



## 2013 Bulletin 12

### CFPB Aggressive in Enforcing RESPA Kickback Violations

May 19, 2013

Only a month after announcing a \$15.4 million penalty and a settlement with four mortgage insurance companies requiring them to stop paying kickbacks to mortgage lenders through ownership in a captive reinsurer and subject themselves to ongoing compliance monitoring, the CFPB announced a settlement with a Texas homebuilder who was being improperly compensated for referral of loan originations through two “sham” affiliated business entities. What is most interesting is the latter were relatively small affiliated business arrangements, (the larger handled only 32 closings during the relevant period) and that the CFPB targeted the unlicensed recipient of the kickbacks. We think this is evidence of CFPB’s increasingly aggressive stance in enforcing RESPA kickback violations.

#### **Mortgage Insurance Kickbacks through Captive Reinsurance**

In the mortgage insurer case, Genworth Mortgage Insurance Corp., Mortgage Guaranty Insurance Corp., Radian Guaranty, and United Guaranty Corp. were alleged to have received lucrative business referrals from lenders and to have provided kickbacks by purchasing captive reinsurance that was essentially worthless, but was designed to make a profit for the lenders.

As part of their settlement agreement, the four mortgage insurers agreed (subject to court approval) to the following:

- **End the practice:** The mortgage insurers are prohibited from entering into any new captive mortgage reinsurance arrangements with affiliates of mortgage lenders, and from obtaining captive reinsurance on any new mortgages, for a period of ten years. As pre-existing reinsurance arrangements come to a close, the mortgage insurers will forfeit any right to the funds not directly related to collecting on reinsurance claims.

The mortgage insurers will also be prohibited from paying illegal kickbacks or otherwise violating the Real Estate Settlement Procedures Act.

- **Fines:** The four mortgage insurers will pay the CFPB a total of \$15.4 million in penalties. The amount of the penalties reflects a number of factors, including each mortgage insurers’ finances, the pervasiveness of its conduct, its relative culpability, and its cooperation with the Bureau.

- Compliance monitoring and reporting: These companies will be subject to monitoring by the CFPB and required to make reports to the CFPB in order to ensure their compliance with the provisions of the orders.

Here's the text of each of the proposed consent orders:

- [Genworth Mortgage Insurance Corporation](#)
- [Mortgage Guaranty Insurance Corporation](#)
- [Radian Guaranty Inc.](#)
- [United Guaranty Corp](#)

### **Kickbacks to Builder through Affiliated Loan Companies**

Friday, May 17, CFPB announced that it ordered Texas homebuilder Paul Taylor to surrender more than \$100,000 he received in kickbacks for referring mortgage origination business to Benchmark Bank and to Willow Bend Mortgage Company, and from engaging in future real estate settlement services, including mortgage origination.

Taylor and the bank created and jointly owned Stratford Mortgage Services, LC, which claimed to be a mortgage originator. Similarly, Taylor and Willow Bend created and jointly owned PTH Mortgage Company. His homebuilding company, Paul Taylor Homes, then referred mortgage origination business to the sham entities. However, all underwriting, processing, and closing functions were actually performed by the Bank and Willow Bend. The affiliates did not have their own employees or office space, did not advertise and did no loan origination business not referred by Taylor and his other affiliates. During the relevant period (roughly 3 years) only 32 loans were closed through the larger affiliate.

CFPB said the kickbacks were passed through the sham entities back to Taylor through profit distributions and as a payment through a "service agreement"

Here's a copy of the [Consent Order](#).

Based on these cases, we expect to see an increased level of CFPB enforcement of RESPA kickback violations not just against affiliated businesses, but against anyone paying or receiving improper inducements.

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