





HOT TOPICS

Mortgage Compliance
 IMA Fall Conference
 October 17, 2023

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Agenda

- Frequently Cited Exam Violations related to Mortgage Origination
 - CFPB Supervisory Highlights - Summer 2023
https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf
 - FDIC Supervisory Highlights – Spring 2023
<https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2023.pdf>
- Appraisal Discrimination
- Use of Testimonials

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CFPB Supervisory Highlights


- **Loan Originator Compensation**
 - **Background:** Reg. Z prohibits MLO compensation “based on a term” of a transaction
 - Preamble of MLO comp rule: “not permissible to differentiate on product type, since products are simply a bundle of particular terms”
 - **Finding:** Paying MLOs different compensation rates for in-house loans vs. brokered (secondary market) loans violates Reg. Z because it constitutes payment based on terms of the transaction

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CFPB Supervisory Highlights

- **Loan Originator Compensation**
 - **Allowable MLO Compensation Methods**
 - MLO’s overall dollar volume delivered to creditor
 - Long-term performance of MLO’s loans
 - Fixed payment for every loan the MLO arranges (\$x per loan)
 - Percentage of loan amounts that close (0.75% of loan amount)
 - Quality of MLO’s files submitted to creditor
 - **Resources**
 - [CFPB Loan Originator Small Entity Guide](#)



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CFPB Supervisory Highlights

- **Loan Disclosures Failure to Reflect Contract Terms**
 - **Background:** Reg. Z requires disclosures “reflect the terms of the legal obligation between the parties”
 - **Finding:** ARM loan disclosures failed to reflect contract terms
 - ARM loan note stated the result of current index + margin should be rounded up or down to the nearest .125%
 - Loan origination system was not programmed to round
 - Fully indexed rate was not calculated according to contract terms and was either overstated or understated
 - Potentially triggering inaccurate APR & reimbursement

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FDIC Supervisory Highlights


- **FCRA Trigger Leads**
 - **Background:** The FCRA limits the circumstances in which a CRA may furnish a consumer report. One such permissible purpose is “prescreening”. Prescreened solicitations must include a “firm offer of credit.”
 - A “firm of credit” is “any offer of credit ... to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer.”
 - “Trigger leads” involve a lender paying CRA to produce a report based on specific credit criteria and then triggered by the consumers’ credit activity, such as a mortgage loan application
 - Trigger leads are a type of prescreened offer

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FDIC Supervisory Highlights


- **FCRA Trigger Leads**
 - **Finding:** Lenders purchased “trigger leads” but failed to provide consumers with a firm offer of credit
 - Communications with consumers failed to disclose, one or more of the following:
 - (1) An offer of credit was being made,
 - (2) The offer was guaranteed as long as the consumer met the credit criteria,
 - (3) The offer was a prescreened offer based on the consumer’s credit report, and
 - (4) The consumer could opt out of future prescreened offers.
 - **Note:** the FCRA does not state that a firm offer of credit must be in writing and does not explicitly prohibit verbal offers

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FDIC Supervisory Highlights

- **RESPA Section 8: Referral Arrangements**
 - **Background:** Section 8(a) prohibits the giving any thing of value or accepting of kickbacks pursuant to any agreement or understanding to refer settlement service business in connection with a mortgage loan
 - Paying for “leads” is permissible – e.g., paying for a list of customer contacts where no preferential treatment is provided to a lender and payment is NOT conditioned on the number of closed loans resulting from the leads, or any other consideration, such as endorsement of the provider
 - **Finding:** Lead providers actively directing consumers to a particular lender to influence consumer selection
 - Thus, practice is deemed a paid “referral” not a “lead”

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FDIC Supervisory Highlights

- RESPA Section 8: Findings cont. – FDIC found evidence of:
 - Warm handoffs – Lead provider called identified consumers and directly connected/introduced them to a specific lenders

Indicators of “Warm Handoffs”

The third party provider:

