

San Francisco Region Bankers' Forum: Consumer Protection Hot Topics

May 19, 2016

Agenda

- Opening Comments
 - Acting Regional Director Kathy Moe
- RESPA Section 8
 - Refresher on Section 8
 - Correspondent or Broker?
 - Marketing Service Agreements
- Questions and Answers

RESPA Section 8 - Refresher

- History of RESPA
- Purpose of Section 8
- Applicability of RESPA Section 8

RESPA Section 8 - Refresher

- Section 8 prohibitions
- Exceptions to the prohibitions
 - Salaries
 - Fees for “compensable services” that are “legitimately earned”

RESPA Section 8 - Refresher

“Compensable Services” must be “actual, necessary, and distinct”

Taking applications

Analyzing debts and income

Educating/counseling

Collecting financial information

Verifying employment and deposits

Ordering loan verification requests

Ordering appraisals

Ordering inspections

Providing disclosures

Helping clear credit problems

Maintaining regular contact

Ordering legal docs

Ordering flood determination

Participating in closing

RESPA Section 8 - Refresher

- “Legitimately earned”
 - Services are actually provided
 - Compensation is related to market value

RESPA Section 8 - Refresher

- **Section 8(a) – “thing of value”**
- Section 8(b) – “split of any charge”

RESPA Section 8 - Refresher

- Section 8(a) – “thing of value”
- **Section 8(b) – “split of any charge”**

CORRESPONDENT OR BROKER?

Correspondent or Broker?

- Correspondent lenders
 - ✓ Fund, close, and sell loans to investors by prior arrangement

Correspondent or Broker?

- Correspondent lenders may:
 - Be compensated for providing origination services by consumers
 - Receive a gain or premium from the sale of loans to investors

Correspondent or Broker?

- Mortgage Brokers
 - ✓ Facilitate brokered loan transactions between borrowers and lenders
 - ✓ Does not fund or sell loans

Correspondent or Broker ?

- Mortgage Brokers may:
 - Be compensated for origination services as long as the compensation bears a reasonable relationship to the services provided (HUD SOP 1999)
- Mortgage Brokers may NOT:
 - Be compensated by both the borrower and the lender in the same closed-end mortgage transaction

COMPLEX ARRANGEMENTS

Correspondent or Broker?

- Mini-correspondent lenders
 - ✓ Similar capacity as a correspondent lender
 - ✓ Must be materially different from a broker

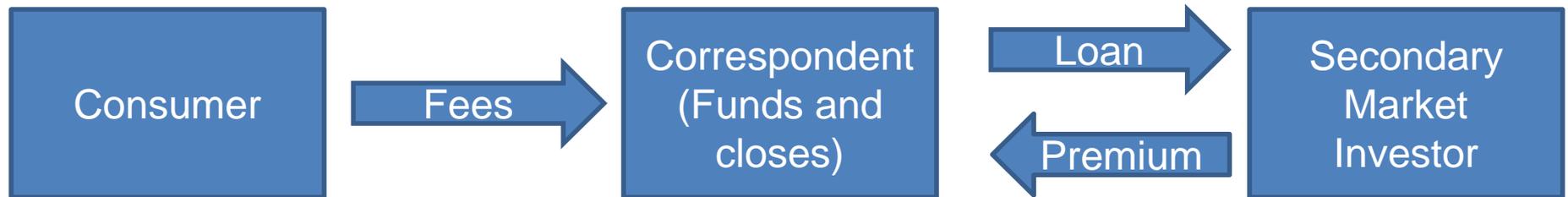
Correspondent or Broker?

- Brokers acting as mini-correspondent lenders
 - ✓ Similar capacity as a mortgage broker
 - ✓ Substantially similar to a broker

