



March 5, 2024

CFPB ISSUES GUIDANCE ON COMPARISON-SHOPPING AND LEAD GENERATION

The Consumer Financial Protection Bureau (“CFPB”) has issued guidance on kickbacks and steering in the context of (i) digital comparison-shopping tools, whether on websites, in applications or through chatbots, and (ii) lead generation. See [Circular 2024-01 \(Feb. 29, 2024\)](#). The CFPB noted that consumers may reasonably rely on the perceived impartiality of the information and tools offered by digital comparison-shopping sites and the broker-like guidance and assistance of lead generators.

The CFPB described various compensation structures but noted that compensation in fair exchange for the provision of time or space for advertising that is set apart from the content of a comparison-shopping tool, like banner ads or pop-up advertisements, are not covered by the Circular.

The CFPB’s guidance follows the Federal Trade Commission’s (“FTC”) recent finalization of its updated endorsement guides which also addressed consumer influencing through procuring, suppressing, boosting, organizing, publishing, upnoting, downnoting or editing consumer reviews in ways that distort consumer views of a product. 16 C.F.R. Part 255; 88 Fed. Reg. 48092 (July 26, 2023). The FTC also addressed (i) incentivized reviews, reviews by employees and fake negative reviews of competitors; (ii) “clear and conspicuous” disclosures, noting that a platform’s built-in disclosure tool might not constitute adequate disclosure; (iii) the concept of “endorsement,” asserting that the term includes fake reviews, virtual influencers, and tags in social media; (iv) the liability of advertisers, endorsers and intermediaries for misleading statements; and (v) highlighting child-directed advertising as a special concern.

In its Circular, the CFPB reiterated that an act or practice in connection with the provision of a consumer financial product or service is abusive if it “takes unreasonable advantage” of certain circumstances, including “the reasonable reliance by the consumer on a covered person to act in the interests of the consumer” and that protecting and facilitating consumers’ ability to effectively compare and choose among options for consumer financial products or services is among the core statutory objectives of the CFPB.

CFPB Circulars are intended to promote consistency in

approach across the various enforcement agencies and parties with authority to enforce federal consumer financial laws including state attorneys general and regulators. Circulars are general statements of policy and do not, in the CFPB’s view, restrict the CFPB’s ability to operate with latitude in the future.

As important as the practices addressed by the CFPB and FTC are to operations and compliance with federal law, they also have implications for licensing and compliance issues under state law. See, e.g., our ALERTS of [Feb. 9, 2023](#) (advisory opinion on illegal steering and [on information sharing](#) with advertisers) and Jan. 22, 2014.

We have extensive experience helping clients comply with digital marketing and e-commerce requirements that concern the FTC, CFPB and other state and federal regulators, such as online marketing, advertising, endorsements, the Truth-in-Lending Act and Regulation Z, unfair or deceptive (or abusive) acts and practices (UDAP/UDAAP), the E-SIGN Act, state privacy laws and state Uniform Electronic Transactions Act (UETA) laws. If you have any questions regarding digital compliance, please let us know. □

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LOOKING FOR HELPFUL COMPLIANCE RESOURCES?

We publish easy-to-use online references, our subscription DIGESTS, that compile state, federal and some local laws, including some U.S. territories, on a multistate basis for such topics as credit cards, fair debt collection, financial privacy, fair credit reporting, telemarketing/automatic dialing and announcing devices, telephone monitoring and recording, electronic signatures, restrictions on the use of social security numbers by financial service providers and other topics. The online PDF format allows for multiple simultaneous users. These resources are continually updated and accompanied by periodic updates targeting new laws and other developments of interest. Creditors, marketers and servicers should find this resource invaluable to program development and ongoing regulatory compliance. *Contact us for details*

We also offer a number of more targeted multistate resources to assist clients with particular tasks and issues, including licensing analysis and program development, advertising and disclosures and other ongoing compliance needs.

Let us know how we can assist you!

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