

September 26, 2002

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888 Mililani Street
Honolulu, Hawaii 96813

Re: Federal Credit Union as a Finder of Mortgage Loans.

Dear Mr. Nagaue:

You have asked if a federal credit union (FCU) may promote a bank's reverse mortgage products to its members under our incidental powers rule. An FCU may provide its members the opportunity to obtain a reverse mortgage from a bank as a permissible finder activity. 12 C.F.R. §721.3(f). While FCUs may generally earn income from finder activities without restriction, it appears that the Real Estate Settlement Procedures Act (RESPA) prohibits an FCU from receiving fees under the circumstances you have described. The Department of Housing and Urban Development (HUD), not the NCUA, has the authority to interpret RESPA, and you should contact that agency if you have questions concerning the information provided in this letter about RESPA.

You indicated in your letter and in a discussion with our staff that a bank has asked your client, an FCU, to market the bank's reverse mortgages to the FCU's members who are 62 years of age or older. The Federal Housing Administration (FHA) insures these reverse mortgages in a program called the Home Equity Conversion Mortgage. Under the bank's arrangement with the FCU, the FCU would inform members about the mortgage product, assist them in completing the application, and forward applications to the bank. The FCU would not represent the bank, perform any underwriting of the loan, or provide any membership lists to the bank. In exchange for the FCU's services, the bank would pay the FCU a percentage of the loan origination fee.

The FCU may find or refer its members to mortgage products funded by another financial institution under its incidental powers authority to act as a finder. 12 C.F.R. §721.3(f). Under this authority, an FCU introduces or otherwise brings together outside vendors with its members for the negotiation and consummation of transactions. Id. Our incidental powers rule does not limit the types of vendors, products, or services an FCU may find for its members. Acting as a finder, an FCU may perform administrative functions for vendors and its members to facilitate their transactions. Therefore, an FCU may act as a finder of reverse mortgages offered by other financial institutions as a service to its members and earn income from engaging in finder activities, without restriction, under our rule. 12 C.F.R. §721.6. Other applicable federal or local law, however, may limit or prohibit an FCU from receiving compensation when acting as a finder. 12 C.F.R. §721.5.

RESPA regulates the settlement process for federally-related mortgage loans,

including reverse mortgages insured by FHA. 12 U.S.C. §2602(1). Section 8(a) of RESPA prohibits any person from giving and any person from accepting “any fee, kickback, or thing of value pursuant to an agreement . . . that business incident to or part of a real estate settlement service . . . shall be referred to any person.” 12 U.S.C. §2607(a). Under Regulation X, 24 C.F.R. Part 3500, the rule issued by HUD to interpret RESPA, the term “referral” is broadly defined.

A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

24 C.F.R. §3500.14(f). An FCU affirmatively influences a member’s selection of a lender when it identifies members that qualify for reverse mortgages, markets the lender’s mortgage products to them, and then refers them to that particular lender. By directing its members to a mortgage lender in this manner, the FCU is making referrals under Regulation X. While RESPA does not prohibit an FCU from making referrals, it may not receive a fee for its referrals. Regulation X specifically states that a “referral of a settlement service is not a compensable service.” 24 C.F.R. §3500.14(b).

RESPA does allow, however, payment of a fee by a lender to a duly appointed agent or payment to any person for services actually performed. 12 U.S.C. §2607(c)(1)(C), (2); 24 C.F.R. §3500.14(g)(1)(iii), (iv). Note that “[w]hen a person in a position to refer settlement service business . . . receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.” 24 C.F.R. §3500.14(g)(3).

HUD has taken the position that simply filing out a mortgage loan application is not a compensable service by itself. In its Statement of Policy 1999-1 regarding lender payments to mortgage brokers, HUD included a list of compensable loan origination services it originally developed in response to an inquiry from the Independent Bankers Association of America, dated February 14, 1995. 64 Fed. Reg. 10080 (March 1, 1999). HUD stated it “generally would be satisfied that sufficient origination work was performed to justify compensation if it found that the lender’s agent or contractor took the application information and performed at least five additional items on the list [of compensable services].” *Id.* at 10085.

It appears, therefore, that under RESPA, Regulation X, and HUD’s Statement of Policy, an FCU could not receive compensation for taking information from a member, filing out a mortgage application, and making a referral, as described in your letter.

In addition, it appears that the fee arrangement between the bank and the FCU may also violate RESPA even if the FCU provides additional compensable services

because the FCU receives a percentage of the origination fee. If this fee amount varies by loan amount, the fee may not reflect the actual cost of the services provided by the FCU. "In analyzing whether a particular payment or fee bears a reasonable relationship to the value of the good or facilities actually furnished or services actually performed, HUD believes that payment must be commensurate with that amount normally charged for similar services, goods or facilities." Id. at 10086. Payments based upon a percentage of the loan amount are subject to this reasonableness test.

Sincerely,

Sheila A. Albin
Associate General Counsel

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cc: Region VI