



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

May 16, 2008

MORTGAGEE LETTER 2008-14

**TO: ALL APPROVED MORTGAGEES**

**SUBJECT: Home Equity Conversion Mortgage Program - Non FHA-Approved Mortgage Brokers**

This Mortgagee Letter reminds lenders of FHA's policy regarding the use of non FHA-approved mortgage brokers, subsequently referred to as a non-approved entity or third party (i.e., advisor, consultant, mortgage broker) to support the origination of FHA-insured Home Equity Conversion Mortgages (HECM). Loan origination must be performed by FHA approved entities which include: (1) an FHA-approved loan correspondent and sponsor; (2) an FHA-approved mortgagee through its retail channel; or (3) an FHA-approved mortgagee working with another FHA-approved mortgagee. However, FHA policy permits a non-approved entity or third party to assist in the origination of insured loans in certain limited ways, and to receive compensation for such services actually provided under certain limited circumstances.

This Mortgagee Letter describes the ways in which a non-approved entity or third party may support the origination of HECMs and the limited circumstances under which they may be compensated, consistent with both applicable FHA policy and applicable requirements of the federal Real Estate Settlement Procedures Act (RESPA) and its implementing regulations found at 24 CFR Part 3500.

FHA-approved entities are required to complete the full origination process, as described below, in order to be compensated for their services. A non-approved entity or third party may provide more limited services only and be compensated for those limited services under the circumstances described in this Mortgagee Letter and applicable FHA and RESPA regulations. FHA will not permit an FHA-approved entity to serve in the limited capacity of a non-approved entity or third party.

**Required Activities for FHA-Approved Entities**

FHA-approved entities must perform certain activities to be compensated. In RESPA Statement of Policy 1999-1(64 Federal Register 10080, 10085, March 1, 1999), HUD identified the following services that are normally performed in the origination of a loan. For FHA-insured loans, including HECMs, only FHA-approved entities may be compensated for performing these services:

- Taking information from the borrower and filling out the loan application;
- Analyzing the prospective borrower's eligibility for a reverse mortgage;
- Collecting financial information, if applicable, and other related documents that are part

- of the application process;
- Initiating/ordering verification of deposits or assets, if applicable;
- Initiating/ordering requests for mortgage and other loan verifications;
- Initiating/ordering appraisals;
- Initiating/ordering inspections or engineering reports;
- Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
- Assisting the borrower in understanding and resolving adverse property conditions;
- Ordering legal documents;
- Determining whether the property is located in a flood zone or ordering such service; and
- Participating in the loan closing.

For purposes of identifying compensable services under RESPA, HUD RESPA Statements of Policy 1999-1 and 2001-1 (66 Federal Register 53052, at 53055, October 18, 2001) indicated that this list of origination services is not exhaustive.

### **Eligible Activities for Non-Approved Entities**

FHA's HECM regulations permit a non-approved entity or third party to provide educational-type origination services (generally known in the reverse mortgage lending industry as "Advisor" services) under limited circumstances. Under 24 CFR 206.31(a)(1), a non-approved entity or third party must be "engaged independently by the homeowner," and there must be "no financial interest between the mortgage broker and the mortgagee." In addition, the fee paid to the non-approved entity or third party must be "included as part of the origination fee" paid to the mortgagee or loan correspondent.

Under this regulation, the non-approved entity or third party may not be compensated for simply referring the mortgage loan application to FHA-approved entities; nor may the non-approved entity or third party perform the origination activities that must be performed by FHA-approved entities. For example, a non-approved entity or third party may not fill out or process the loan application, and may not collect additional documentation from the prospective borrower, or close the loan.

FHA permits the non-approved entity or third party to provide advisory and educational services to the HECM borrower; and under RESPA, the non-approved entity or third party may receive bona fide compensation for those services. For example, HECM and RESPA regulations permit a non-approved entity or third party to be compensated for educating prospective borrowers about the reverse mortgage lending process, advising the borrower about different types of loan products available, demonstrating how closing costs and payment options could vary under each product, and maintaining regular contact with the lender to keep the borrower apprised of the status of the loan application. Such services would be in addition to, and not as a substitution for, reverse mortgage counseling which is provided by a HUD-approved housing counseling agency. RESPA Statement of Policy 1999-1, addresses the amount of compensation a mortgage broker may receive for such services.

### **Compensation for Non-Approved Entities**

With the HECM, a non-approved entity or third party may be compensated for certain limited services as described in this letter when:

- a. The non-approved entity or third party provides actual services and not simply a referral.
- b. The services are meaningful and do not constitute steering, as described in RESPA Policy Statement 1999-1, or merely delivering a loan with a higher interest rate, as described in RESPA Statement of Policy 2001-1.
- c. The compensation is paid by the borrower directly from the borrower's own available assets or from HECM loan proceeds. If the payment comes from the HECM proceeds, the amount would be added to the loan balance and disbursed to the broker by the closing agent. In all cases, the amount paid must be included in (subtracted from) the loan origination fee which is capped at the greater of \$2,000 or 2% of the maximum claim amount.
- d. The amount paid is no more than the reasonable value for such services. For example, if the payment bears no reasonable relationship to the market value of the services provided, the excess over the market rate may be used as evidence of a compensated referral or unearned fee in violation of section 8(a) or (b) of RESPA and 24 CFR 3500.14.
- e. The final HUD-1 Settlement Statement contains the amount paid and name of the mortgage broker.
- f. The signed written agreement between the borrower and non-approved entity or third party, describing the advisory and educational services to be performed and the amount of compensation for each service, is included in the FHA case binder.

If you have any questions regarding this Mortgagee Letter, please contact the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342).

Sincerely,

Brian D. Montgomery  
Assistant Secretary for Housing-  
Federal Housing Commissioner