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Issue Date
February 9, 2011
Audit Report Number
2011-LA-1801

MEMORANDUM FOR: Teresa B. Payne, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, HE

Vicki B. Bott, Deputy Assistant Secretary for Single Family Housing, HU

FROM: Tanya E. Schulze, Regional Inspector General for Audit, Region IX, 9DGA

SUBJECT: Review of Compliance With the Real Estate Settlement Procedures Act by DHI Mortgage, LTD, and Its Closing Agents

INTRODUCTION

We reviewed Federal Housing Administration (FHA)-insured loan settlement documents from two branches of DHI Mortgage Company, LTD (DHI Mortgage), in Arizona. During a previous audit of loan origination by the same branches (audit report number 2009-LA-1018), there was information indicating that the Real Estate Settlement Procedures Act (Act) might have been violated; however, we were unable to report on the issue at the time. Our review followed up with the objective to determine whether DHI Mortgage FHA branch numbers 0524200180 and 0542400332 charged borrowers for services and disclosed settlement charges in accordance with the Act's and the U.S. Department of Housing and Urban Development's (HUD) requirements. We issued a discussion draft report on August 5, 2010, and solicited comments from the auditee as well as HUD officials. As a result of those comments, we made significant changes to our draft report and omitted the referrals. The report conveys our concerns regarding the potential noncompliance with certain sections of the Act, irrespective of the responsible parties.

SCOPE AND METHODOLOGY

We reviewed title files corresponding to 468[1] FHA-insured loans with beginning amortization dates from October 1, 2006, to September 30, 2008, originated by DHI Mortgage FHA branch numbers 0542400180 and 0542400332, both now closed. Generally, the review was limited to examination of the settlement statement (HUD-1); file balance sheet or disbursements summary; and schedule A to purchase contract, declaration of covenant restricting rental or resale of property, or equivalent documents. We also reviewed underwriting documentation in the lender/FHA loan files for 34 of these FHA-insured loans, which was a nonrepresentative sample based on the existence of loan defaults and claims. We reported the results of the underwriting review for these loans in HUD Office of Inspector General (OIG) audit report number 2009-LA-1018.

To accomplish our objective, we

- Reviewed the Act.
- Reviewed HUD regulations and reference materials related to the Act and FHA single-family mortgage insurance program requirements.
- Reviewed DHI Mortgage's processing, underwriting, and settlement policies and procedures.
- Reviewed 34 DHI Mortgage loan files.
- Reviewed 468 title files corresponding to the 481 loans originated in our audit period. Documents reviewed were generally limited to the (1) HUD-1; (2) file balance sheet or disbursements summary; and (3) schedule A to purchase contract, declaration of covenant restricting rental or resale of property, or equivalent.
- Considered written and oral comments on the discussion draft report provided by the auditee, HUD officials responsible for oversight and enforcement of the Act, and counsel in HUD Office of General Counsel and OIG's Office of Legal Counsel.

We conducted our fieldwork at DHI Mortgage's Tucson and Scottsdale, AZ, branch offices between December 2008 and March 2009.

BACKGROUND

DHI Mortgage is a nonsupervised lender[2] approved June 8, 1981, to originate FHA loans. It currently originates FHA loans under the lender insurance program.[3] The company is a wholly owned subsidiary of D.R. Horton, Inc., a national residential home builder, and provides mortgage financing services principally to purchasers of homes built by D.R. Horton, Inc. DHI

[1] Although we attempted to review all 481 loans originated during our review period, we did not receive 13 title files and, therefore, did not conduct a review of those loans. This limitation did not affect the results of our review.

[2] A nonsupervised lender is a HUD/FHA-approved lending institution that has as its principal activity the lending or investment of funds in real estate mortgages and is not a supervised lender, a loan correspondent, a governmental institution, a government-sponsored enterprise, or a public or State housing agency and has not applied for approval for the limited purpose of being an investing lender.

[3] HUD's lender insurance program allows lenders to self-insure FHA loans and submit only those case binders (paper or electronic) requested for review by HUD. HUD requests approximately 6 percent of insured loans for review.

mortgage generally closed its loans using the services of various settlement agents; however, for the majority of loans in this review, DHI Mortgage primarily used an affiliated title company and one other independent title company. DHI Mortgage headquarters is at 12357 Riata Trace Parkway, Suite C-150, Austin, TX, and the company has branches in 19 States.

RESULTS OF REVIEW

1. Home Buyers May Have Been Charged Ineligible Settlement Fees or Service Charges

The Act is a HUD consumer protection statute enacted by Congress in 1974 to protect the American home-buying public from unreasonably and unnecessarily inflated prices in the home-buying process and is enforced by HUD through regulations promulgated at 24 CFR (Code of Federal Regulations) Part 3500. The Act requires that consumers receive disclosures at settlement in a prescribed manner and that settlement charges be only for goods and services actually furnished. Accordingly, regulations at 12 CFR 3500.14(c) do not allow charges for which no or nominal services are performed or which are duplicative. Fees that violate HUD regulations are ineligible to be charged to borrowers of FHA-insured mortgages. HUD Mortgagee Letter 2006-04 allows lenders to charge and collect customary and reasonable costs necessary to close the mortgage. It restricts the fees, in general, to the actual cost for the service and limits the origination fee to 1 percent of the loan balance at settlement for forward mortgages.[4] This mortgagee letter also notes that "all fees and charges must comply with Federal and State disclosure laws and other applicable laws and regulations."

