

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 39 No. 1 January 2023

RESPA HOT TOPICS: MARKETING ALLIANCES IN A COMPETITIVE MORTGAGE MARKET

In this article, the authors begin with a RESPA Section 8 overview. They then turn to a detailed discussion of CFPB's FAQs, which provide important guidance concerning compliance with Section 8. Finally, they discuss FAQ guidance as applied to MSAs and conclude with tips for RESPA compliance.

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The enforcement landscape under Section 8 of the Real Estate Settlement Procedures Act ("RESPA") remains largely unchanged, but in today's competitive residential mortgage market, strategic marketing alliances among real estate brokers, mortgage lenders, title insurance agencies, and other service providers are in high demand, making compliance with RESPA a hot topic.

With rising interest rates and a steep reduction in applications for mortgage refinance loans, competition has increased for purchase-money mortgages. In times like these, there is a tendency for settlement service providers to enter into creative strategic alliances as a way to help secure more business. These strategic alliances are subject to Section 8 of RESPA, and when structuring them, companies can refer to recent informal guidance from the Consumer Financial Protection Bureau ("CFPB") relating to marketing services

agreements ("MSAs") and other promotional opportunities. This article discusses the CFPB October 2020 guidance on complying with Section 8 of RESPA, as well as provides practical tips to assist in structuring new or existing marketing relationships.

RESPA SECTION 8 OVERVIEW

RESPA contains two provisions that impact how settlement service providers may enter into strategic arrangements with each other. First, Section 8(a) of RESPA prohibits any person from giving or receiving a thing of value pursuant to an agreement or understanding in return for the referral of settlement service business in connection with a federally related mortgage loan.¹ Five

¹ 12 U.S.C. § 2601.

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