



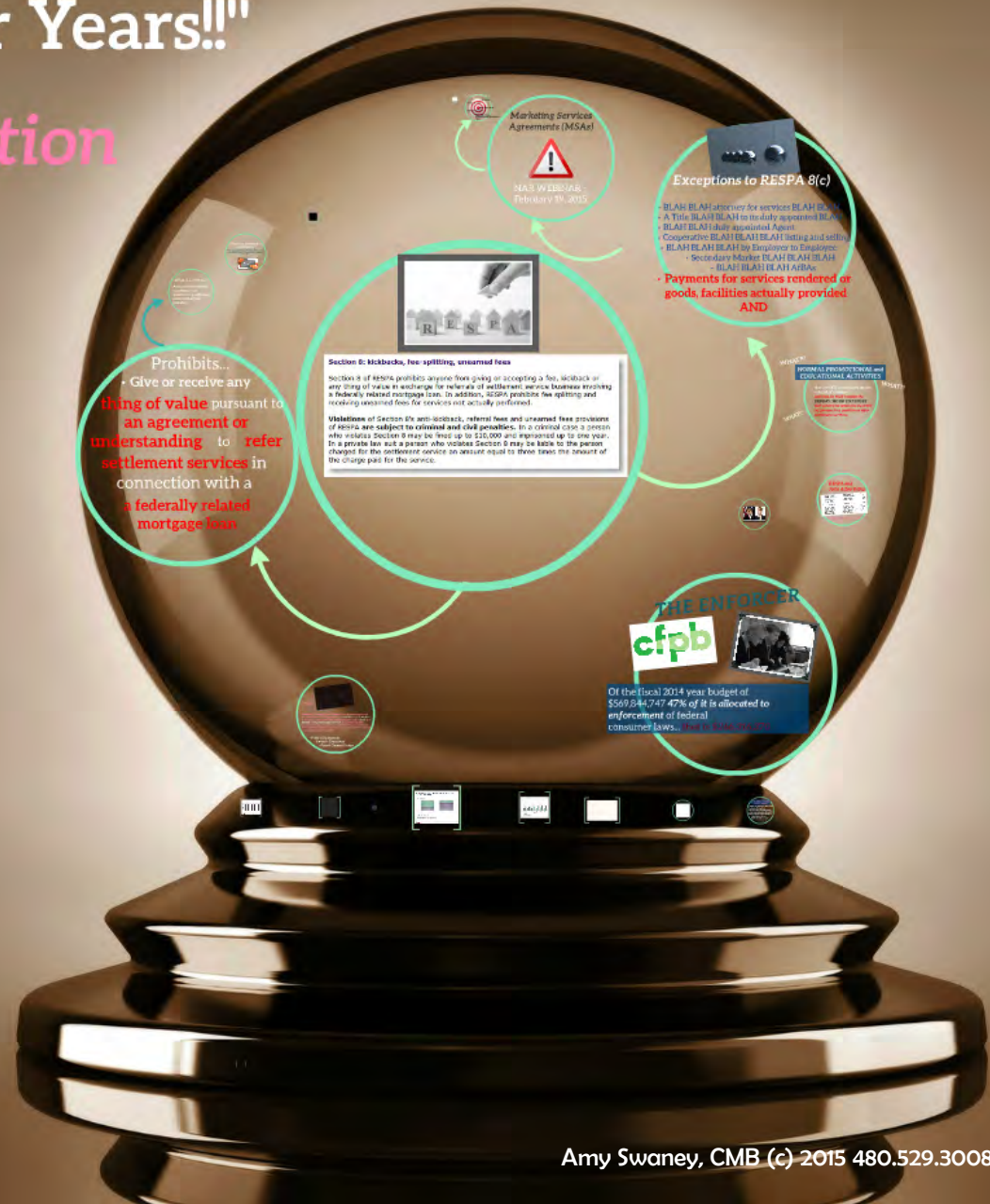


 Amy Swaney  
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# "I've Been Doing This For Years!!"

## ...and other RESPA Violation Red Flags





## **Section 8: kickbacks, fee-splitting, unearned fees**

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or any thing of value in exchange for referrals of settlement service business involving a federally related mortgage loan. In addition, RESPA prohibits fee splitting and receiving unearned fees for services not actually performed.