- **Excess Origination Fees**

  DHI Mortgage charged FHA borrowers for services that appeared to duplicate services covered by the origination fees. We questioned whether charging apparent duplicative fees effectively caused the originations fees to exceed the 1 percent limit applicable at the time.[5] The origination fee (also called an underwriting fee, administrative fee, or processing fee) is charged by the lender for evaluating and preparing the mortgage loan. In a number of instances, DHI charged borrowers fees labeled as document preparation, underwriting, administrative, processing, and/or application fees (or a variation thereof) in addition to an origination fee charge, resulting in an aggregate total that exceeded 1 percent of the loan value.

  The auditee's response disagreed with our interpretation of the 1 percent limit and noted that Mortgagee Letter 2006-04 specifically permits a lender to charge and collect from the borrower those customary and reasonable costs necessary to close the mortgage. The response also noted that "the services covered by the Application and Administration Fee arguably could be considered services covered as part of the administration process. Therefore, DHIM is in the process of refunding the Application and Administration Fee charged to the borrowers" on 11 loans. Although we do not consider the matter settled

[4] All of the loans reviewed were forward mortgages. A forward mortgage is a mortgage in which the balance of the mortgage decreases over time.

[5] For the years in our review period and until January 1, 2010, 24 CFR 203.27 allowed an origination charge of up to 1 percent of the loan value.

and are uncertain of how the auditee distinguished between charges that were duplicative and those that were not, we accept DHI Mortgage's voluntary effort to address the issue. We have decided to not refer the issue and note that HUD revised regulations in November 2008[6] to remove the 1 percent limit on origination fees and allow a single "origination charge" that "must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator."

- **Escrow Charges**

  Almost 20 percent of the settlement statements contained charges to borrowers for recording fees and/or e-mail document and delivery (courier, messenger, overnight, and special) fees. Because the (mostly even dollar) amounts varied widely in some cases and appeared excessive for services such as e-mails, we questioned whether the amounts charged represented actual costs for the services in accordance with Mortgagee Letter 2006-04. The auditee's response stated that the closing agents charged these fees in accordance with escrow rate schedules filed with the State of Arizona to comply with Arizona Revised Statutes, section 6-846.01. The response also stated that the filed rates were evidence that "it is customary to charge a flat escrow service fee for the couriering of documents."

  Our follow-up review of the escrow rate schedules filed by the title companies with the Arizona Department of Financial Institutions generally supported that the charges we had questioned agreed with the rates on file. The Arizona Revised Statutes, title 6, section 846, required escrow agents to file their rate schedule with the Arizona Department of Financial Institutions and further stated that an escrow agent may not deviate from his escrow rates that are in effect. State officials confirmed that penalties would be applied for <u>under</u>charges as well as overcharges. Although in many cases the closing files we reviewed contained no charges for these services, State officials noted that this practice was acceptable if the title company had filed a bundled rate schedule.[7]

  We continue to question charges that did not agree with the applicable rate schedules. We also question whether the rates filed under the Arizona statute would be found allowable as customary and reasonable costs (see OIG's response to auditee's comments in appendix A) or whether this criterion should have been applied when an outside party provided the services. Because HUD's revised regulations[6] generally changed the criteria for allowable charges, we have determined that further pursuit of the matter would not be warranted.

[6] "Real Estate Settlement Procedures Act: Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Final Rule." Federal Register 73 (17 November 2008): 68227, 68239, 68244, and 68276

[7] During our review, it appeared that there was no straightforward way to tell whether a particular fee had been bundled as of a specific date. Further, enforcement of the rates for the related services was complicated by years of disorganized rate filings on the part of one title company.

- **Lender's Inspection Fees**

  DHI Mortgage charged eight FHA borrowers lender's inspection fees that appeared to duplicate appraisal fees, costing home buyers an additional $595 to close on their homes. For FHA-insured loans, an appraisal must be completed, but a lender inspection is not required. FHA appraisals generally evaluate everything and more than a lender's inspection would cover. In all eight cases, an appraisal fee was charged in addition to the lender's inspection fee, which appeared to be for the same service. Further, since DHI Mortgage officials did not consistently charge lenders' inspection fees to borrowers (8 of 468 borrowers were charged), the fees were not customary as required by the Mortgagee Letter 2006-04 fee requirements. DHI Mortgage reviewed the documentation for these loans and provided support for three of the lender inspection fees. It volunteered to refund to the borrowers amounts for the fees that should not have been charged for the other five loans.

2. We Questioned Whether Fees Net Funded by the Lender Were Properly Disclosed

The regulations for the Act listed at 24 CFR Part 3500, appendix A, require that, "The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the Lender, and all sales commissions, whether paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay for at settlement. Charges to be paid outside of settlement…shall be included on the HUD-1 but marked 'P.O.C.' for 'Paid Outside of Closing' (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns." We questioned a number of instances in which HUD-1s included amounts for items such as appraisals and credit reports in the settlement totals but the disbursement records showed no disbursement to the service provider (indicating that the items might have been paid outside of closing).

