

THINGS THAT MAKE YOU GO HMMMM! CFPB Circulated An Advisory Opinion On Digital Mortgage Comparison-Shopping Platforms

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Do I have you playing C+C Music Factory in your head now with that headline? Well, make some space for this mindbender.

If you were not already fluent in RESPA section 8, the time for you may be now! I know what you are thinking, that only applies to mortgages and settlement service providers. Apparently, it may also now apply to digital marketing or "Digital Mortgage Comparison-Shopping Platforms". The CFPB released an [Advisory Opinion](#) yesterday and I am not sure how to feel about it.

The synopsis of the 27-page opinion is that comparison mortgage pages or advertisements, that is what they are, fall under a 1996 HUD policy regulating CLOs or Computer Loan Origination Systems. HUD offered original guidance on CLOs in their 1992 final rule, but the rule seemed to leave more questions than answers. HUD then worked over the next few years to clear things up and offered the [Statement of Policy 1996-1](#), regarding CLOs. The CFPB Advisory Opinion seems to be that comparison mortgage advertisements fall under the definition of a CLO, what exactly is a CLO? According to HUD, a CLO is:

... a computer system that is used by or on behalf of a consumer to facilitate a consumer's choice among alternative products or settlement service providers in connection with a particular RESPA-covered real estate transaction. Such a computer system: (1) may provide information concerning products or services; (2) may pre-qualify a prospective borrower; (3) may provide consumers with an opportunity to select ancillary settlement services; (4) may provide prospective borrowers with information regarding the rates and terms of loan products for a particular property in order for the borrower to choose a loan product; (5) may collect and transmit information concerning the borrower, the property, and other information on a mortgage loan application for evaluation by a lender or lenders; (6) may provide loan origination, processing, and underwriting services, including but not limited to, the taking of loan applications, obtaining verifications and appraisals, and communicating with the borrower and lender; and (7) may make a funding decision.

You could say that comparison mortgage advertisements may offer 2 of the above 7 categories, potentially 1 and 4, but 4 would be a stretch, comparison sites are general quotes and not specific to

an individual's unique financial situation. You would need to consult a lender or loan officer for exact rates and terms. HUD then goes on to say "This definition is not meant to be restrictive or exhaustive; it merely attempts to describe existing practices of service providers. With the use of technology evolving so rapidly, however, it is difficult for the Department to provide guidance on future unspecified practices in the abstract." Fair enough, we were all still tying up phone lines with dial-up in 1996, I mean I know was, and look at us now! Under section 3 of RESPA, a settlement service is defined as:

*"[A]ny service provided in connection with a real estate settlement including, but not limited to * * * the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement. 12 U.S.C. 2602(3).*

And goes on to say in the 1996 Statement of Policy "...any service provided in connection with a prospective or actual settlement." 24 CFR 3500.2. This definition specifically includes the providing of any services related to the origination, processing, or funding of a federally-related mortgage loan. 24 CFR 3500.2. To the extent that a CLO performs "settlement services", it is a settlement service provider. Conversely, if a CLO does not perform settlement services, it is not a settlement service provider."

Given the definition of a settlement service, I am not so sure that comparison mortgage advertisements fall under that. They are not origination loans or performing origination services. Could there be an issue with how these types of advertisements work, maybe, I am not saying that there is no room for improvement here. But I am having a hard time understanding how it may now be a RESPA violation.

Lenders are paying for a service, they are paying to advertise. Is every lender paying the same amount to appear on the site, probably not? The mortgage comparison advertisement is offering more than one option, typically a list of multiple lenders and programs. Section 8(c)(2) permits payment for goods and services and calls for a consumer to be shown more than one option. Most of the comparison sites I have seen usually list multiple lenders and multiple loan programs and you typically can find a statement somewhere on the website that says they receive payment for placement on the page or similar to that effect.

This has my mind running in a few different directions, isn't a Google ad the same thing then if applied under the CFPB's theory? The lender or even individual loan consultant getting their website to ping at the top of the search list, is that now considered steering as well? It's those things that make you go hmmm.

If this CFPB Advisory applies to your business model, make sure you read it and digest it for yourself. It will be interesting to see where this goes.

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