

COMPLIANCE POLICY AND PROCEDURES FOR**The Real Estate Settlement Procedures Act (RESPA) and its Implementing Regulation X**

- **Section 8 Prohibition on Payment of Kickbacks and Referral Fees**
- **Affiliated Business Arrangements Exception**
- **Marketing Services Agreements, Desk Rentals and Co-Operative Advertising Arrangements.**

INTRODUCTION

Section 8 of the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X (12 CFR §1024.14, 1024.15) provides two prohibitions.

- Section 8(a) prohibits a person from giving or accepting any fee, kickback, or thing of value in exchange for the referral of settlement service business incident to or a party of a federally related mortgage loan transaction, that is pursuant to an agreement or understanding (oral, course of conduct, or otherwise).
- Section 8(b) prohibits the splitting of any fee or charge made or received for the performance of a settlement service with another party unless that other party has actually performed part of the compensable settlement service(s) performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates Section 8(b).

RESPA Section 8(c) gives an exception from 8(a) and (b) coverage for “affiliated business arrangements” – two or more entities that are under common ownership or control – that refer settlement service business to one another and disclose the nature of the affiliate arrangement with consumers at the time of business referral. RESPA Section 8 scrutiny also applies to Marketing Services Agreements – where one party agrees to source settlement service business leads and/or provide various marketing consultant services to a settlement service provider in return for compensation. HUD’s June, 2010 Interpretive Rule covering MSAs between real estate brokerage firms and home warranty companies outlines why Section 8 scrutiny applies, and how application of the “affiliated business arrangement” tenets adds legitimacy to any similar type of MSA, including builder MSAs.

COMPANY POLICY

CMG Mortgage, Inc. dba CMG Financial (hereinafter referred to as “CMG”) adheres to these RESPA Section 8 prohibitions through the following Policy and Procedures, through training of personnel, through internal auditing, and through its compliance automation systems interfacing with the company’s Loan Origination System, Loan Document and Disclosure Generation System, and through ComplianceEase®.

1. KEY DEFINITIONS

Agreement or Understanding. An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

Referral. 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. A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to a particular provider of a settlement service or business incident thereto with the exception of the following permitted activities under Section 8:

- A payment to an attorney at law for services actually rendered;
- A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;
- A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;
- A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;
- A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);
- Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or
- An employer's payment to its own employees for any referral activities.
- Affiliated Business Arrangements (CMG Financial has none).

Settlement Service. Section 3 of RESPA defines “settlement service” to include “any service provided in connection with a real estate settlement. Regulation X lists the following examples of settlement services:

- (1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);
- (2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);
- (3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;
- (4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;
- (5) Rendering of services by an attorney;
- (6) Preparation of documents, including notarization, delivery, and recordation;
- (7) Rendering of credit reports and appraisals;
- (8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

- (9) Conducting of settlement by a settlement agent and any related services;
- (10) Provision of services involving mortgage insurance;
- (11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;
- (12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;
- (13) Provision of services involving real property taxes or any other assessments or charges on the real property;
- (14) Rendering of services by a real estate agent or real estate broker; and
- (15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

As the above examples illustrate, “settlement service” potentially covers the spectrum of mortgage origination services, starting with cultivating marketing leads and advertising/soliciting mortgage business, continuing through consumer loan inquiry/prequalification discussions, loan application, loan approval and ends with loan closing (settlement). Secondary market transactions are not governed under RESPA and its Section 8 prohibitions.

Thing of Value. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise, royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a moneymaking program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation.

2. SECTION 8(a).

Section 8(a) of RESPA specifically prohibits the practice of a settlement service provider paying or accepting a fee, kickback, or other thing of value for the mere referral of settlement service business. [12 CFR § 1024.14(a).] In other words, one cannot pay or receive any type of compensation or thing of value in connection with a federally related mortgage loan transaction without actual [performance and delivery of goods or services. In addition, any compensation paid or received for settlement services must be at a reasonable market rate for the goods delivered and services actually performed. [12 CFR § 1024.14(a).]

