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CFPB Takes Action Against PHH Corporation for Mortgage Insurance Kickbacks

WASHINGTON, D.C. — Today, the Consumer Financial Protection Bureau (CFPB) initiated an administrative proceeding against PHH Corporation and its affiliates (PHH), alleging PHH harmed consumers through a mortgage insurance kickback scheme that started as early as 1995. The CFPB is seeking a civil fine, a permanent injunction to prevent future violations, and victim restitution.

The filing is against New Jersey-based PHH Corporation and its residential mortgage origination subsidiaries, PHH Mortgage Corporation and PHH Home Loans LLC, and PHH's wholly-owned subsidiaries, Atrium Insurance Corporation and Atrium Reinsurance Corporation.

Mortgage insurance is typically required on loans when homeowners borrow more than 80 percent of the value of their home. It protects the lender against the risk of default. Generally, the lender, not the borrower, selects the mortgage insurer. The borrower pays the insurance premium every month in addition to the mortgage payment. While mortgage insurance can help borrowers get a loan when they cannot make a 20 percent down payment, it also adds to the cost of monthly payments for borrowers who have little equity in their homes.

Mortgage insurance can be harmful when illegal kickbacks inflate its cost. Increasing the burden on borrowers who already have little equity increases the risk that they will default on their mortgages. The Real Estate Settlements Procedures Act (RESPA) protects consumers by banning kickbacks that tend to unnecessarily increase the cost of mortgage settlement services. RESPA also helps promote a level playing field by ensuring companies compete for business on fair and transparent terms.

A CFPB investigation showed that when PHH originated mortgages, it referred consumers to mortgage insurers with which it partnered. In exchange for this referral, these insurers purchased "reinsurance" from PHH's subsidiaries. Reinsurance is supposed to transfer risk to help mortgage insurers cover their own risk of unexpectedly high losses. According to today's Notice of Charges, PHH took the reinsurance fees as kickbacks, in violation of RESPA. The CFPB alleges that because of PHH's scheme, consumers ended up paying more in mortgage insurance premiums.

Enforcement Action

Today's Notice alleges that PHH used mortgage reinsurance arrangements to solicit and collect illegal kickback payments and unearned fees – through its affiliates Atrium Insurance Corporation and Atrium Reinsurance Corporation – in exchange for the referral of private mortgage insurance business. The Bureau believes that from the start of the arrangements, and continuing into at least 2009, PHH manipulated its allocation of mortgage insurance business to maximize kickback reinsurance payments

Photos and bios

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for itself. PHH Corporation and its affiliates are specifically accused of:

- **Kickbacks:** Over the approximately 15-year scheme, the CFPB alleges that PHH set up a system whereby it received as much as 40 percent of the premiums that consumers paid to mortgage insurers, collecting hundreds of millions of dollars in kickbacks;
- **Overcharging Loans:** In some cases, PHH charged more money for loans to consumers who did not buy mortgage insurance from one of its kickback partners. In general, they charged these consumers additional percentage points on their loans; and
- **Creating Higher-Priced Insurance:** PHH pressured mortgage insurers to "purchase" its reinsurance with the understanding or agreement that the insurers would then receive borrower referrals from PHH. PHH continued to steer business to its mortgage insurance partners even when it knew the prices its partners charged were higher than competitors' prices.

A Notice of Charges initiates proceedings in an administrative forum, and is similar to a complaint filed in federal court. This case will be tried by an Administrative Law Judge from the Bureau's Office of Administrative Adjudication, an independent adjudicatory office within the Bureau. The Administrative Law Judge will hold hearings and make a recommended decision regarding the charges, which may be appealed to the Director of the CFPB for a final decision.

The Bureau's administrative proceedings are similar to the administrative proceedings of other federal regulators, including the Securities and Exchange Commission, the Federal Trade Commission, and prudential regulators like the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

The Office of Inspector General at the Department of Housing and Urban Development (HUD) initiated the investigation of PHH's reinsurance practices, and in July 2011, HUD's authority over the investigation transferred to the CFPB. Since then, HUD has given the Bureau valuable assistance in this matter.

This administrative proceeding follows the Bureau's settlements in 2013 with five mortgage insurers who participated in similar schemes.

The Notice of Charges is not a finding or ruling that the defendants have actually violated the law. The Bureau's Rules of Practice for Adjudication Proceedings provide that the CFPB may publish the actual Notice of Charges ten days after the company is served. If allowed by the hearing officer, the charges will be available on the CFPB website after Feb. 12, 2014.

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

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