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GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF FINANCIAL INSTITUTIONS
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AUGUSTA, MAINE
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Lloyd P. LaFountain III
SUPERINTENDENT

June 3, 2011

Re: Marketing Services Agreements with Real Estate Brokers

Dear

Financial institutions and other creditors are required to comply with the provisions of the federal Real Estate Settlement Procedures Act (RESPA) codified at 12 U.S.C. Chapter 27 as implemented by the Department of Housing and Urban Development (HUD) at 24 C.F.R. Part 3500 (Regulation X). This obligation is further enforced by Title 9-A M.R.S.A. Section 3-316.

RESPA prohibits kickbacks and unearned fees at 12 U.S.C. Section 2607, also known as Section 8 of RESPA. Essentially, Section 8 prohibits a person from paying or receiving fees for the referral of settlement services or from splitting fees and charges, except for services actually performed.

Recently, the Maine Bureau of Financial Institutions (Bureau) was informed that a real estate brokerage firm asked a financial institution to sign an agreement in which the financial institution will pay the real estate brokerage firm a monthly fee for the real estate broker to market the financial institution's loan products to clients of the real estate brokerage firm. The Bureau obtained a copy of the agreement, entitled "Marketing Services Agreement (MSA)," which indicates that marketing services include promoting the financial institution as a "preferred partner" of the real estate brokerage firm, posting advertisements and marketing material in the real estate brokerage firm's offices, distributing the creditor's marketing materials to clients at the firm's seminars, and posting the creditor's marketing materials on the real estate brokerage firm's website. The MSA also implies that the arrangement with the creditor is not necessarily exclusive and the monthly fee is adjustable at the discretion of the creditor, presumably based on volume, but without explicitly stating so.

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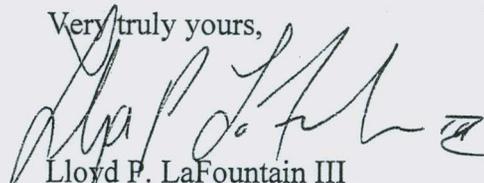
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The MSA purports to structure a compensation arrangement between a creditor and real estate brokerage firm in such a way that does not violate Section 8 of RESPA. The Bureau shared a copy of the agreement with officials at the Federal Reserve Bank of Boston, the New York Region of the Federal Deposit Insurance Corporation, and HUD to determine if these agencies are familiar with such agreements, and if they had determined if such agreements are or are not compliant with Section 8 of RESPA. HUD was the only agency with knowledge of such agreements. HUD officials indicated that they had yet to take a formal position on whether or not such agreements are compliant with Section 8 of RESPA, but they expressed concern about the practice and are reviewing these types of agreements. However, because of the impending transfer of RESPA administration and enforcement to the Consumer Financial Protection Bureau, review of these types of agreements will likely not be complete until after the transfer and reorganization.

Because of the uncertainty that such agreements are compliant with Section 8 of RESPA, the Bureau strongly advises financial institutions not to enter into such agreements while this uncertainty exists. If your institution has entered into such an agreement, please provide the Bureau a copy of the signed agreement and any written, legal opinion that the institution obtained relevant to the agreement.

If you have any questions, please contact Deputy Superintendent John Barr at 624-8561 or Deputy Superintendent Donald Groves at 624-8577.

Very truly yours,



Lloyd P. LaFountain III
Superintendent