DHI Mortgage stated in its response that it net funded certain borrower charges at closing and, therefore, properly included the charges in the HUD-1totals without a corresponding settlement disbursement. This situation occurred because DHI Mortgage had already paid the charges for items such as appraisals and credit reports through its standard corporate accounts payable system and the borrowers paid the third party "through DHIM [DHI Mortgage] the amount charged for the service at the time of settlement" (see Auditee Response, appendix A).

We agree that, in cases that were net funded, the borrower actually paid for the services at the time of closing and, therefore, the charges should not be marked "P.O.C." or omitted from the computed totals. However, we question whether in all cases reviewed, the charges were properly itemized as required by the regulations. Under section L, Settlement Charges, the regulations also state that "for all items except those paid to and retained by the Lender, the name of the person or firm ultimately receiving the payment should be shown." Therefore, for cases with facts consistent with net funding as described in the auditee's response, omission of the outside service provider's name appeared to be noncompliant with the regulations. The settlement documents were too inconsistent to allow a determination in each instance regarding whether DHI received and retained payment for items (because there was no outside service provider to disclose).

As a result of the net funding practice and inconsistent identification of third-party service providers, we could not conclude whether all of the transactions were net funded and/or were reported in compliance with regulations. Further, unless we examined the auditee's corporate accounts payable, we would not be able to determine compliance with FHA regulations at 24 CFR 203.27 that do not allow lenders to collect more than the amount actually paid for an outside appraisal.[8] We believed that the pattern of many questionable disclosures warranted referral to HUD for further review of compliance with the Act and related regulations. However, our preliminary discussions of the matter with HUD officials knowledgeable in the field did not provide a consensus regarding this issue. Further, the Act's statute of limitations has expired for many cases; therefore, we do not plan to pursue this matter further. It should be noted that the challenges we encountered while applying the Act and its regulations raised concerns regarding how well the Act served its purpose to inform and protect the consumer or whether instances of noncompliance could be detected and prosecuted. It remains to be seen whether the revised regulations issued in November 2008 successfully addressed these challenges.

3. Names of Individuals Who Ultimately Received Payments for Apparent Real Estate Commissions Were Not Disclosed on the HUD-1

Real estate commissions disbursed at settlement were not all disclosed on the HUD-1 in 35 instances. Regulations at 24 CFR Part 3500, appendix A, required that, "For all items except for those paid to and retained by the Lender, the name of the person or firm ultimately receiving the payment should be shown" and "Lines 701–702 (of the HUD-1) are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers." In these cases, the total real estate commission paid for the transaction was listed on the HUD-1 in the 700 series as payable to one entity, generally the real estate broker. However, at settlement, separate checks were issued to up to five different entities and/or individuals.

In its response to our discussion draft report, the auditee stated that the settlement agents had followed instructions set forth in the commission disbursement authorizations received from the real estate brokers regarding how to disburse the real estate proceeds and, further, in no case was the amount of commission disbursed in accordance with the instructions different from the [total] amount of commission owed to the real estate broker as evidenced on the HUD-1. The auditee's response stated that the settlement company issued separate checks as a courtesy to the real estate brokerage firms and that this was a customary practice to avoid the need for and cost of additional processing internally by the brokerage company once the commission was received. The response further asserted that the HUD-1only needed to disclose the names of the real estate brokers who were due the commissions earned for services performed. However, we believe it could be argued that the regulations meant for all settlement disbursements of commissions to be disclosed to the borrower on the HUD-1, so that the borrower was informed of who [ultimately] profited from the sales transaction. HUD officials did not provide a consensus on this matter and, therefore, we are not recommending corrective action.

[8] HUD's regulations for the FHA single-family insurance program at 24 CFR 203.27(a) state that, "The mortgagee may collect from the mortgagor the following charges, fees or discounts… (3) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items: …(v) Fees paid to an appraiser or inspector approved by the Commissioner for the appraisal and inspection, if required, of the property." (Reasonable amounts are allowed for mortgagee staff appraisers.)

CONCLUSION

The affected home buyers were potentially overcharged fees—which may have increased the cost of home ownership—and/or were uninformed about who received payments related to settlement or when payments for settlement charges were made to service providers. We concluded that the disclosures in the HUD-1s we reviewed were inadequate to fully inform the borrowers regarding these settlement charges and that the many loans with questionable settlement charges amounted to a pattern of questionable disclosures. Therefore, a review of the supporting documentation by HUD officials was warranted to determine whether requirements of the Act and other regulations had been satisfied. Although we discussed the draft report and auditee's comments with various HUD officials, we did not obtain a consensus and could not establish the likelihood of enforcement if noncompliance were determined. Further, since our audit period, HUD has revised the applicable regulations in an effort to improve some of the disclosure issues we questioned. Lastly, with future plans to transfer the responsibility to administer the Act outside HUD, we are not making recommendations for further corrective action. We are hopeful that the Act's current and future regulations and new administration[9] will improve its effectiveness and enforceability in respect to the consumer.

RECOMMENDATIONS

There are no recommendations with this report.

[9] The responsibility to administer the Act will be moved to the Bureau of Consumer Financial Protection established under the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) with the transfer effective July 21, 2011.