In order to pass an 8(a) analysis, there must be a finding that compensation given and received was for an actual settlement service performed, and the level of compensation is reasonable and commensurate with the region in which the service was performed. Taking in a credit application, for instance, is not a compensable settlement service. Originating a federally related mortgage loan is a compensable service. Only mortgage brokers and lenders may earn percentage based compensation for

services they perform; all other settlement service providers must earn a fixed dollar amount that is reasonable related to the value of the service performed (or goods provided) for that particular region.

Working off of HUD Policy Statement 1999-1, the following is a list of compensable settlement services; for mortgage brokers, at least five activities – in and above the taking of a mortgage loan application -- from the following list must be performed in order to earn that broker fee:

- Taking information from the borrower and filling out the application (not compensable on its own).
- Analyzing the prospective borrower's income and debt and prequalifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford.
- Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product.
- Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process.
- Initiating or ordering VOEs (verifications of employment) and VODs (verifications of deposit);
- Initiating or ordering requests for mortgage and other loan verifications.
- Initiating or ordering appraisals. *Due to Regulation Z Appraisal Independence Rules (AIR), this function has been significantly curtailed.* At CMG Financial, all appraisals must be ordered through our internal Appraisal Desk. Refer to CMG Financial's Compliance Policy on AIR for further details.
- Initiating or ordering inspections or engineering reports.
- Providing disclosures (truth in lending, good faith estimate, others) to the borrowers.
- Assisting the borrower in understanding and clearing credit problems.
- Maintaining regular contact with the borrowers, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed.
- Ordering legal documents.
- Determining whether the property was located in a flood zone or ordering such service.
- Participating in the loan closing.

In summary, under RESPA Section 8(a), referrals of settlement service business are not compensable – one cannot pay for the referral, nor may one accept compensation in return for the referral of settlement service business. In addition, the settlement service that is being compensated for must actually have been performed – nominal performance is not compensable – and the compensation must fall in line with reasonable value of the services rendered (or goods delivered) for the region.

A cautionary note – “Thing of Value.” Any “thing of value” that is given in return for the referral of settlement service business can constitute a Section 8 violation. *Thing of value* is broadly defined under RESPA. The CFPB may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited. [12 CFR §1024.14(g)(2).]

A further cautionary note – Desk Rentals. The leasing of desk or office space to/from a settlement service provider is subject to RESPA Section 8 scrutiny if the (sub)lease agreement is not negotiated at arm’s length, or with terms not meeting commercial standards. The amount of rent paid is also subject to RESPA Section 8 scrutiny (a “thing of value”) and held to the standard of “general market value.” CFPB examines each individual set of facts to determine whether the rental payment bears a reasonable relationship to the general market value of the rental space provided, or is a disguised referral fee. [HUD Statement of Policy 1996-3.]

A further cautionary note – Multiple Services. HUD’s June, 2010 Interpretive Rule on marketing services agreements between real estate brokerage focuses on this provision of Regulation X. When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, 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. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing. [12 CFR §1024.14(g)(3).]

RESPA Section 8 does permit the following compensation arrangements [12 CFR § 1024.14(g)]:

- A payment to an attorney at law for services actually rendered;
 - A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;
 - A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;
 - A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for *services actually performed*;
 - A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);
 - Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; and
 - An employer's payment to its own employees for any referral activities.
- Note:** CFPB’s final 2013 Loan Originator Compensation Rules tightened this exception. Only licensed Mortgage Loan Originators can receive compensation from their employer for referring mortgage business to the company (i.e., to a fellow Mortgage Loan Originator holding licensure in a state that the referring MLO does not hold).

3. SECTION 8(b).

Section 8(b) of RESPA prohibits the splitting of charges among settlement service providers in a manner that is not commensurate with the value of the goods delivered or services actually rendered by each of the respective providers. [12 CFR § 1024.14(c).]

To establish a violation of 8(b) there must be compensation paid and received for a settlement service actually performed; that compensation must be divided among two or more persons; and at least one or more of those compensated persons did not actually perform the settlement service. If one provided services and the other did not, or if neither of them provided settlement services, then both of them are in violation of 8(b).

