

## **THE SUBJECT MESSAGE IS APPLICABLE ON FORWARD MORTGAGES ONLY**

### **\*\*\*POLICY ALERT – RESPA/FHA EXISTING POLICY REGARDING NON FHA-APPROVED MORTGAGE BROKER FEES IN FHA MORTGAGE TRANSACTIONS\*\*\***

The subject alert reconfirms existing FHA policy regarding the use of non FHA-approved mortgage brokers. FHA loan origination services must be performed by a FHA-approved lender or FHA-approved mortgage broker (loan correspondent). A 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 RESPA statute and regulations or FHA regulations.

In transactions where the mortgage broker is not an FHA-approved broker, the loan origination services **cannot** be performed. Under these circumstances, RESPA would prohibit the payment to the non FHA-approved mortgage broker because those services, under FHA regulations, would have to be performed again by either an FHA-approved lender or loan correspondent. 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 also acts 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.

While a broker who is not FHA-approved may assist a prospective FHA borrower in obtaining an FHA loan, the non-approved broker cannot perform required FHA loan origination services. 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 included in the loan file submitted for insurance endorsement.

Under no circumstances, may a borrower pay a fee that is **not** commensurate with the amount normally charged for the similar services, goods or facilities. If the payment or a portion thereof bears no reasonable relationship to the market value of the goods, facilities or 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.