

**HUD'S GUIDELINES: WHEN A MORTGAGE COMPANY
MAY PAY A FEE TO A THIRD PARTY FOR LOAN ORIGINATION
WORK WITHOUT VIOLATING RESPA**

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MAY PAY A FEE TO A THIRD PARTY FOR LOAN ORIGATION
WORK WITHOUT VIOLATING RESPA**

HUD has issued guidelines for when a mortgage company may pay a fee to a third party (such as a real estate salesperson) for loan origination work without violating § 8 of RESPA. See HUD Informal Op. No. 13 (Feb. 14, 1995), 2 Fed. Reg. Real Estate and Mortgage Lending (West) at App. 2B1-6-8 (June 2004). HUD has made clear that the mere taking of a loan application is not sufficient work to justify a fee under RESPA.¹ To determine whether sufficient loan origination work has been performed to justify a fee, HUD will look at the specific facts of each case, including: (1) whether an agreement calls for certain work to be performed in exchange for a fee; (2) whether such work was actually performed; (3) whether the services were necessary for the transaction; and (4) whether they were duplicative of services performed by others.

HUD generally would be satisfied that no § 8 RESPA violation had occurred if a real estate salesperson (1) took information from the borrower and filled out the loan application; (2) performed at least five additional items on the Loan Origination Services List (attached hereto); and (3) received a fee reasonably related to the market value of the services performed.

HUD expressed particular concern that a fee for steering a customer to a particular lender could be disguised as compensation for “counseling-type” activities. Therefore, if a salesperson relies on taking the application and performing only “counseling-type” services – items (b), (c), (d), (j) and (k) on the Loan Origination Services List – to justify his fee, HUD will also look to

¹ Just last year, HUD announced the settlement of a case involving the alleged violation of this rule. World Savings Bank, a large California-based lender with operations nationwide, paid up to \$100 to real estate agents for filling out and submitting on-line loan applications for prospective borrowers. HUD stated that it had "long considered that a real estate agent may not be compensated for merely filling out a loan application. This compensation may even be considered a fee for the referral of business in violation of Section 8(a) of RESPA." World Savings agreed to discontinue the program and pay the Government \$7,557. See HUD Press Release, No. 03-082 (July 28, 2003).

see that meaningful counseling, not steering, is provided. In this circumstance, HUD would be satisfied that no § 8 RESPA violation had occurred if (1) the counseling gave the borrower the opportunity to consider products from at least three different lenders; (2) the salesperson performing the counseling would receive the same compensation regardless of which lender's product was ultimately selected; and (3) any payment made for "counseling-type" services is reasonably related to the services performed and not based on the amount of loan business referred to the lender.

Loan Origination Services List

According to HUD, some or all of the following services are normally performed in the origination of a loan:

- (a) taking information from borrower and filling out application;
- (b) analyzing borrower's income and debt and pre-qualifying him to determine maximum mortgage he can afford;
- (c) educating borrower in home buying and financing process, advising him about different types of loan products available, demonstrating how closing costs and monthly payments would vary under each product;
- (d) collecting financial information (tax returns, bank statements) and other related documents that are part of application process;
- (e) initiating/ordering verifications of employment and verifications of deposits;
- (f) initiating/ordering requests for mortgage and other loan verifications;
- (g) initiating/ordering appraisals;
- (h) initiating/ordering inspections or engineering reports;
- (i) providing disclosures (truth in lending, good faith estimate, others) to borrower;
- (j) assisting borrower in understanding clearing credit problems;
- (k) maintaining regular contact with borrower, realtors and lender between application and closing to apprise them of status of application and to gather additional information needed;
- (l) ordering legal documents;
- (m) determining whether property is located in flood zone (or ordering such service); and
- (n) participating in the loan closing.

HUD Informal Op. No. 13.