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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 20, 2008

MORTGAGEE LETTER 2008-17

TO: ALL APPROVED MORTGAGEES

SUBJECT: Non FHA-approved Mortgage Brokers – Forward Mortgages

This Mortgagee Letter reminds lenders of existing FHA policy regarding the use of non FHA-approved mortgage brokers when originating FHA-insured forward mortgages. FHA loan origination services must be performed by a FHA-approved lender or FHA-approved mortgage broker (loan correspondent). A FHA-approved loan correspondent may be compensated for the actual loan origination services it performs either directly by the consumer or indirectly by the FHA-approved lender without being in violation of either the Real Estate Settlement Procedures Act (RESPA) statute and regulations or FHA regulations.

While FHA regulations permit a borrower to engage a broker who is not FHA-approved to assist him/her in obtaining mortgage financing (24 CFR 203.27(e)), the loan origination services *may not* be performed by that broker and the FHA approved mortgagee shall not compensate the broker for such services. FHA requires that these services be performed by either an FHA-approved lender or loan correspondent[1]. RESPA prohibits the payment of duplicative fees. The payment to the unapproved broker for duplicated services amounts to an unearned fee in violation of section 8(b) of RESPA. Further, this payment may also act as a disguised referral fee for steering the borrower to the FHA-approved lender or loan correspondent, which is in violation of section 8(a) of RESPA.

In RESPA Policy Statement 1999-1 (FR-4450-N-01), the Department identified the services normally performed in the origination of a loan. It has been FHA's experience that when non FHA-approved entities perform origination functions and services on FHA-insured loans, the instances of serious compliance problems increase as do the associated risks. As a result, there are particular origination functions and services that FHA requires to be performed by an FHA-approved lender or loan correspondent:

- taking information from the borrower and filling out the loan application;
- collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
- initiating/ordering Verifications of Employment and Deposit;
- initiating/ordering request for mortgage and other loan verifications;

[1] HUD Handbook 4060.1 REV-2, FHA Title II Mortgagee Approval Handbook

- initiating/ordering appraisals;
- initiating/ordering inspections or engineering reports;
- providing disclosures (truth in lending, good faith estimate and others) to the borrower(s);
- maintaining regular contact with the borrower, real estate professional, and lender between loan application and closing to apprise them of the status of the application and gather any additional information needed;
- ordering legal documents; and
- determining whether the property is in a flood zone or ordering such service.

Other services that are considered counseling in nature (e.g., educating prospective borrowers in the home buying and financing process, advising the borrower about different types of loan products available, and demonstrating how closing costs and monthly payment could vary under each product), may be performed by a non FHA-approved broker so long as the services provided constitute meaningful counseling, and not steering. Under RESPA Policy Statement 1999-1, when "counseling type" services are performed, HUD also looks at whether, (1) counseling gave the borrower the opportunity to consider products from at least three different lenders; (2) the entity performing the counseling would receive the same compensation regardless of which lender's product were ultimately selected; and (3) any payment made for the "counseling type" services is reasonably related to the services performed. In these instances, the fee charged must be paid from the mortgagor's *own available assets*, must be disclosed on the HUD-1 at closing and a copy of the contract for these services must be included in the loan file submitted for insurance endorsement.

Under no circumstances may a borrower be charged a fee that is *not* commensurate with the amount normally charged for similar services. 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(g).

RESPA provided further guidance to industry regarding payments by lenders to mortgage brokers in Policy Statement 1999-1. While the policy statement specifically speaks of lender payments to mortgage brokers, those payments are indirectly paid by the consumer and the policy statement would apply equally to payments made directly by the consumer.

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