CFPB Files Consent Orders Against Wells Fargo and Chase Over Marketing Services Kickbacks

On January 22, 2015, the Consumer Financial Protection Bureau (CFPB) announced that it had taken action in conjunction with the Maryland Attorney General against Wells Fargo and JP MorganChase for an illegal marketing services-kickback scheme involving Genuine Title. Genuine Title would purchase mortgage lead contact information and create, print on bank letterhead and sometimes mail solicitations to the lead prospects on behalf of bank loan originators. There was an implied understanding that the originators would try to steer the closings for the resulting loans to Genuine Title. The loan originators would reimburse Genuine Title varying amounts for these services, but never the full cost. The practice appears to have been somewhat more widespread at Wells than at Chase.

Some actions of Genuine Title employees indicate that they were intentionally hiding the true cost of the services. The CFPB complaint refers to e-mails from employees of Genuine Title to a printing company requesting ‘fake’ invoices to provide a paper trail to Wells Fargo for a lower cost, while also requesting ‘true’ invoices sent to Genuine Title reflecting the actual amounts paid for the services.

The CFPB faults both financial institutions for failure to have systems and processes in place to identify this kickback scheme. The allegations against Wells Fargo are more factually specific. In some cases the Wells Fargo originators submitted internal requests to use leads obtained from Genuine Title, and in other cases Wells Fargo branch managers were aware of the practice. One branch manager insisted that Genuine Title begin paying for the postage to mail the Wells Fargo solicitations. The complaint names one specific Wells Fargo loan officer, whose spouse received cash payments from Genuine Title in return for the loan officer’s referral of settlement services.
The complaint alleges that Wells Fargo has ‘multiple warnings’ about these illegal arrangements, including a ‘federal lawsuit,’ but took no action to stop them.

The proposed consent orders posted by the CFPB require payment of a monetary judgment ($300,753 for Chase, well over $10 million for Wells Fargo) to be paid to borrowers who closed loans with the banks and closed at Genuine Title while the kickback scheme was in effect. Individual borrowers and other government agencies may still take action against Wells Fargo and Chase under other laws (such as state unfair and deceptive acts and practices statutes) for the same kickback scheme. The proposed consent orders disallow any penalty offset for the monetary judgment paid under the consent order against any penalties in any other actions, even if both would be paid to the same individual borrower. If either bank receives a penalty offset in a separate action, it must negate it by paying the offset amount directly to the U.S. Treasury.

The proposed consent orders also require payment of a separate civil monetary penalty ($3 million from Wells to the Maryland Attorney General, and $500,000 from Chase to the CFPB). Both banks must implement a compliance plan within 90 days of the date of the final consent order, to be approved (or modified) by the CFPB, to ensure that there are no further kickbacks. Finally, each bank must distribute copies of its final consent order to each of its board members, executive officers, and each retail mortgage employee ‘down to the level of Home Mortgage Consultant,’ within 30 days of the effective date of the consent order, and each year for five years thereafter.

Although the severity of the terms of the proposed consent orders speak for themselves, the CFPB press release included a statement from Director Cordray that they ‘should serve as a warning to all those in the mortgage market.’

If you have any questions or comments concerning this Client Alert, please do not hesitate to contact:

**Eldon L. Youngblood**  
Attorney  
Phone: (214) 257-1701  
Fax: (214) 257-1717  
E-mail: eyoungblood@msyalaw.com  
dpederson@mcglinchey.com

Eldon L. Youngblood is an attorney in the firm’s Dallas office and focuses his practice on real estate finance matters, with emphasis on lender issues, mortgage banking and construction law. *

**David J. Pederson**  
Attorney  
Phone: (214) 257-1705  
Fax: (214) 257-1717  
E-mail: dpederson@msyalaw.com  
dpederson@mcglinchey.com

David J. Pederson is an attorney in the firm’s Dallas office and focuses his practice on all aspects of residential mortgage banking, including multistate and federal compliance, licensing, loan documentation and servicing. *
Bradley N. Cope
Attorney
Phone: (214) 257-1702
Fax: (214) 257-1717
E-mail: bcope@msyalaw.com
bcope@mcglinchey.com

Bradley N. Cope is an attorney in the firm’s Dallas office and focuses his practice on consumer financial services, including all aspects of residential mortgage banking, multistate and federal compliance, to litigation and claims management. *

For assistance with your mortgage documentation needs, you may also contact:

Vicki R. Murphy *
Executive Director
Phone: (214) 257-1820
Fax: (214) 257-1717
E-mail: vmurphy@msyalaw.com

Vicki Murphy is Executive Director for McGlinchey Stafford and Youngblood & Associates, LLP. She has worked in client services for law firms representing residential mortgage lenders for over 18 years. She has spent her career working with lawyers and residential mortgage lenders to develop operational and closing services and software to maximize lender efficiencies. *Ms. Murphy is not licensed to practice law.

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