The U.S. Supreme Court weighed in on the scope and application of RESPA Section 8(b) in *Freeman v. Quicken Loans, Inc.*, 2012 US LEXIS 3940 (May 24, 2012) concluding that for a Section 8(b) violation to have occurred, the settlement service fee in question must be shared among two or more parties. With that court decision, RESPA Section 8(b) stands for the following tenet:

Two or more persons split a fee for settlement services performed and at least one of the provider's share of the fee is unearned, either because no or nominal service was actually performed by the provider, or because the compensation received and divided among them is found to be unreasonable in terms of the value of the service for that particular region. Consequently, that portion of compensation deemed to be unreasonably high for the region is "unearned" and therefore an 8(b) violation.

With the *Freeman* decision's treatment of Section 8(b), settlement service providers must document and be prepared to show that they actually perform services at reasonable market value in return for the compensation they receive and the fees they charge.

A Cautionary Note - Recruitment Services Agreements. Loan originator recruiters may approach CMG Financial offering to place high producing loan officers at CMG locations in return for compensation that is based wholly or partially on a percentage of either the placed loan officer's commissions earned on closed loan transactions, and/or the net profit earned by the CMG location as a result of the recruiter's placement of one or more loan officers at that location. This is a Section 8(b) violation (as well as a probable state mortgage licensing violation) – sharing of settlement service compensation without actually having performed any of the settlement service functions attributed to that closed loan.

4. AFFILIATED BUSINESS ARRANGEMENTS, THE RESPA SECTION 8(c) EXEMPTION

RESPA Section 8(c) carves out an exception to Section 8 prohibited practices for "Affiliated Business Arrangements." [12 CFR § 1024.15.] Under this exception, participant owners in a joint venture settlement service provider entity may refer their customers to the entity and receive in return, compensation in the form of return on their equity ownership investment in the joint venture. To avail themselves of the Section 8(c) exception, the owners must meet the following three conditions:

- (1) An "Affiliated Business Arrangement Disclosure" that is substantially in the form prescribed in Regulation X is given to the customer at the time of business referral or, if the referral is given over the telephone, the disclosure must be provided orally with the written disclosure delivered within three business days thereafter;

- (2) There can be no required use of the joint venture entity on an individual loan transaction; and
- (3) Fees earned by the joint venture for settlement services actually performed on an individual loan basis are disclosed on the HUD Good Faith Estimate and HUD-1 Settlement Statement. Each of the owners can still earn additional “fee for service” compensation for performing actual settlement services themselves in connection with a federally related mortgage loan transaction.

RESPA defines *affiliated business arrangement* as “an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.” To further clarify this definition, HUD adds in its Regulation X Section 1024.15(c) that an “affiliated relationship” means “the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement...”

HUD Policy Statement 1996-2

HUD has issued formal guidance on forming *bona fide* affiliated business arrangements under RESPA Section 8(c), as opposed to a “sham” arrangement, in its Policy Statement 1996-2. In order to qualify for the Section 8(c) exception, the affiliated business arrangement must be an autonomous, independently operated legal entity that is adequately capitalized and a “going concern.” These same concepts carry over to CFPB analysis of Marketing Services Agreement counterparties.

Policy Statement 1996-2 lists factors that HUD (now CFPB) will consider on a case-by-case basis in determining *bona fide* v. “sham” arrangements as follows:

- (1) Does the new entity have sufficient initial capital and net worth, typical in the industry, to conduct the settlement service business for which it was created? Or is it undercapitalized to do the work it purports to provide?
- (2) Is the new entity staffed with its own employees to perform the services it provides? Or does the new entity have “loaned” employees of one of the parent providers?
- (3) Does the new entity manage its own business affairs? Or is an entity that helped create the new entity running the new entity for the parent provider making the referrals?
- (4) Does the new entity have an office for business which is separate from one of the parent providers? If the new entity is located at the same business address as one of the parent providers, does the new entity pay a general market value rent for the facilities actually furnished?
- (5) Is the new entity providing substantial services, i.e., the essential functions of the real estate settlement service, for which the entity receives a fee? Does it incur the risks and receive the rewards of any comparable enterprise operating in the market place?
- (6) Does the new entity perform all of the substantial services itself? Or does it contract out part of the work? If so, how much of the work is contracted out?

