



U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

THE SECRETARY

July 18, 2002

Mr. Martin Edwards, Jr.
President, National Association
of Realtors
430 North Michigan Avenue
Chicago, IL 60611-4087

Dear Mr. Edwards:

Thank you for your letters dated April 25, 2002, and April 26, 2002, on behalf of the National Association of Realtors. You have asked HUD to clarify its *2001-1 Statement of Policy: Clarification of Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b)*, as it applies to real estate brokers.

Your letter suggests that HUD should issue a written legal opinion stating that the prohibition against imposing charges on the consumer where “no, nominal or duplicative work is done, or the fee is in excess of the reasonable value of goods and facilities provided or services actually performed” does not apply to contracts between consumers and real estate brokers for their services when the price of services is fully disclosed. In particular, you indicate that section 8(b) of the Real Estate Settlement Procedures Act (RESPA) would not apply to licensed real estate brokers when the following conditions are met: the consumer’s decision to employ the services of the real estate broker is voluntary, the consumer personally engages the real estate broker, and the total compensation to be paid by the consumer is fully disclosed in writing and acknowledged by the consumer at the time the relationship is created.

Although the conditions you cite may be among the indicia one would consider in determining the possibility of abuse in the real estate broker/agent-client relationship, HUD cannot issue the opinion you seek. As you know, RESPA does explicitly cover settlement services provided by real estate agents or brokers in connection with Federally related mortgage loans. Section 8 of RESPA prohibits kickbacks, unearned fees, referral fees, and splits of fees in connection with all settlement services. At the same time, RESPA does not forbid bona fide compensation or other payment for goods or facilities actually furnished or services performed.

You raise the concerns in the context of HUD's 2001 Statement of Policy. The Statement of Policy was drafted in part to address the decision of a Federal appellate court that concerned the mark-up of a third party charge by a loan originator which found HUD's rule to be ambiguous. The court had held that Section 8 of RESPA did not prohibit the fee because the statute covered only splits of unearned fees. In its decision, the court invited further guidance from this Department. Thus, the Statement was primarily directed to payments made by the consumer for services in connection with a mortgage loan. HUD did not consider payments by the sellers or purchasers of property for residential real estate under a contract with a real estate agent or broker in developing the statement. Nor were the rule changes initiated in any way by concern about misinformation or confusion in the context of the real estate broker/agent-client relationship.

I hope that this explanation clarifies the primary purpose of the Statement of Policy. As you know, I am committed to reforming RESPA so that industries subject to RESPA can continue to innovate to lower settlement costs to increase homeownership. In that process, I will work closely with the National Association of Realtors and other key industry and consumer groups that share this goal.

Thank you again for your letters.

Sincerely,



Mel Martinez