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## New RESPA Enforcement Pledged

by Lew Sichelman

Builders who penalize their buyers for not obtaining financing from their builder-operated mortgage affiliates are now on the radar screen at the Department of Housing and Urban Development, according to a top enforcement official.

Under the Real Estate Settlement Procedures Act (RESPA), HUD's Rebecca Holtz told the Real Estate Providers Council's annual conference in Alexandria, Va., recently, builders can offer their buyers incentives to keep the loan in-house.

But they are in violation of the Sec. 8 anti-kickback provisions of the law if they charge their customers a fee for taking their mortgage business elsewhere.

RESPA is the consumer protection law designed to prevent builders and real estate agents from steering their customers to title companies, appraisers, attorneys and escrow agents in return for cash or other under-the-table forms of compensation.

Builders often offer buyers a free fireplace or some other option or upgrade, or offer to help buyers with closing costs, if they use an affiliated lender. But apparently some are sticking customers who go elsewhere for their loans with a surcharge under the reasoning that the transaction usually doesn't go as smoothly.

Holtz said most complaints alleging Sec. 8 violations don't come from consumers but from rival lenders and service providers who maintain their competitors are operating illegal referral programs and creating an unfair playing field in the process. But lately, she added, an increasing number of complaints have come from state regulators concerned about abusive lending practices and fee gouging.

The HUD official also told the meeting that most of the RESPA complaints fielded by the Departmental Enforcement Center don't involve the statute's better known Section 8. Rather, they involve servicing issues under Section 6.

Two out of every five complaints deal with such topics as transfers of servicing and taxes and insurance payments that were not paid in a timely manner. By contrast, only three out of 10 are about kickbacks.

Holtz said her undersized department -- currently at 2.5 full-time employees -- was originally intended to be housed entirely within HUD's enforcement section. But with the new regime at HUD, the question of where enforcement will eventually rest is under review.

She anticipates "a decision soon," but until then, she told the conference, it's still business as usual.

In fiscal 2000, 919 complaints alleging RESPA violations were received at HUD. By comparison, 835 were fielded in fiscal '99. The agency closed 393 complaints last year, carrying over the remaining 526 to this fiscal year. And at the midway point, a total 770 complaints were pending.

Holtz wouldn't discuss specific cases that are currently under investigation. But besides suspected violations by home builders, also under scrutiny are situations in which title companies are paying \$50 to \$200 bonuses for each referred loan, a scheme the HUD official described as a "flat out you send your business to me and I'll pay you" violation of the law.

In addition, mortgage companies that are paying less for a credit report than they charge applicants and pocketing the difference are being looked at, as is an FHA-approved loan broker who is, for a fee, allowing another lender to use his FHA license.

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