**Violations** of Section 8's anti-kickback, referral fees and unearned fees provisions of RESPA **are subject to criminal and civil penalties.** In a criminal case a person who violates Section 8 may be fined up to \$10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.



# ***5 Elements for Violation***

**No Difference if you are the  
Giver or Receiver**

Prohibits...

- Give or receive any **thing of value** pursuant to **an agreement or understanding** to **refer settlement services** in connection with a **a federally related mortgage loan**

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**What is a referral?**

**Any conduct intended to influence the selection of a particular settlement service provider.**



# What is an agreement or understanding?

**Need not be written or verbalized but may be established by a practice, pattern or course of conduct.**







**Richard Cordray (Ohio AG)** TotallyLooksLike.com **Kenneth Parcell (30 Rock)**

# THE ENFORCER

The logo for the Consumer Financial Protection Bureau (CFPB), featuring the lowercase letters 'cfpb' in a bold, green, sans-serif font on a white rectangular background.

Of the fiscal 2014 year budget of \$569,844,747 47% of it is allocated to *enforcement* of federal consumer laws... **that is \$266,316,370.**



A Newton's cradle with five silver spheres is positioned at the top center of the slide. The background is a light blue gradient with a large, semi-transparent green circle overlaid on it. The text is centered within this green circle.

## *Exceptions to RESPA 8(c)*

- BLAH BLAH attorney for services BLAH BLAH
- A Title BLAH BLAH to its duly appointed BLAH
- BLAH BLAH duly appointed Agent
- Cooperative BLAH BLAH BLAH listing and selling
- BLAH BLAH BLAH by Employer to Employee
  - Secondary Market BLAH BLAH BLAH
  - BLAH BLAH BLAH AfBAs

- **Payments for services rendered or goods, facilities actually provided**  
**AND**

# NORMAL PROMOTIONAL and EDUCATIONAL ACTIVITIES

- that are NOT conditioned on the referral of business
- *and that do NOT involve the **DEFRAYING OF EXPENSES** that otherwise would be incurred by persons in a position to refer settlement services*



Are You Making Yourself a Target?

- 
- Exclusivity
  - "Preferred" Status
  - Payment for Access
  - Giving Endorsements
  - Payment for Broker DISTRIBUTION of materials to clients

# Marketing Services Agreements (MSAs)



NAR WEBINAR -  
February 19, 2015

# Are You Making Yourself a Target?

- **Exclusivity**
- **"Preferred" Status**
- **Payment for Access**
- **Giving Endorsements**
- **Payment for Broker DISTRIBUTION of materials to clients**



SEP 30 2014

## CFPB Takes Action Against Mortgage Kickback Agreements

*Bureau Orders Michigan Title Insurance Agency to Pay \$200,000*

WASHINGTON, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) ordered Lighthouse Title, a Michigan title insurance agency, to pay \$200,000 for illegal quid pro quo referral agreements.

“Today’s action sends a clear and simple message, that quid pro quo agreements for real estate referrals are illegal,” said CFPB Director Richard Cordray. “The Consumer Bureau will continue to take action to ensure that the mortgage market is a level playing field where everyone plays by the rules.”

The Bureau found that Lighthouse Title violated the Real Estate Settlement Procedures Act (RESPA), which prohibits, among other things, providing something of value to any person with an agreement or understanding that the person will refer real estate settlement services.