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation **Auditee Comments**

WEINER
BRODSKY
SIDMAN
KIDER PC

August 20, 2010

VIA FED-EX

Tanya E. Schulze
U.S. Department of Housing and Urban Development
Office of Inspector General - Region IX
611 West Sixth Street, Suite 1160
Los Angeles, California 90017-3101

RE: DHI Mortgage Company, LTD's Response to OIG's Draft Report

Dear Ms. Schulze:

Enclosed please find DHI Mortgage Company, LTD's response to your draft memorandum report dated August 5, 2010. An electronic copy of the enclosed has also been provided to you via email on August 20, 2010.

Please do not hesitate to contact me directly at 202.628.2000 with any questions regarding this matter.

Sincerely,

Mitchel H. Kider

Enclosures

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Washington DC Dallas TX Newport Beach CA

DHI MORTGAGE

a D·R·HORTON company

America's Builder

August 20, 2010

U.S. Department of Housing and Urban Development
Office of Inspector General – Region IX
Attn: Ms. Tanya E. Schulze
611 West Sixth Street, Suite 1160
Los Angeles, California 90017-3101

Re: DHI Mortgage Branch 0542400180
DHI Mortgage Branch 0542400332
Audit Period: Loans closed from October 1, 2006, to September 30, 2008

Dear Ms. Schulze:

This letter serves as the response of DHI Mortgage Company, LTD's ("DHIM" or "Company") to your draft memorandum report ("Draft Report") dated August 5, 2010, containing the findings of the completed audit of the DHIM branch offices referenced above that was conducted by the Office of Inspector General ("OIG").

We want to reiterate at the outset that DHIM is committed to adherence to all state and federal laws and with all HUD established guidelines, as well as to maintaining a high standard of best practices, internal policies and procedures. Accordingly, we believe that our best practices, policies and procedures in fact resulted in DHIM maintaining compliance with the same and intend that our response will clearly exhibit such compliance.

Comment 1

DHIM is troubled by the Draft Report because it is based on factual inaccuracies and reflects a fundamental misunderstanding of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* ("RESPA"). For example, the Draft Report repeatedly refers to charges imposed by DHIM when, in fact, the charges were imposed by third parties over whom DHIM has no control. Other fees identified as violations by the OIG in its Draft Report were specifically authorized by the State of Arizona and fall within the filed-rate doctrine.

Comment 2
Comment 8

Further, with respect to the most significant finding, the failure to designate fees as "paid outside of closing," which the Draft Report states occurred with respect to "1,028 loan settlement charges," the OIG's demand that a "P.O.C." designation should have been used is particularly

troubling. In those cases where the borrowers paid for the credit report and appraisal services at closing, requiring DHIM to designate these charges as "P.O.C." would have been a misrepresentation.

With respect to each of the specific findings of the Draft Report, DHIM responds as follows:

EXAMINATION FINDINGS

1. DHI Mortgage Charged Home Buyers Ineligible Settlement Fees.

The Draft Report claims 108 instances of ineligible fees which purport to violate RESPA and HUD Mortgagee Letter 2006-04 ("ML 2006-04"). As the Draft Report categorizes these violations in five subsets, DHIM will address each separately.

- Administrative Brokerage Commission and Marketing, Technology, and Verification Fees

Comment 3

The Draft Report inaccurately states that in 23 cases, DHIM "charged borrowers administrative brokerage commission ["ABC"] fees or marketing, technology and verification ["MTV"] fees that were duplicative, unnecessary, and uncustomary," therefore violating 24 C.F.R. § 3500.14(c) and ML 2006-04. *See* Draft Report at 3. There is no factual basis for this assertion. As demonstrated by the HUD-1 Settlement Statements ("HUD-1s") for each of the transactions, DHIM did not charge, collect or impose, directly or indirectly, any of the 23 fees cited by OIG. The real estate professional charging the fees, not DHIM, provided the settlement agent with instructions with respect to disclosure of these fees on the HUD-1. DHIM is not liable for a third party settlement servicer's charges to borrowers that are based on a separate agreement between those parties. Accordingly, DHIM is not responsible for any violation under section 3500.14(c) or ML 2006-04 with respect to such fees.

Specifically, in all 23 cases, borrowers independently contracted with the real estate professional to represent them as they searched for a new home. The real estate professional is not in any way affiliated with DHIM, DHIM did not instruct or advise the borrower to work with the real estate professional, and DHIM was not privy to the specific details of the agreement. These fees are specifically contracted for between either the seller or buyer and the real estate professional for the services specified in the agreement. As borrowers are free to work with any real estate professional they choose, it is the borrower's choice as to whether or not they want to work with an agent that requires such an agreement. These contractual agreements are entered into at the onset of the buyer/broker relationship and are not subject to or connected with any particular home purchase or lender. Exhibit A[1] includes examples of the instructions received by the

[1] Please note that in the interest of protecting personal privacy and confidentiality, borrower names, real estate agent names, property addresses, loan numbers and other sensitive or personally identifiable information has been redacted on the enclosed Exhibits.

settlement service provider to collect ABC and MTV fees from the borrower.[2] Because the settlement agent frequently receives these types of instructions from real estate professionals, there was no reason to believe such fees were unreasonable or not customary. Although the OIG asserts that the fee was not customary due to the percentage of files in which such fee existed, this fact merely indicates that many borrowers for which DHIM handled transactions chose not to work with real estate professionals who charged for these specific real estate services.

