

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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THE CFPB SAGA CONTINUES

We report on two additional significant pieces of news since our initial report on *the PHH v. CFPB* decision last Wednesday. One is a small but important part of the actual opinion. The second is action taken by the CFPB concerning lending discrimination.

First, the PHH decision.

Most of the attention and most of the written opinion focus on the challenge to the constitutionality of the CFPB. As we know, the Circuit Court found, in a divided opinion, that the structure of a Bureau headed by one director who may only be removed for cause, is constitutional. But the case began with an enforcement action by the CFPB against PHH.

The thrust of the enforcement action was the CFPB's claim that PHH violated RESPA's prohibition of payment of referral fees. Without getting too technical, the Bureau claimed that Section 8 of RESPA only allowed for payments made solely for the service provided by one entity to another. That is, payments made "*solely for the service actually being provided on its own merits*". Payments may not include payments the purpose of which is "*to serve as a quid pro quo for referrals*".

PHH argued that kickbacks in the form of payments for services are permitted so long as the payments do not exceed the reasonable market value of the services. Does the payment bear a reasonable relationship to the value of the services actually provided? A divided court found that PHH's position was correct.

Now before we all rush out to restructure our marketing agreements and other relationships let's remember that this may not be the final position on this issue. There are several reasons that this finding could change, most notably an appeal to the Supreme Court. However, one of the more aggressive positions taken by the Bureau is at least momentarily reversed.

Second, we have an almost a complete reversal on lending discrimination.

The CFPB has removed enforcement powers from the Office of Fair Lending and Equal Opportunity. The duties of that unit will now move to the director's office and focus on "*advocacy, coordination and education.*" They will not have enforcement or oversight duties. Essentially it would seem that the Bureau has renounced any power to oversee/enforce civil rights compliance.

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You may direct any questions or comments directly to:

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