MORTGAGE COMPLIANCE FORUM is a unique website, devoted to providing articles written by professionals and featured contributors who specialize in the area of residential mortgage compliance. Comments are encouraged!

HOME | FREE NEWSLETTER | RECENT ARTICLES | CONTACT US

Friday, January 29, 2016

AARP joins the PHH v CFPB Battle

In the continuously unfolding saga of PHH Corporation's ("PHH") battle with the Consumer Financial Protection Bureau ("Bureau"), we now have a well-known advocacy group joining the side of the Bureau. Last month, the AARP (formerly the "American Association of Retired Professionals") told the D.C. Circuit that the Bureau should have broad authority to enforce mortgage laws that protect older people.

I have been watching this matter since its inception, commenting from time to time.

AARP asserts that the Real Estate Settlement Procedures Act ("RESPA) is tasked with protecting against kickback scams which, it is contended, inflate mortgage loan settlement costs that distort the market and increase the cost of homeownership. Furthermore, AARP takes the view that the Bureau was given authority to enforce RESPA and, as such, the appellate court should hold that the Bureau has acted within its constitutional authority by leveling a heavy monetary penalty against PHH for exactly the type of harmful scheme it was created to protect against.

Here is AARP's position:

> Widespread mortgage lending abuses also correspond to unprecedented numbers of people entering their retirement years having to make mortgage payments and carrying increasingly unaffordable levels of consumer and health care debt that threaten their ability to afford basic necessities such as food, medicine and shelter.

As a refresher: this case before the D.C. Circuit originated with administrative claims the Bureau filed against PHH in January 2014. The Bureau alleged that when PHH originated mortgages, it referred consumers to mortgage insurers with which it had relationships. In exchange for this referral these insurers purchased reinsurance from PHH's subsidiaries, and PHH took the reinsurance fees as kickbacks - which is a violation of RESPA.

PHH also charged more money for loans to consumers who did not buy mortgage insurance from one of its kickback partners and, in general, charged consumers additional percentage points on their loans.

Director Richard Cordray upheld a November 2014 ruling by Administrative Law Judge Cameron Elliot, finding that PHH engaged in a mortgage insurance kickback scheme

Pulse

Share

Visitors

12,055

SUITE OF SERVICES

NEWSLETTER - FREE!

Subscribe Now

ARCHIVE

under RESPA; but, said Director Cordray, the judge incorrectly assessed the penalties.

Rather than requiring that PHH face a monetary penalty for kickbacks on mortgages that closed on or after July 21, 2008 – three years before the Bureau took over RESPA enforcement from the U.S. Department of Housing and Urban Development – PHH should be penalized for each payment it received after that date, regardless of when the mortgage had closed.

In support of his decision, Director Cordray noted his determination was based on the way mortgage reinsurance premiums are paid; to wit, rather than being applied as a one-time payment at the closing date of a mortgage, such premiums are paid by borrowers each time they make a monthly mortgage payment. Thus, it was the Director's view, PHH should be liable for each payment it accepted on or after July 21, 2008 – even if the loan associated with the payment had closed prior to that date!

Given the Director's review, PHH's penalty was increased fantastically. Whereas Judge Elliott levied a $6.4 million penalty on PHH based on the amount borrowers paid on mortgages that closed on or after July 21, 2008, Director Cordray's calculation increased the penalty to $109 million.

PHH appealed the decision, and the D.C. Circuit stayed the ruling. PHH the invoked the rule of lenity, asserting that the Bureau was violating RESPA's statute of limitations. In response, the Bureau took the position that it is entitled to deference.

Which brings us back to AARP. The AARP apparently supports the stiff penalty, saying evidence of the harm to older people inflicted by inflated fees and abusive mortgage-related practices is indisputable: approximately 1.5 million families headed by someone over age 50 lost their home to foreclosure between 2007 and 2011.

PHH has some of the biggest legal talent handling their litigation against the Bureau. The Amici Curiae consist of many of the most influential mortgage industry associations and building industry participants that are subject to RESPA.

Jonathan Foxx
President & Managing Director
Lenders Compliance Group

No comments:

Post a Comment

Home Older Post

Subscribe to: Post Comments (Atom)

POWERED BY

Lenders Compliance Group | Brokers Compliance Group
Vendors Compliance Group | Servicers Compliance Group
Title Services Compliance Group | Realty Compliance Group

TEAM TRID™ - PRESENTATION

Notice to Visitors

reliability of any statement, information, data, finding, interpretation, advice, opinion, or view presented herein.

Mortgage Compliance Forum is a "discussion venue" that is designed to share information about residential mortgage compliance.

The discussions on Mortgage Compliance Forum do not constitute legal advice from or to other Mortgage Compliance Forum members or any other person. Mortgage Compliance Forum encourages an exchange of information and views, but is not responsible for the information, comments, advertising, products, resources or other materials of this site, any linked site, or any link contained in a linked site. The inclusion of any link does not imply endorsement. Your use of any linked site is subject to the terms and conditions applicable to that site. Mortgage Compliance Forum may be used for lawful purposes only. Please do not post content that is obscene, otherwise objectionable, in violation of federal or state law, or that encourages conduct that could constitute a criminal offense or give rise to civil liability; that discloses any non-public transactions, business intentions, or other confidential information; and, that infringes the intellectual property, privacy, or other rights of third parties. Material protected by restricted copyright, use, or other proprietary right may not be uploaded, posted, or otherwise made available to Mortgage Compliance Forum participants without the permission of the copyright owner, if such permission is required. The Mortgage Compliance Forum administrator reserves the right to remove content at any time and without notice that is deemed to be inappropriate and/or in violation of comment rules.