(7) If the new entity contracts out some of its essential functions, does it contract services from an independent third party? Or are the services contracted from a parent, affiliated provider or an entity that helped create the controlled entity? If the new entity contracts out work to a parent, affiliated provider or an entity that helped create it, does the new entity provide any functions that are of value to the settlement process?

(8) If the new entity contracts out work to another party, is the party performing any contracted services receiving a payment for services or facilities provided that bears a reasonable relationship to the value of the services or goods received? Or is the contractor providing services or goods at a charge such that the new entity is receiving a "thing of value" for referring settlement service business to the party performing the service?

(9) Is the new entity actively competing in the market place for business? Does the new entity receive or attempt to obtain business from settlement service providers other than one of the settlement service providers that created the new entity?

(10) Is the new entity sending business exclusively to one of the settlement service providers that created it (such as the title application for a title policy to a title insurance underwriter or a loan package to a lender)? Or does the new entity send business to a number of entities, which may include one of the providers that created it?

As further illustration of what it deems to be a "sham" Affiliated Business Arrangement (hereinafter referred to as "AfBA"), HUD Policy Statement 1996-2 gives the following examples –

1. An existing real estate broker and an existing title insurance company form a joint venture title agency. Each participant in the joint venture contributes \$1000 towards the creation of the joint venture title agency, which will be an exclusive agent for the title insurance company. The title insurance company enters a service agreement with the joint venture to provide title search, examination and title commitment preparation work at a charge lower than its cost. It also provides the management for the joint venture. The joint venture is located in the title insurance company's office space. One employee of the title insurance company is "leased" to the joint venture to handle closings and prepare policies. That employee continues to do the same work she did for the title insurance company. The real estate broker participant is the joint venture's sole source of business referrals. Profits of the joint venture are divided equally between the real estate broker and title insurance company.

HUD Analysis. After reviewing all of the factors, HUD would consider this an example of an entity which is not a bona fide provider of settlement service business. As such, the payments flowing through the arrangement are not exempt under Section 8(c)(4) and would be subject to further analysis under Section 8. In looking at the amount of capitalization used to create the settlement service business, it appears that the entity is undercapitalized to perform the work of a full service title agency. In this example, although there is an equal contribution of capital, the title insurance company is providing much of the title insurance work, office space and management oversight for the venture to operate. Although the venture has an employee, the employee is leased from and continues to be supervised by the title insurance company. This new entity receives all the referrals of business from the real estate broker participant and does not compete for business in the market place. The venture provides a few of the essential functions of

a title agent, but it contracts many of the core title agent functions to the title insurance company. In addition, the title insurance company provides the search, examination and title commitment work at less than its cost, so it may be seen as providing a "thing of value" to the referring title agent, which is passed on to the real estate broker participant in a return on ownership.

2. A title insurance company solicits a real estate broker to create a company wholly owned by the broker to act as its title agent. The title insurance company sets up the new company for the real estate broker. It also manages the new company, which is staffed by its former employees that continue to do their former work. As in the previous example, the new company also contracts back certain of the core title agent services from the title insurance company that created it, including the examination and determination of insurability of title, and preparation of the title insurance commitment. The title insurance company charges the new company less than its costs for these services. The new company's employees conduct the closings and issue only policies of title insurance on behalf of the title insurance company that created it.

HUD Analysis. As was the case in the first example, HUD would not consider the new entity to be a bona fide settlement service provider. The legal structure of the new entity is irrelevant. The new company does little real work and contracts back a substantial part of the core work to the title insurance company that set it up. Further, the employees of the new company continue to do the work they previously did for the title insurance company which also continues to manage the employees. The new entity is not competing for business in the market place. All of the referrals of business to the new entity come from the real estate broker owner. The creating title insurance company provides the bulk of the title work. On balance HUD would consider these factors and find that the new entity is not a bona fide title agent, and the payments flowing through the arrangement are not exempt under Section 8(c)(4) and would be subject to further analysis under Section 8.

