

CFPB and DOJ File Action Against Provident Funding Alleging Discriminatory Lending Policies and Practices

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Last week, the Consumer Financial Protection Bureau (CFPB, or “Bureau”), together with the Department of Justice (DOJ), filed an enforcement action against Provident Funding Associates, L.P. (Provident), the second-largest private mortgage company in the United States, in a California District Court. The CFPB's mission includes ensuring fair, equitable, and nondiscriminatory access to credit for all consumers. According to the CFPB's recent Fair Lending Report to Congress, which highlights accomplishments made during the 2014 calendar year, its Office of Fair Lending implemented five separate consent orders last year, making *Provident* the sixth enforcement action seeking to address violations of anti-discrimination laws. In the complaint, alleging violations of the Fair Housing Act (FHA) and the Equal Opportunity Credit Act (EOCA), the CFPB and DOJ allege that, from early 2006 to 2011, Provident, through its wholesale mortgage brokers (brokers), charged approximately 14,000 African-American and Hispanic borrowers higher broker fees on wholesale mortgage loans (*i.e.*, the sum of the direct fees paid by the borrower to the broker, plus the yield spread premium) than those charged to non-

Hispanic white borrowers. It is further alleged that these higher fees were not based on the individual borrower's creditworthiness or on other objective risk assessment or loan-type characteristics but, rather, were based solely on the borrower's race or national origin. Consequently, African-American and Hispanic borrowers allegedly paid, on average, hundreds of dollars more for their respective Provident loans than did white borrowers. The CFPB and DOJ further assert that it was Provident's business practice to provide their brokers, who generated loan applications for Provident, "subjective and unguided discretion to determine the total broker fees they would charge in connection with any individual loan application." Moreover, Provident allegedly did not require the brokers to document the reasons for the increased rates charged to African-American and Hispanic borrowers and therefore ratified the brokers' subjective decisions each and every time one of these loan applications was approved. The complaint seeks not only declaratory, injunctive, and equitable relief, but also monetary damages, as well as a civil penalty. On the same day the complaint was filed, and in an effort "to avoid the risks and burdens of litigation," the CFPB, DOJ, and Provident filed a Joint Motion for Entry of Consent Order, along with the proposed order (the "Order"). Although Provident denies that its lending practices were/are in any way unfair or discriminatory, pursuant to the Order it has agreed to do the following:

- Refrain from engaging in any discriminatory act or practice against residential mortgagors based on their race or national origin, in connection with any aspect of assessment of total broker fees;
- Monitor compliance with the provisions of the Order through a compliance officer and/or committee;
- Continue to maintain race- and national-origin neutral standards for broker fees in connection with real estate loans it underwrites, originates, or funds. This includes periodic analyses of its loans for any broker fee disparities based on race. If any disparities are discovered, Provident shall take necessary corrective action to address same;
- Provide equal credit opportunity training to its employees (*i.e.*, those in positions of management or with responsibility) and obtain signed statements from said employees, wherein they acknowledge receipt of the Order (and its requirements thereunder) and completion of required training; and
- Deposit \$9 million in an interest-bearing escrow account to compensate affected borrowers for direct and indirect damages they "may have suffered as a result of [Provident's] alleged violations of FHA and ECOA."

The Order requires court approval, and a case management conference is presently scheduled in August.

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