



February 9, 2023

CFPB ADVISORY OPINION ON ILLEGAL STEERING

On February 7, 2023, the CFPB released an advisory opinion regarding the applicability of Section 8 of RESPA. Through its advisory opinion, the CFPB addressed mortgage comparison websites who appear to be objectively directing consumers to lenders when the websites are actually steering customers to specific lenders on the basis of fees paid for promotion. Director Chopra stated that “we are working to ensure that online platforms are not manipulating their search results in order to coerce kickbacks from lenders.”

The advisory opinion states that an operator of a Digital Mortgage Comparison Shopping Platform violates Section 8 of RESPA if the platform provides enhanced placement or otherwise steers consumers to platform participants based on compensation the platform operator receives from those participants rather than on neutral criteria.

Additionally, an operator of a digital Mortgage Comparison Shopping Platform receives a prohibited referral fee in violation of Section 8 of RESPA when: (i) the Digital Mortgage Comparison Shopping Platform non-neutrally uses or presents information about one or more settlement service providers participating on the platform; (ii) that non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, those settlement service providers, thus constituting referral activity; and (iii) the operator receives a payment or other thing of value that is, at least in part, for that referral activity.

Furthermore, if an operator of a Digital Mortgage Comparison Shopping Platform receives a higher fee for including one settlement service provider compared to what it receives for including other settlement service providers participating on the same platform, that can be evidence of an illegal referral fee arrangement absent other facts indicating that the payment is not for enhanced placement or other form of steering.

No specific mortgage comparison website or company was mentioned in the advisory opinion. The CFPB is taking notice of mortgage comparison companies because rising interest rates are causing a growing number of consumers to shop for better interest rates.

All companies offering comparison services should assess their relationships with lenders and their business models in light of this advisory opinion to ensure referral practices are fairly disclosed to consumers. We can assist in reviewing comparison programs and referral practices for fairness and presentation to ensure compliance with appropriate advertising and promotional principles. Let us know how we can help you. ☐

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