Although these fees are real estate broker commission fees not imposed by or attributable to DHIM, DHIM further disputes the allegation that these fees are duplicative, unnecessary and/or uncustomary. The Draft Report does not explain how or why these fees are duplicative or unnecessary other than the conclusory statement that, because the seller was charged commission fees "that appear to cover the same service" the charge to the borrower must be "duplicative." Given the fact that real estate professionals, not DHIM, charged the fees at issue, and the OIG made no effort to interview, research, or investigate, the basis for these specific charges, *see* Draft Report at 2 (Scope and Methodology), the conclusions in the Draft Report regarding the propriety of these fees is based on sheer speculation on the part of the OIG.

Moreover, Chapter 5 of HUD Handbook 4000.2 provides that a borrower may be charged real estate broker's fees, as long as the borrower engages the broker independently and the fees are reasonable and customary. In addition, Appendix A to HUD's Regulation X provides instruction on where real estate brokerage fees other than commissions should be disclosed: "Line 704 may be used for additional charges made by the sales agent or real estate broker … which will be disbursed by the settlement agent." If charging such fees other than commission were not customary as the Draft Report asserts, Line 704 on the HUD-1 would not be necessary.

DHIM was not responsible for the charging of the ABC or MTV fees, nor did it have any authority to negate a legally binding contractual agreement for services. As such, we request that this finding be cleared and removed from the final report. Indeed, the OIG's statement that "DHI Mortgage charged borrowers more than $22,000 in ineligible fees" is factually incorrect. Further, if the OIG feels that these particular fees that are imposed by real estate brokers are unnecessary or duplicative, it should instead discuss the issue with the State of Arizona Department of Real Estate which authorizes and endorses this practice, seek remedy with the real estate professionals contracting with and charging consumers these fees, or both.

- E-Mail Loan Document Fees

Comment 1

The Draft Report inaccurately states that DHIM "charged 35 home buyers email document fees totaling $832." *See* Draft Report at 4. Once again, the fee for this service was not requested,

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[2] The instructions from the real estate professionals make clear that "[t]hese instructions are not to be changed without the express consent of [the entity imposing the charge]." *See* Exhibit A. This is simply further evidence of the fact that the OIG's conclusion that DHIM had any responsibility for, or the ability to control, the imposition of this charge, is inaccurate.

applied nor collected by DHIM but rather was charged by a third party settlement service provider. In all but two cases, the settlement service provider was also not affiliated with DHIM. On this basis alone, the OIG must correct the Draft Report's factual misstatement regarding the party charging the fee.

The OIG also asserts, in conclusory fashion, that "the use of e-mail to send or receive a document was common practice and posed no incremental cost to the user." A service or action being common practice does not negate the fact that a cost is incurred. The use of courier services is also a common practice and it is undisputed that costs are incurred for these services. While sending an e-mail itself may not require extensive effort, the subsequent action by the recipient can incur extensive costs, which is why settlement agents charge a fee for this service.

Historically, mortgage lenders as part of the loan process would create, print and deliver loan documents to the settlement agent in order to effect the closing. With the onset of email, lenders no longer need to incur the extensive costs of high volume printers, hardware service costs, and extensive paper and toner costs to print these documents. As a result of the common practice of emailing loan documents, these costs have now become the responsibility of the settlement agents. In addition to the equipment and related expenses, settlement agents must also expend financial resources to maintain more internet bandwidth and high capacity file servers to handle the routing of emailed loan documents. Due to large increases in operational costs, it has become common practice for settlement agents to charge for this service of receiving documents electronically.

Comment 4
Comment 7

DHIM also notes that, in accordance with Section 6-846.01 of Title 6 (Banks and Financial Institutions) of the Arizona Revised Statutes, title companies are required to file basic rates for all such service charges, and such rates are approved by the Arizona Department of Financial Institutions. Exhibit B contains copies of the publically available and state-approved filed rates of seven title companies indicating that they charge consumers a fee for the electronic delivery of documents. These seven title companies handle approximately thirty-seven percent (37%) of all real estate transactions in the State of Arizona, a further indication that the charge for such a fee is customary.

Although the OIG asserts that the email fee charged to borrowers "was clearly more than the actual cost," no evidence to support this assertion is provided. To the contrary, the filed rates provided in Exhibit B indicate that some companies charge substantially more for this service than any of the charges for the same service cited in the Draft Report, evidence that this charge may reflect an amount significantly less the actual cost in some cases.

DHIM did not review the filed-rates for every title company doing business in Arizona but it believes that the majority of settlement service providers have such a rate filed. As DHIM did not collect the fee, was not paid the fee, nor had control as to whether or not the settlement agent charged the fee, DHIM respectfully requests that this finding be cleared and removed from the final report.

- Lender's Inspection Fees

DHIM agrees with the Draft Report's finding that in five of the eight instances, an inspection fee should not have been charged. For these five loans (FHA Case numbers: 022-1858078, 022-1882314, 022-1883463, 022-1896103, 022-1901617), DHIM is in the process of refunding the fees charged.