- Initiates calls directly to consumers
- Offers consumers only one lender or will only transfer the consumer to one lender
- Describes the lender in non-neutral terms such as preferred, skilled, or possessing specialized expertise
- Receives payment from the lender only if a “warm handoff” occurs

- Digital platforms that purported to rank lender options based on neutral criteria provided by consumer but actually participating lenders merely rotated in the top spot regardless of consumer criteria

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More RESPA Section 8 Activity

- CFPB Advisory on Digital Mortgage Comparison Shopping Platforms & Related Payments
 - [Feb 13, 2023 Federal Register](#)
 - Payments to digital shopping platform operators violate RESPA section 8 when:
 - The platform non-neutrally uses or presents information about one or more settlement service participating providers;
 - That non-neutral use or presentation has the effect of steering the consumer to select those settlement service providers, thus constituting referral activity; and
 - The operator receives a payment or other thing of value that is, at least in part, for that referral activity.

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More RESPA Section 8 Activity

- CFPB Advisory on Digital Mortgage Comparison Shopping Platforms & Related Payments, cont.
 - Examples of non-neutral presentation
 - Platform boosts a service provider's rankings on the site based solely on the amount that service provider paid to be listed on the platform
 - Platform identifies a particular provider as its "featured provider," based on nothing more than that provider paying an additional fee to be given that designation

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More RESPA Section 8 Activity

- CFPB vs. Freedom Mortgage & Realty Connect
 - August 2023 – [CFPB press release](#)
 - CFPB found Freedom Mortgage & Realty Connect:
 - Paid for referrals through illegal market service agreements
 - Offered premium subscription services free of charge
 - **Hosted and subsidized company events** and provided gifts
 - Enforcement order
 - Cease illegal activity
 - Freedom will pay \$1.75 million CMP
 - Realty Connect will pay \$200,000 CMP

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More RESPA Section 8 Activity

- CFPB Guidance on HUD’s RESPA Policy Statements
 - September 1, 2023 – [Statement re: Applicable HUD RESPA Documents](#)
 - Confirms CFPB’s intent to apply HUD Statements of Policy unless the statements are superseded by law
 - Itemizes 7 specific Statements of Policy, including
 - June 1996 Statement re: Rental of Office Space
 - June 1996 Statement Sham Controlled Business Arrangements
 - March 1999 Statement re: Lender Payments to Mortgage Brokers
 - Oct. 2001 Clarification re: Lender Payments to Mortgage Brokers & Unearned Fees
 - **Is this a signal of enforcement actions to come based on these policy statements???**

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Appraisal Discrimination

- DOJ & CFPB [Statement on Appraisal Discrimination](#)
 - Issued March 13, 2023, in connection w/ lawsuit alleging appraiser and lender violated FHA & ECOA by lowering valuation of home because owners were Black
 - Lender's attorneys argued the lender should not be held liable because it was relying on a third-party appraiser
 - CFPB and DOJ said lenders can be held liable under the FHA and ECOA for relying on discriminatory appraisals & are legally obligated NOT to rely on appraisals that are inaccurate

*The lender "wrongly insists that it could not comply with the FHA and ECOA's requirements because its hands were tied by other federal laws concerning appraisal independence...rather, it is well-established that a **lender is liable** if it relies on an appraisal that it **knows or should know** to be discriminatory.."*

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Recent Activity

- [Proposed Quality Control Standards for AVMs](#)
 - [June 21 Federal Register](#)
 - Comment period ended August 21, 2023
 - Modifies Reg. Z – 1026.42 and each agency's appraisal rules to require banks to adopt and maintain *policies, practices, procedures and controls* to ensure AVMs adhere to quality control standards designed to:
 - Ensure high level of confidence in estimate produced
 - Protect against manipulation of data
 - Avoid conflicts of interest
 - Require random sample testing and reviews
 - Comply with applicable laws

