

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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CFPB TAKES ACTION AGAINST MARKETING ARRANGEMENTS

Today, the Consumer Financial Protection Bureau (“CFPB”) again took action against violations of RESPA. Specifically, the CFPB reviewed a marketing arrangement between, New Day Financial and a veteran’s organization and found that the arrangement violated Section 8 of RESPA’s prohibition on paying referral fees. The CFPB assessed a fine of 2 million dollars against New Day for this conduct.

In our view, what is especially significant about this enforcement action, is that the arrangement in question is similar to ones we see being proposed, by or to, our clients. Our negative reaction to such proposed arrangements is often viewed with skepticism. The question usually posed by our clients is some variation of, “*How can a normal business arrangement be viewed as a violation of law?*”

This CFPB action provides an answer, at least from its point of view.

CFPB factually found that New Day paid the veteran's organization:

- ✚ a monthly licensing fee of \$15,000,
- ✚ a "lead generation" fee for each member who contacted New Day, and
- ✚ an additional "lead generation" fee for each member who contacted New Day for a particular type of loan.

The Bureau also determined that:

- ✚ At no point did the veteran's organization make its members aware of the financial arrangement between the two entities.
- ✚ Advertisements referred to New Day as "*our exclusive reverse mortgage provider*".
- ✚ Another advertisement referred to New Day as the veteran's organization's "*exclusive provider of home loan programs*".
- ✚ A veteran's organization's phone script read "*New Day is the exclusive lender...*".

Based on these facts, the CFPB concluded that the failure to disclose the financial arrangement between New Day and the veteran's organization was a deceptive act or practice.

In addition, as to RESPA, the CFPB found that the marketing arrangement violated Section 8 of RESPA, which generally provides that no person may pay a referral fee for a referral of a settlement service such as a mortgage loan.

The CFPB found:

- ✚ That the veteran's organization mailed advertising pieces to "prescreened" members and directly referred the recipients to New Day for mortgage lending services.
- ✚ Members who called the organization for information on mortgage products were directly referred to New Day.
- ✚ Members who visited a related website were referred to New Day by text "recommending" New Day as a source for home loans.

This conduct was found to be a violation of Section 8.

It is readily apparent from this and prior CFPB enforcement actions involving Section 8, that the Bureau is placing great emphasis on this issue. To state the obvious, it is clear that if you are involved in a marketing arrangement, or contemplating one, these arrangements should be reviewed with great care. To the extent that they involve marketing to establish or enhance your brand they may be permissible. To the extent that they involve referrals, direct marketing or payments based on productivity, you are, in all likelihood, heading down the wrong road.

The CFPB's announcement and Consent Order can be found at the Newsroom tab of www.consumerfinance.gov .

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