Comment 5

However, in the other three instances (FHA Case numbers: 022-1930058, 022-1930881, 022-1955723) an additional inspection was required by the appraiser. Exhibit C includes copies of the appraisals, the final inspections completed and the invoices for these inspections. As evidenced by each of these appraisals included in Exhibit C, at the time of the initial appraisal, the construction of the property was not yet complete. Indeed, in each of the three cases, the homes were between 80% and 85% completed and the appraiser was required to return to the property to perform a final inspection to ensure that the construction was complete. In each of these three instances, the additional services were performed and the borrowers were properly charged for these services. Thus, there is no basis for the assertions that 1) there was no evidence in the files as to why the additional services were required (since the appraisals clearly state that at the time of the appraisal the construction was not completed); or 2) that the services were duplicative.

DHIM respectfully requests that upon the refund of the inspection fee to the consumer for the five loans identified above, this finding be cleared.

- Excess Origination Fees

The OIG cites ML 2006-04 as prohibiting a lender from charging a borrower reasonable and customary fees to close the mortgage if such fees, including an origination fee results in an aggregate total that exceeds one percent of the loan value. Respectfully, the OIG is misguided in its interpretation of the requirements of ML 2006-04, which does not set forth such a prohibition.

Comment 6

ML 2006-04 specifically permits a lender to charge and collect from the borrower those customary and reasonable costs necessary to close the mortgage. In addition, ML 2006-04 prohibits a lender from charging the mortgagor an origination fee greater than one percent on forward mortgages. Nowhere is there language in ML 2006-04 that states that the reasonable and customary fees charged by the lender plus the origination fee may not exceed an aggregate total that exceeds one percent of the loan total.

DHIM charges market appropriate fees for the origination, processing, underwriting and document preparation involved in the closing of loans. In each loan identified in the Draft Report, DHIM maintains that the origination fee charged was in fact equal to or less than 1% of the loan amount (*see* Exhibit D).

Comment 6

The fees charged for underwriting, processing and document preparation are services which are distinctly separate from the costs incorporated in the loan origination fee. HUD itself acknowledged this through the most recent RESPA revised guidelines which went into effect January 1, 2010. The revised RESPA guidelines call for all additional lender services (such as underwriting, processing and document preparation) to be combined into a single "Origination Charge" which is distinctly different from the origination fee which was applied to transactions prior to January 1, 2010, because it includes both the 1% origination fee and additional reasonable charges. Accordingly, based on the new RESPA guidelines, there is no longer a 1% limitation on the Origination Charge, as it includes the additional service fees represented. The new guidelines show that HUD considers fees for such services as allowable beyond the 1% limitation for the origination fee itself.

It is significant to note also that HUD's current policy as evidenced by HUD's regulatory change to 24 C.F.R. § 203.27 (as announced in Mortgagee Letter 2009-53) no longer limits the origination fee to one percent of the mortgage amount for its standard mortgage insurance programs. Lenders are permitted to collect from the borrower fair and reasonable fees for all loan origination services performed by them.

DHIM notes, however, that the services covered by the Application and Administrative Fee arguably could be considered services covered as a part of the origination process. Therefore, DHIM is in the process of refunding the Application and Administrative Fee charged to the borrowers on the following eleven (11) loans:

FHA Case #	Administrative Fee	Application Fee	Total
022-1882077	$ 150.00	$ 125.00	$ 275.00
022-1886374	$ 150.00	$ 8.80	$ 158.80
022-1890589	$ 150.00	$ 125.00	$ 275.00
022-1890826	$ 150.00	$ 125.00	$ 275.00
022-1894081	$ 150.00	$ 125.00	$ 275.00
022-1895324	$ 150.00	$ 0.00	$ 150.00
022-1896228	$ 150.00	$ 125.00	$ 275.00
022-1900289	$ 150.00	$ 125.00	$ 275.00
022-1901617	$ 100.00	$ 125.00	$ 225.00
022-1904035	$ 150.00	$ 125.00	$ 275.00
022-1905118	$ 150.00	$ 125.00	$ 275.00
			$2,733.80

DHIM respectfully requests that upon refunding of the Application and Administrative Fee on the eleven loans identified above, this finding be cleared.

Comment 1

- Courier and Recording Fees

The Draft Report indicates that DHIM "may have overcharged 53 home buyers for 99 courier fees," and "89 home buyers may have been overcharged for recording fees." *See* Draft Report at 6. This too, is an incorrect factual assertion since DHIM did not charge any borrowers any of the courier fees and recording fees identified in the Draft Report. Curiously, the Draft Report correctly notes that these fees were charged "by the service provider," *see* Draft Report at 5; however, there is nothing in the Draft Report that explains how or why the OIG concludes that the service provider was DHIM when the HUD-1s for these transactions clearly demonstrate that it was an entity other than DHIM that imposed these specific charges.

DHIM agrees that ML 2006-04 prohibits a lender from "marking-up" fees, such as recording and courier fees. However, there is nothing to suggest that DHIM either charged these fees or received any portion of these fees. Rather, as explained below, these charges were imposed by other third party settlement service providers working directly with the settlement agents. While maintaining the stance that it is not DHIM's responsibility, additional evidence of the accepted practice for both the charging of courier and recording fees is attached in the form of Exhibit E.