## Penalties

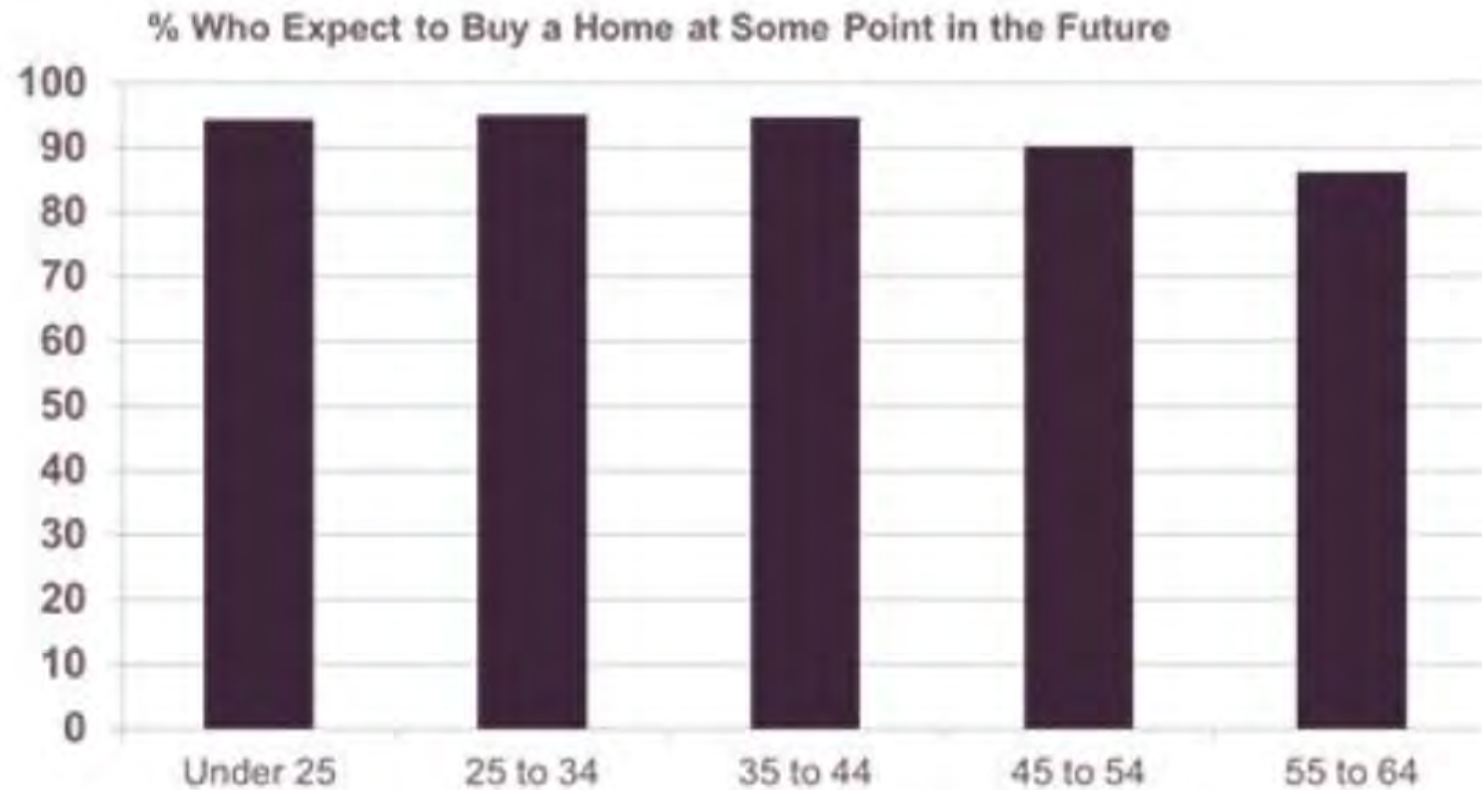


*Violations of Section 8's anti-kickback, referral fees and unearned fees provisions of RESPA are subject to criminal and civil penalties. In a criminal case a person who violates Section 8 may be fined up to \$10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.*

- Federal Disbarment
  - Owner's/Executives
  - Fines / Consent Orders



## Overwhelmingly, People Expect to Buy in the Future



Source: Drew and Herbert, 2012. Based on Fannie Mae National Housing Survey 2010-2012.