The following is an example from HUD Policy Statement 1996-2 of what is a *bona fide* AfBA –

3. A lender and a real estate broker form a joint venture mortgage broker. The real estate broker participant in the joint venture does not require its prospective home buyers to use the new entity and it provides the required CBA disclosures at the time of the referral. The real estate broker participant is the sole source of the joint venture's business. The lender and real estate broker each contributes an equal amount of capital towards the joint venture, which represents a sufficient initial capital investment and which is typical in the industry. The new entity, using its own employees, prepares loan applications and performs all other functions of a mortgage broker. On a few occasions, to accommodate surges in business, the new entity contracts out some of the loan processing work to third party providers, including the lender participant in the joint venture. In these cases, the new entity pays all third party providers a similar fee, which is reasonably related to the processing work performed. The new entity manages its own business affairs. It rents space in the real estate participant's office at the general market rate. The new entity submits loan applications to numerous lenders and only a small percent goes to the lender participant in the joint venture.

HUD Analysis. After reviewing all of the factors, HUD would consider this an example of an entity which is a bona fide provider of settlement service business rather than a sham

arrangement. The new entity would appear to have sufficient capital to perform the services of a mortgage broker. The participant's interests appear to be based on a fair value contribution and free from tie-ins to referrals of business. The new entity has its own staff and manages its own business. While it shares a business address with the real estate broker participant, it pays a fair market rent for that space. It provides substantial mortgage brokerage services. Even though the joint venture may contract out some processing overflow to its lender participant, this work does not represent a substantial portion of the mortgage brokerage services provided by the joint venture. Moreover, the joint venture pays all third party providers a similar fee for similar processing services.

While the real estate broker participant is the sole source of referrals to the venture, the venture only sends a small percent of its loan business to the lender participant. The joint venture mortgage broker is thus actively referring loan business to lenders other than its lender participant. Since the real estate broker provides the CBA disclosure and does not require the use of the mortgage broker and the only return to the participants is based on the profits of the venture and not reflective of referrals made to the venture, it meets the CBA exemption requirements. HUD would consider this a bona fide controlled business arrangement.

As of this writing, CMG Financial has no affiliated business arrangements. However, the counterparties we do business with may very well have their own AfBAs to whom they refer settlement service business. Pursuant to CMG Financial's Vendor Management Policy, we must do our initial due diligence and ongoing monitoring of these counterparties to ensure that they are fully compliant with RESPA Section 8 and the AfBA requirements under Regulation X.

5. CMG FINANCIAL POLICY STATEMENT ON MARKETING SERVICES AGREEMENTS

It is the company policy of CMG Financial to enter into and administer marketing services agreements with various counterparties so long as those agreements are structured and executed in compliance with RESPA Section 8(a) and (b), and that the counterparties we enter into marketing services agreements with take on the characteristics of a *bona fide* AfBA as enumerated in HUD Policy Statement 1996-2.

In deference to the high level of compliance risk inherent in RESPA Section 8, it is further the company policy of CMG Financial that no marketing services agreement can be entered into without prior review and approval by the Chief Legal & Risk Officer. In order to be considered for approval, the form of Marketing Services Agreement must contain all of the following features:

- ✓ **Two party agreement between CMG Financial and a counterparty that takes on the features of a *bona fide* AfBA including –**
 - (a) a formal legal entity properly registered in good standing with the home state secretary of state and in all other jurisdictions in which it does business.
 - (b) a functioning executive management structure – board of directors, member LLC management, corporate executive officers; general partner(s).
 - (c) adequately capitalized to carry out its business function(s) and reflect its autonomy as a separate and formal legal entity;
 - (d) employees to carry out its business activities;