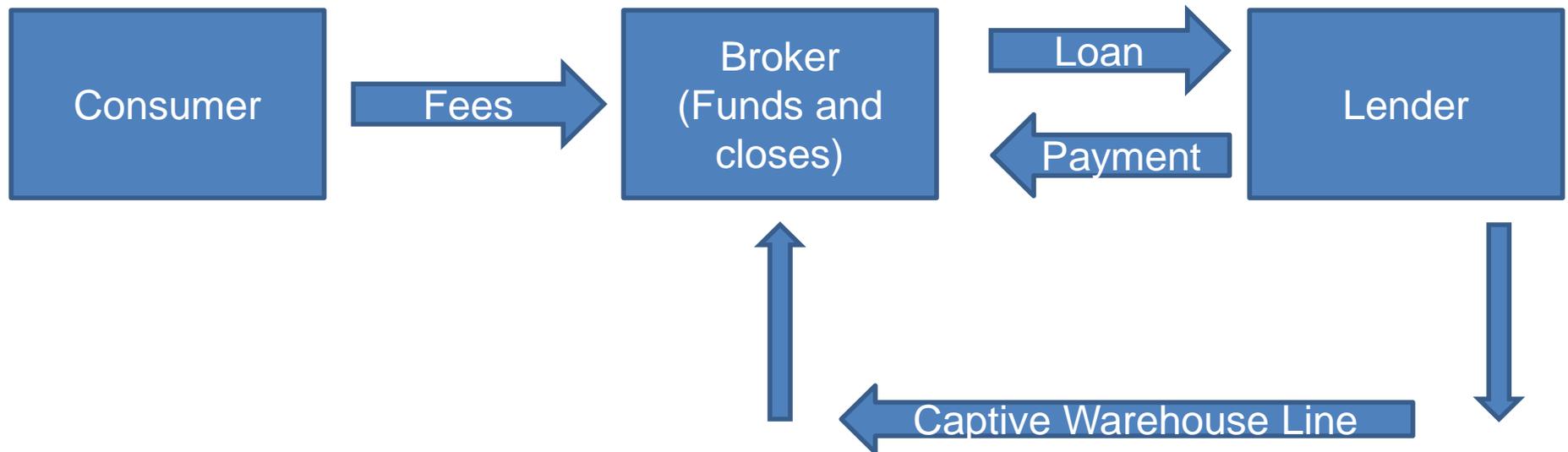
Correspondent or Broker?

- Regulatory Areas of Focus
- Truth in Lending
 - QM and HOEPA
 - LO Compensation
- RESPA Section 8

Correspondent or Broker?



Correspondent or Broker?



Correspondent or Broker?

- What to consider
 - Has my institution, an affiliate, or business relationship changed from a broker to a correspondent?
 - What is different in my operations and CMS that reflect that change?
 - How do my operations conform to the relevant guidance?

Correspondent or Broker?

- Made a mistake?
 - Consider which regulatory areas may be implicated
 - Determine the extent of the issue
 - Evaluate what corrective action may be necessary
 - Evaluate whether consumers were harmed
 - Include the FDIC as needed

CORRESPONDENT OR BROKER SUMMARY

Marketing Service Agreements (MSA)

- What is a “marketing service agreement”?
- Formal requirements?
- Parties covered?

MSA Examples

- Weblinks/social media
- Presentations to bank staff
- Printed or broadcast marketing media
- Home buying seminars or education programs

Cases involving MSAs

- Weblinks
- Staff presentations/internal bank newsletters
- Flyers and online advertising
- Networking opportunities/education programs

Rental Agreements

- Type of space rented
- Occupancy
- Rental rate

Conclusion

- Services listed in an MSA or rental agreement must be compensable
- The services must actually be provided
- Payment amounts must be reasonably related to the market value of the services, not the value of the referral

CMS Best Practices

- Due diligence
- Training
- Marketing/advertising reviews
- Weblink/social media reviews

Resources

Mini-correspondent guidance:

www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-issues-guidance-regarding-brokers-shifting-to-mini-correspondent-model/

HUD Statement of Policy 1999-01 Lender Payments to Mortgage Brokers:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resp0222

Freeman et al. v. Quicken Loans, Incorporated:

<http://www.supremecourt.gov/opinions/11pdf/10-1042.pdf>

HUD RESPA Program Office Website:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res



Resources

Marketing Services Agreements bulletin:

<http://www.consumerfinance.gov/newsroom/cfpb-provides-guidance-about-marketing-services-agreements/>

HUD Interpretive Rule on Home Warranty Payments to Mortgage Brokers and Agents:

https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14577.pdf

Q&A on HUD Interpretive Rule on Home Warranty Payments:

<http://www.gpo.gov/fdsys/pkg/FR-2010-12-01/pdf/2010-30243.pdf>

Rental Office Space, Lock-outs, and Retaliation Regulations:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/res0607b



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Questions and Answers

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