LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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CFPB GOES AFTER MARKETING AGAIN

In what is certainly one of CFPB's hot button issues, the Bureau has taken action against Equifax, TransUnion and their subsidiaries for deceiving *"consumers about the usefulness and actual cost of credit scores"* sold to consumers. The companies also *"lured"* consumers into recurring payments with false promises. Between them, the companies will pay $17.6 million in restitution to consumers and fines of $5.5 million.

Marketing and advertising are serving as challenges facing the financial services industry and are lighting rods for both state and federal regulatory action. The applicable regulations, policies, or unwritten parameters of regulators vary from state to state and from those of federal agencies, as well. Requirements/prohibitions are often ambiguous or unwritten. Sometimes official "policies" become known only after examinations. A compliance review of marketing conducted before publication requires a knowledge of these unwritten policies.

Further, what we see in media advertising often doesn't seem to correspond with what regulations or policies require. The question is seldom so

succinctly put, but may be summed up with the cliché *"Where is the level playing field?"*

In the aforementioned action against TransUnion and Equifax, the Bureau found that the companies were:

- **Deceiving consumers about the value of the credit scores they sold: in their advertising, TransUnion and Equifax falsely represented that the credit scores they marketed and provided to consumers were the same scores lenders typically use to make credit decisions. In fact, the scores sold by TransUnion and Equifax were not typically used by lenders to make those decisions.**

- **Deceiving consumers into enrolling in subscription programs: In their advertising, TransUnion and Equifax falsely claimed that their credit scores and credit-related products were free or, in the case of TransUnion, cost only *"$1"*. In reality, consumers who signed up received a free trial of seven or 30 days, after which they were automatically enrolled in a subscription program. Unless they cancelled during the trial period, consumers were charged a recurring fee – usually $16 or more per month. This billing structure, known as a *"negative option"* was not clearly and conspicuously disclosed to consumers.**

Rarely, with compliance issues, are the decisions we make, so immediately available for public and regulatory review. With advertising and marketing the decisions we make today are published the next day and readily available for regulatory or competitor scrutiny and possible enforcement action.

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ABOUT ALT & ASSOCIATES

Alt & Associates publishes the *Lenders Update* via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

****Regulatory assistance, both state and federal**
****Compliance work**
****Operational advice**
****Transactional work**
****Agreements such as Loan Officer Compensation Agreements etc.**
****Various forms of employee, officer, and/or manager contracts**
****Litigation representation**

You may direct any questions or comments directly to:
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