**RADIAN**

## A Changing Set of Demographics

### Looking Ahead:

- + Millennials will form 24 million new households
- + Households in their 30s – increase by 2.7 million
- + Majority Minority



Source: Joint Center for Housing Studies of Harvard University

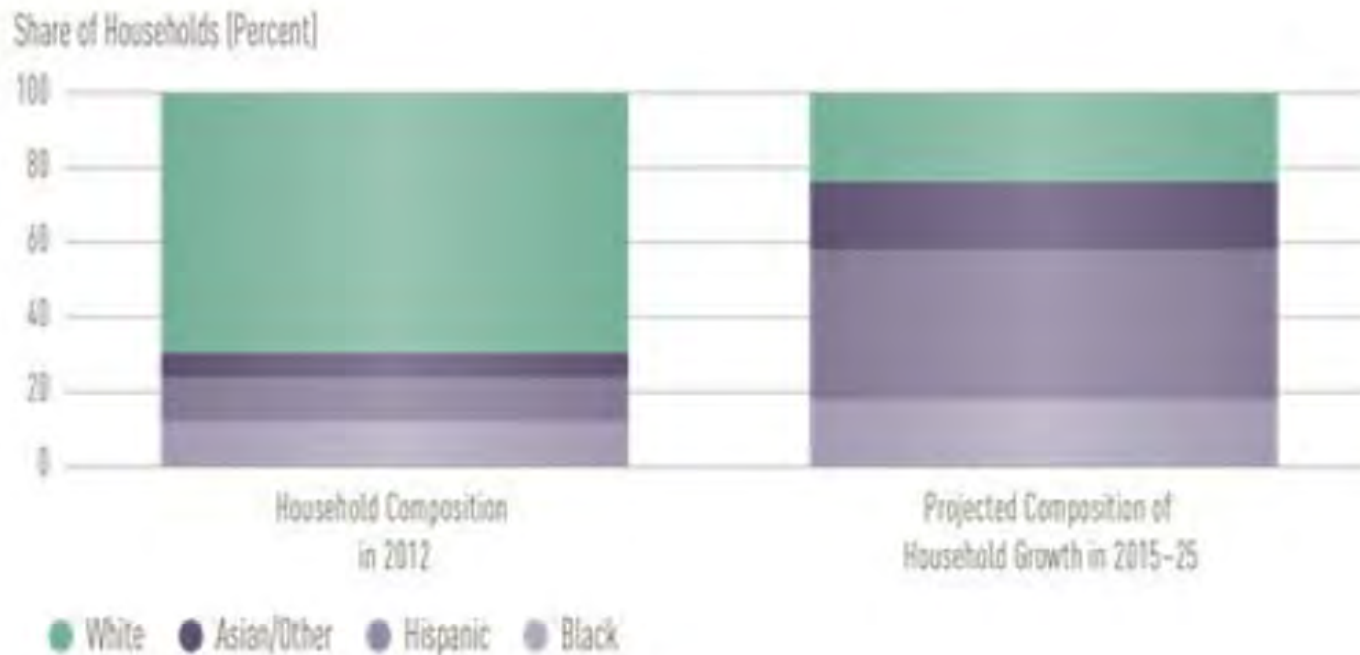
RADIAN







## Minorities Will Account for Three-Quarters of Household Growth Over the Coming Decade



Notes: White, black, and Asian/Other households are non-Hispanic. Hispanic households may be of any race.

Sources: JCHS tabulations of US Census Bureau, 2012 American Community Survey; JCHS 2013 middle-series household projections.

**RADIAN**



## Household Growth - Younger Minorities and Aging Baby Boomers

Projected Households (Millions)



Source: JDS 2013 middle-series household projections.

**RADIAN**



76%  
HISPANICS

Access the internet from  
a mobile device vs.

60%  
NON-HISPANICS



73%  
IMMIGRANTS

Use mobile to send  
e-mail vs.

38%  
NON-IMMIGRANTS



70%  
ASIAN  
AMERICAN  
S

Own a smart phone vs.

60%  
U.S. POPULATION



# **cul-tur-al com-pe-tency**

**(kŭl'chŭr-ăl kom'pĕ-tĕn-sĕ)**

an ability to interact effectively with people of different cultures and socio-economic backgrounds and is comprised of four components:

- (a) Awareness of one's own cultural worldview,
- (b) Attitude towards cultural differences,
- (c) Knowledge of different cultural practices and worldviews, and
- (d) Cross-cultural skills.

## *What Does This Mean for the Future?*

- **Movement Toward Lower Down Payment Transactions**
- **Heavy Push Toward Updating Credit Scoring Models to Reflect More Accurate Representation**
  - **More Private Lower Down Payment Options**
  - **Community**





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