Courier Fees

Importantly, none of the courier fees cited in the Draft Report were charged by DHIM or its affiliated title company, DHI Title Company ("DHI Title"). DHIM would not have knowledge of the specific charge for a courier associated with a different settlement service provider or know whether such fee was an actual rate for a service not provided by or through DHIM. Because these fees were not collected by or distributed through DHIM, DHIM would not have the ability to keep any portion of such fees, a critical component in proving a fee mark-up violation.

Comment 7

Additionally, DHIM refers the OIG to Exhibit E which contains copies of the publicly available and state-approved filed rates of six title companies doing business in Arizona. It is evident in these rates, which have been filed and approved by the State of Arizona, that it is customary to charge a flat escrow service fee for the couriering of documents. The fee included the specific cost by the third party vendor as well as the cost incurred by the settlement agent in preparing, packaging and monitoring the couriering of documents.

It is neither customary, nor common practice for the lender to request copies of, review or authorize the payment of courier services for settlement agents. If the OIG believes this rate, approved by the State of Arizona, is non-compliant, the OIG should discuss the issue specifically with the settlement service providers charging the fees, the State of Arizona, or both. Moreover, we point out that, as a result of the practice by the settlement service provider of charging the filed-rate for these services, every lender closing a real estate transaction with any of the aforementioned settlement service providers will likely have such charges included on the corresponding HUD-1s. Although the provided list of settlement service providers with this customary fee is not exhaustive and only represents a sample, additional review of the state

approved, filed rates of all settlement service providers will provide further verification that this is a standard and accepted practice for real estate transactions within Arizona.

Recording Fees

Comment 1

The Draft Report asserts that homebuyers may have been overcharged for the recording of documents. As mentioned above, Exhibit E includes copies of the publicly available and state-approved filed rates of six title companies doing business in Arizona, which provides evidence that it is accepted common practice for settlement service providers to charge a flat rate for the recording of loan documents. Again the Draft Report indicates that "DHI Mortgage may have overcharged" borrowers with regard to these fees. DHIM did not impose or collect for these charges. These costs were charged by the settlement service provider for services rendered and not the responsibility of DHIM.

Comment 7

Exhibit F is an excerpt from a State of Arizona audit of DHI Title (formerly known as Century Title) which took place in 2002. The exhibit details that the settlement service provider is being instructed by the State of Arizona that third-party fees (specifically recording fees) "must be charged [in] the exact amount **or the Company must file a rate with the Superintendent"** (emphasis added). Based on this direction, DHI Title filed a rate with the State of Arizona. It is commonly understood among Arizona settlement service providers that, in order to transact business efficiently and in compliance with the state regulations, filing and following such rates is a requirement. It should also be noted that any deviation, including charging a consumer **less** than the filed-rate, is not allowed and will result in a financial penalty and potential regulatory action by the State of Arizona. The State of Arizona does provide for a rate review at the time of filing to ensure that the escrow rates filed are appropriate. Coincidently, this is similar to the practice authorized by HUD in the revised RESPA rules allowing for Average Cost Pricing. In effect, HUD was following the practice and direction previously put in place by the State of Arizona. It is disingenuous for the OIG to deem inappropriate a course of action which HUD has already endorsed.

While DHIM has shown the customary nature, historical context and State of Arizona endorsement for the practice of charging the courier and recording fees in the manner represented, as previously indicated, these are not DHIM fees. If the OIG feels that these fees are not proper, it should discuss the issue with the State of Arizona, seek remedy with the title companies charging the fees, or both. Because these fees are not within the control of or the responsibility of DHIM, we respectfully request that this finding be cleared and removed from the final report.

2. <u>DHI Mortgage Did Not Properly Disclosed Fees Paid Outside of Closing</u>.

Comment 8

The OIG has asserted that DHIM improperly disclosed 1,028 loan settlement charges on 364 HUD-1 settlement statements because such fees were paid outside of closing and therefore should have been labeled as "P.O.C." and not included in the computing totals. DHIM vehemently disagrees with the OIG's interpretation of this requirement and its finding in the

Draft Report. Indeed, the Draft Report's conclusion that all of these fees were "[not] paid at settlement" is factually wrong.

While DHIM does not dispute that Appendix A to 24 C.F.R. Part 3500 requires charges paid outside of settlement to be marked as P.O.C. on the HUD-1, the OIG is incorrect in its assertion in the Draft Report in cases where the charges were **paid by the borrower at the time of closing**. That occurred where DHIM net funded the transaction, and it separately paid the appraisal and credit report fees. In those instances, the charges identified by the OIG were accurately disclosed on the HUD-1, and properly included in the computing totals. As the Draft Report makes clear, the borrower did not pay for the appraisal or the credit report prior to the settlement, nor did the lender or anyone else agree to pay for these services at no cost to the borrower. Omitting such items from the HUD-1 or the computing totals would inaccurately calculate the amount paid by the borrower at closing, an undisputable violation of RESPA and HUD's Regulation X. Further, marking these items as "paid outside of closing" as demanded by the OIG in those instances where the borrower's payment for these items did not actually occur until the closing, would also be misleading to the borrower and a violation of RESPA and Regulation X. That is so because, as noted by the Draft Report, DHIM would deduct these amounts from the proceeds provided at the closing. It was only at the closing, therefore, that the borrower was making the payment for these services.

