and five big banks, has yet to provide much help to consumers. The state of Florida is just now ready to decide how to spend part of its share. Jan. 18 is the deadline for homeowners to file a claim under that settlement. Details are available at nationalmortgagesettlement.com.

Regarding the OCC settlement, community advocate Taylor said the OCC's change in tack is troubling. "It would have been a better approach to find those people the most wronged and make them whole, instead of a blanket payment," Taylor said. "It's a little money for a lot of people, instead of more money for those most abused."

Bruce Jacobs, a Miami attorney who specializes in foreclosure defense, said the OCC settlement "sounds like a lot, but it's a quarterly profit for some of these banks. It's not much of a penalty. A lot of people in Miami need help and I'm afraid they're not going to get it. The government sold them short."

Bank of America and Fannie Mae

Separately, Fannie Mae and Bank of America announced an $11.6 billion settlement to a long-standing dispute Monday.

Fannie, the giant government-sponsored enterprise that buys mortgages and package them into securities, has been pressing BOA to buy back a pile of souring loans made between Jan. 1, 2000 and Dec. 31, 2008 that were poorly underwritten. The bulk of those mortgages came from Countrywide Mortgage, which was acquired by BOA in 2008.

As part of the settlement, BOA agreed to pay $1.3 billion to Fannie Mae to make up for dropping the ball on servicing mortgages for Fannie Mae by delaying contacts with delinquent borrowers or failing to process foreclosures properly.

While the deal is aimed at compensating Fannie Mae, it has big implications for many BOA mortgage customers: In coming months, they will be notified their mortgages will be serviced by someone else.

BOA, which has been pulling back from several areas of mortgage lending, got approval from Fannie Mae to transfer certain mortgage servicing rights to two firms, Nationstar Mortgage of Lewisville, Texas, and Green Tree, part of Walter Investment Management Corp .

Nationstar Mortgage, which specializes in mortgage servicing, agreed to acquire $215 billion in servicing rights from Bank of America for about $1.3 billion.

Executives of Nationstar, whose shares trade on the New York Stock Exchange, said in a conference call Monday they expect to take over the massive pile of mortgage servicing rights in a series of steps over the next nine months. In the meantime, BOA will continue to handle them.

Specialty servicers like Nationstar focus on customer outreach to try to reduce losses. But changing mortgage servicers can often be a bumpy experience for bank customers.

Both Bank of America and Nationstar promised a smooth transition.

"Servicing of accounts acquired will be transferred throughout the year in a manner that will ensure a smooth transition for our customers,'' Nationstar told The Miami Herald in a statement.

New consumer mortgage rule

The fledgling Consumer Financial Protection Bureau, which was born of the 2010 Dodd-Frank Act, unveiled its first major rule regarding home mortgages Thursday, laying out standards for "qualified mortgages," which require that lenders determine a customer's "ability to repay."

In the financial crisis that culminated in the near collapse of the U.S. banking system in 2008, many homeowners had signed up for mortgages that they couldn't afford or that had risky and deceptive terms.

The agency's rule, which becomes part of the Truth in Lending Act, is aimed at protecting homebuyers from greedy lenders — and from their own flawed skills in personal finance.

Under the rule, which takes effect in a year, lenders must consider eight factors to determine a borrower's "ability to repay."

Those include: employment status; current monthly income or assets; the monthly payment; other loan obligations, mortgage-related obligations; debt-like alimony and child support; debt-to-income ratio, and credit history. And lenders have to verify the information using third-party records.

While some bankers complain the rule will discourage mortgage lending and keep credit tight, consumer advocates mostly praise the measure as a major step in the right direction.

The issuance of a clear rule on safe lending should only encourage banks to make mortgages, said Kathleen Day, a spokeswoman for the Center for Responsible Lending in Washington, D.C.

"The good news for consumers is they ought to find it easier to walk up to a bank or mortgage company and get a loan," Day said. "The biggest excuse for not lending has been removed."

Under the rule, "no-doc" loans that don't require proof of a borrower's income or assets are excluded.

A "qualified mortgage" also can't have toxic features such as interest-only or balloon payments, terms exceeding 30 years, or negative amortization, in which the balance increases over time instead of dwindling.

And a "qualified mortgage" generally can't have points or fees exceeding 3 percent of the loan amount.

A major element is the monthly payment can't be more than 43 percent of a borrower's monthly income. And lenders can't use low teaser rates to calculate whether a consumer can repay a loan.

In a concession to banks, the consumer agency agreed that during a transitional period for the new rule, loans exceeding the debt-to-income ratio can be considered qualified so long as they meet the other criteria.

Banks got something else out of the new rule, too: A "qualified mortgage" carries a safe-harbor provision. That means banks that have followed underwriting rules generally will be shielded from consumer claims that the loan was improper.

"The banks got some privileges they didn't have before," said Taylor. "We thought they were unnecessary and undeserved, a concession to the lenders."