- (e) multiple sources of business, not just from CMG Financial;
- (f) properly licensed, where applicable, in all jurisdictions to be covered by the scope of the Marketing Services Agreement.
- ✓ **Scope of marketing services to be performed by the counterparty (or by CMG Financial for the counterparty) are both generally described in the Marketing Services Agreement and are *very specifically described and enumerated in CMG forms Exhibit "A" and "B" to the agreement (i.e., menu of marketing services to be performed monthly).***
- ✓ Based on HUD's June, 2010 Interpretive Rule on the subject of MSAs in particular involving real estate brokerages and home warranty companies, the referral source can only be compensated for marketing services that it can perform *legally* in accordance with RESPA Section 8 and state licensing laws. More specifically, the June 2010 Interpretive Rule made the following pronouncements:
 - (1) Distributing promotional material at a broker's office, or at an open house, is a "referral" and cannot be compensated.
 - (2) A payment by a Home Warranty Company ("HWC") for marketing services performed by real estate brokers or agents on behalf of the HWC that are directed to particular homebuyers or sellers is an illegal kickback under RESPA Section 8. These are payments for affirmatively influencing a consumer's choice of settlement service provider, constituting an illegal kickback for a referral.
 - (3) An HWC may compensate a real estate broker or agent for services when those services are actual, necessary and distinct from the primary services provided by the real estate broker or agent, and when those additional services are not nominal and are not services for which there is a duplicate charge.

In short, the referral source must perform distinct services, outside their normal business activity. Those services must be not directed toward a particular borrower or potential borrower. The services must be "real." The services must have documented intrinsic value independent of facilitating access to borrowers. And of course, the services must be actually performed by the counterparty (or by CMG Financial) rather than delegated out to a third party contractor.

When promotional material is shared by CMG and a counterparty, both parties must share the cost for the material created and distributed, otherwise it is considered an illegal kickback.

- ✓ **Compensation provision to be defined as a dollar amount, paid no more frequently than monthly, whether for marketing services performed individually or in the aggregate during the applicable payment period, and supported by an independent third party valuation provider (CMG Financial uses MLinc Mortgage Solutions).**
- (a) In order to be eligible to receive compensation, the party performing the services must prepare a written narrative or "check the box" menu of what services were

actually performed, along with an itemized invoice for payment. **CMG Financial provides the form Exhibit “A” and “B” to complete.**

- (b) Compensation must reflect the *reasonable market value for that given region(s)* for the marketing services actually performed. The derived reasonable market value must be documented in CMG Financial’s MSA file prior to final execution of the agreement **and supported by an independent, third party valuation company such as MLine Mortgage Solutions.**
- (c) **CMG Financial’s Legal Department will be the sole interface with the independent third party valuation company.**
- (d) The level of compensation or structure for compensation can be revisited by the parties based on historical performance (i.e., through utilization of objective, measurable performance metrics or “score carding”), **no more often than annually.**
- ✓ **MSA Counterparties are not to be paid a monthly marketing fee until they produce an itemized invoice detailing the actual marketing services that were performed to earn the fee. The invoice must be reviewed, audited to confirm actual performance of services, and approved for payment before the counterparty can get paid. A copy of each approved invoice and proof of payment is to be archived at the Branch Office and cc to Legal.**

6. CMG FINANCIAL POLICY STATEMENT ON DESK RENTALS AND CO-OPERATIVE ADVERTISING ARRANGEMENTS

CMG Financial will also allow entering into Desk and Office Rental Agreements so long as the agreement is standalone and not part of a marketing services agreement or any related type of agreement. The rent to be paid must be commensurate with the fair rental value of the desk/office space. There must be supporting documentation included as an exhibit to the agreement depicting the space to be rented and the supporting square footage fair rental valuation.

Lead generation agreements are to be terminated. They cannot be independently valued. CMG Financial’s current policy is to not allow lead generation agreements and that policy continues into 2014.

Co-operative advertising arrangements with Real Estate Professionals may be acceptable if documented by formal agreement supported by itemization of costs to produce and distribute the co-operative advertising, along with the methodology being used for cost sharing among the parties. Under no circumstances will CMG Financial agree to apportion more than 50% of the cost of any co-operative advertising. The agreement is to be approved in advance by Marketing and Legal. The counterparty is not to be paid each month without first producing an itemized invoice for payment, similar to (3) above. A copy of each approved invoice and proof of payment is to be archived with the Marketing Department.

*

*

*