RESPA REGULATIONS

Below is a summary of HUD's RESPA regulation, which took effect October 7, 1996. The regulation affects real estate firms that affiliate with other settlement service providers, rent space to other providers and use computerized loan origination systems.

The regulation covers seven areas:

- Incentive payments to employees
- Office space rental
- Computerized Loan Origination Systems
- Controlled Business Arrangement Disclosure Form
- Sham Controlled Business Arrangements
- Retaliation
- Lender Lock-out

1. Incentive payments to employees - HUD's final rule creates three classifications of employees that may receive incentive payments from employers.

Permissible incentive payments may go to: (1) managerial employees provided the payments are not based on a multiple of the number or value of referrals (capture rate systems are permissible); (2) employees, provided the employee does not perform settlement services in any transaction. Filling out an application would not be considered a settlement service. The employee cannot serve as an ongoing point of contact for coordinating the delivery and provision of settlement services. (If the employee does not receive incentive compensation, these restrictions would not apply); and (3) employees for generating business for the employer itself and not an affiliate.

2. Office space rental - HUD sought guidance on when rent paid for desks or office space in real estate offices leased to settlement service providers, particularly lenders, is legitimate and when it is conduit to disguise payments for referrals. Real estate offices that lease space to lenders or other settlement service providers must charge the general market value of the office space leased; rent cannot be based on the number or value of business generated from the location. Real estate firms would be prohibited from charging lenders (or other settlement providers) more than the market rate for office space located in the real estate firm. This generally means general market rates plus related overhead.

3. Computerized loan origination systems - The regulation would permit consumers to pay for CLO services and be reimbursed for these fees by lenders. Settlement service providers such as mortgage firms may pay for goods or facilities actually furnished or for services actually performed by the CLO operator. Settlement provider names on a CLO system must be presented in a neutral display format. HUD believes a non-neutral format may influence the selection process. For example, if one lender always appears at the top of any listing or mortgage products.

4. Disclosure form - The pertinent section of the new Controlled Business Arrangement disclosure form (signed by the consumer) reads as follows: You are NOT required to use (provider) as a condition for (settlement of your loan on) (or) (purchase, sale, or refinance of) the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

5. Sham-controlled business arrangements - HUD sought guidance on when Joint Ventures and other Controlled Business Arrangements (CBAs) between settlement service providers are bona fide and when they are shams designed to avoid RESPA's prohibition on referral fees. The interpretation sets forth a list of factors HUD looks to in determining whether a CBA is bona fide, including: how adequately it is capitalized, whether it has its own employees and whether it contracts out all or most of the work back to a parent company. The guidance specified that no single factor determines whether or not a specific business arrangement is a sham.

6. Retaliation - Employees and agents who did not refer business to affiliated entities alleged that they faced reprisals, including loss of benefits, fewer sales leads, higher desk fees, less desirable work space, and job loss. HUD has concluded that RESPA does not give HUD authority to prohibit retaliation against employees who fail to make referrals to affiliated entities.

7. Lender Lock-out - Settlement service providers alleged they are being excluded from, or locked-out of, places of business where they might find customers. Most frequently, they claim, lenders are being excluded from a real estate office that has leased space to another lender. HUD has concluded that RESPA does not give HUD authority to regulate access to the offices of settlement service providers to require a company to assist another in its marketing activity.