

New CFPB Consent Orders Point to Growing Indirect Regulation of Title Insurance

March 25, 2015

The Dodd-Frank Act of 2010 granted rule-making authority under the Real Estate Settlement Procedures Act (RESPA) to the CFPB and, with respect to entities under its jurisdiction, generally granted authority to the CFPB to supervise and enforce compliance with RESPA and its implementing regulations. CFPB supervisory jurisdiction includes residential mortgage originators, brokers, and servicers and other large participants in the consumer financial services market, however; CFPB does not have authority over insurers, including title insurers. However, as we reported in the last issue, new regulations promulgated by the CFPB have been resulting in the indirect regulation of title insurance. In addition to those regulations, recent and aggressive RESPA enforcement actions by CFPB against title insurance agents and settlement service providers are giving rise to concerns that the CFPB is extending its authority to areas not contemplated under Dodd-Frank. **Such actions could impact how title insurers operate in the marketplace and potentially allow CFPB to supplant a space in which state insurance regulators have traditionally maintained authority.** The CFPB has made its mark on RESPA enforcement against the title industry in three actions directly against title insurance agents in 2014, in which Realty South and its TitleSouth, LLC affiliate, Stonebridge Title Services, Inc. and Lighthouse Title, Inc., entering into consent orders and levying fines in connection with alleged RESPA violations for affiliated business arrangement disclosures, payment of referral fees and marketing service agreements, respectively. The Consent orders announced by the CFPB in January 2015, highlight the role Genuine Title LLC was alleged to play in violations of RESPA related to marketing services and commission payments. While there has been considerable analysis and debate of CFPB's interpretation of RESPA as applied to the 2014 actions, there is no question as to CFPB's intent to establish itself in the enforcement arena. While no title insurers were cited by CFPB in these actions, **CFPB's willingness to use RESPA as a tool to extend its authority over title insurance agencies has implications for title insurers, especially with respect to agency, audit, and compliance programs.** Title insurers who own title agencies, are engaged in joint ventures, or are service providers to mortgage originators are at the

greatest risk of impact by CFPB's maturing view of its jurisdiction. They should take note of the agency's recent enforcement actions and work to align their controls and business practices in anticipation of further activity by the CFPB.

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