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Recent Activity

- [Proposed Interagency Guidance on Reconsideration of Value for Residential Real Estate Valuations](#)
 - Comment period ended September 19, 2023
 - Describes risk of deficient collateral valuations
 - Outlines applicable laws, regulations & guidance on ROVs and collateral valuation
 - Explains how ROVs can be incorporated into existing appraisal review & complaint management programs
 - Provides examples that may be considered when developing ROV policies, procedures, processes and controls
 - Suggests applicants should be advised early in the loan process of their right to raise concerns re: appraisal errors or bias

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Freddie Mac Initiative

- Freddie Mac Appraisal Tools
 - Loan Collateral Advisor will provide feedback to alert users when prohibited, subjective or potentially biased words or phrases are used in appraisals that could indicate discrimination
 - Warning will not prevent submission until 4th Quarter 2023
 - For use only on loans submitted to Freddie through its portal
 - Other Freddie Appraisal Tools
 - [Q & A on Words & Phrases for Objective Appraisals](#)
 - [Collateral Valuation and Appraisal Resources](#)
 - No log in required to access

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Recent Activity

- June 2023 FDIC Consumer News article
[Understanding Appraisals and Why They Matter](#)
 - Emphasizes significant role of appraisal in credit decision and credit making process
 - Recommends consumers ask lender about ROV process
 - Reminds consumers of their right to copy of appraisal
 - Suggests consumers review appraisal closely for errors and possible bias
 - States consumer should file complaint w/ lender &/or regulator if warranted
 - [FDIC Tips on Appraisal Bias & FAQ](#)

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Evaluating Your Appraisal Bias Risk

- Review current appraisal practices for consistency
- Re-evaluate appraiser selection & monitoring process
- Strengthen your appraisal review procedures
- Incorporate potential bias into compliance monitoring program
- Track and analyze appraisal-related complaints
- Include appraisal bias training in fair lending training

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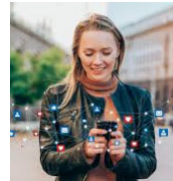
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Endorsement & Testimonial Guidance

- Issued by Federal Trade Commission
 - Found on [FTC website here](#)
 - Update to existing Endorsement Guidance
 - “Endorsement” (and testimonial) – defined as any advertising, marketing, or promotional message for a product that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser
 - Broadly defined
 - Verbal statements, tags in social media posts, depictions of name, signature or likeness, influencer posts & videos, etc.



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Endorsement & Testimonial Guidance

- Endorsements & testimonials must reflect honest opinions, findings, experience & beliefs of endorser
 - An advertiser may use an endorsement only if it has good reason to believe that the endorser continues to subscribe to the views presented
 - If ad represents endorser used the endorsed product or service, endorser must have been bona fide user at time endorsement was given
 - Ad can only continue to run only if advertiser has reason to believe endorser remains bona fide user

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Endorsement & Testimonial Guidance

- Advertisers should:
 - Provide guidance to their endorsers on the need to ensure their statements are honest and not misleading
 - Monitor their endorsers for compliance
 - Take action sufficient to remedy non-compliance and prevent future non-compliance
 - Disclose material connections with endorsers
 - E.g., employment, relatives, payment for endorsement, etc.
- Advertisers should **NOT** take actions that would distort or misrepresent what consumers think of their product
 - E.g., suppressing negative reviews


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Endorsement & Testimonial Guidance



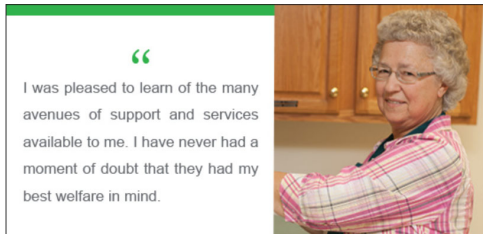
- Liability
 - Advertisers are subject to liability for misleading or unsubstantiated endorsement statements or for failing to disclose unexpected material connections between themselves and their endorsers
 - Endorsers may be liable for statements made in the course of their endorsements

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Endorsement & Testimonial Guidance

- Other FTC publications:
 - [What People Are Asking](#) – series of FAQ
 - [Disclosures 101 for Social Media Influencers](#)
 - [Soliciting and Paying for Online Reviews: A Guide for Marketers](#)



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