Comment 8

The Draft Report appears to reach its faulty conclusion based on the fact that these charges are not reflected on the corresponding disbursement record. Contrary to the OIG's interpretation, neither RESPA nor Regulation X requires the settlement agent to make all distributions included on the HUD-1, only to ensure that the HUD-1 accurately reflects the "actual charges and adjustments paid by the borrower and the seller" in connection with the settlement. DHIM does not dispute the fact that the disbursement records do not reflect disbursement of these fees or that such fees were deducted by the loan proceeds provided by DHIM. As a matter of practice, DHIM regularly pays such charges incurred by borrowers through its standard corporate accounts payable system, and the borrowers pay the third party through DHIM the amount charged for the service at the time of settlement. While the lender pays these charges to the third party "outside of closing," the **borrower pays for the service at closing**. To identify these charges as paid outside closing and exclude them from the computing totals would serve only to inaccurately calculate the amount listed on Line 1400 (Total Settlement Charges), which subsequently would not be equal to the amount actually paid by the consumer. To account for this issue and correct the amount on Line 1400, other adjustments would need to be made on the HUD-1, which would add unnecessary confusion to the HUD-1 to the detriment of the consumer, which directly conflicts with the underlying purposes of RESPA and Regulation X's disclosure requirements.

When or by what accounting method the lender uses to pay the third party for such fees does not concern the borrower and is frankly irrelevant with regard to a lender's compliance with RESPA, as long as the fee paid by the borrower is no more than the amount charged by and paid to the third party. If anything, HUD should view such a net funding practice favorably because the

consumer is not forced to come out of pocket for such charges prior to settlement. Based on the foregoing reasons, DHIM respectfully requests the OIG to clear this finding and omit it from the final report.

3. DHI Mortgage Did Not Properly Disclose the Names of Individuals That Ultimately Received Payments for Real Estate Commissions.

Comment 9

The Draft Report claims there are 35 instances where real estate commissions were not appropriately disclosed on the HUD-1. DHIM's investigation reveals that there is no factual basis for this finding. In every instance, the disbursement of the real estate commission on the HUD-1 accurately reflected the entity to which the payment was owed -- that is, the settlement service provider (the realtor), with whom the borrower had a contractual agreement. Accordingly, to the extent DHIM reviewed the HUD-1, it would have concluded, correctly, that it was accurate with respect to the disbursement of these commission payments.

Based on this assertion, DHIM reviewed the pertinent HUD-1s and contacted the settlement service providers who handled these transactions. Nineteen (19) transactions were handled by a non-affiliated title company and sixteen (16) were handled by DHI Title.

Comment 10

Our research indicates that in two instances (loans identified by FHA Case number: 023-2480416 and 023-2518767) the title company made only one disbursement with respect to real estate commissions. Exhibit G contains copies of DHI Title's disbursement sheets showing that the full amount of the commission, as disclosed on the corresponding HUD-1, was made in one disbursement with respect to each of these files. Accordingly, OIG should remove these two loans from its findings.

In the remaining 33 cases, DHIM has been advised that the settlement agent received instructions from the real estate brokers as to how to disburse the real estate proceeds. Through the closing of a lender transaction, DHIM would have no knowledge of the Commission Disbursement Authorizations provided to the settlement agent by third parties. The real estate commission, which was paid by the seller and due to the real estate broker, was disbursed in accordance with said instructions. Examples of these instructions are attached in Exhibit H. In no case was the amount of the commission disbursed in accordance with a real estate broker's instructions different from the amount of commission owed to the real estate broker as evidenced on the HUD-1. At the request of the real estate broker, the settlement service provider disbursed the commission to the appropriate brokerage, its agents and/or (under specific direction) to a third party as a customer service for the broker. For example, in one of the DHIM referenced loans (FHA ID number 023-2412235-703), the real estate broker instructed the title company to pay $50 of the real estate broker's commission to the Boys and Girls Club of Casa Grande.

Comment 9

Regulations at 24 C.F.R. Part 3500, Appendix A, requires that, "[f]or all items except for those paid to and retained by the Lender, the name of the person or firm ultimately receiving the payment should be shown" on the HUD-1. In every case the real estate broker was due the

commission earned for services performed and this was evidenced appropriately on the HUD-1s. The settlement company issues separate checks as a courtesy to the real estate brokerage firms. This is a customary practice to avoid the need for and cost of additional processing internally by the brokerage company once the commission is received. Disclosing the subsequent disbursements requested by the real estate brokers would have been tantamount to requiring the brokers themselves to provide a detailed analysis of their accounts payable through the HUD-1. Such a practice would clutter the HUD-1and result in unnecessary consumer confusion. The fact that a real estate broker was choosing to make a donation to the Boys and Girls Club is not a real estate related matter. The Boys and Girls club did not earn a portion of the commission, but was merely the recipient of the realtor's generosity.

Comment 9

Further, the Draft Report's reliance on the statement in the regulations regarding Lines 701-702 to "state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers," *see* Draft Report at 6, is inapposite. That portion of the regulations is referring to instances where there are co-brokers or buyer and seller agents, both of whom are separately retained and entitled to compensation. That provision does not apply to situations where, as here, the one entity entitled to the compensations asks, as a matter of courtesy, that its compensation be distributed. Indeed, it would be incorrect to list, as demanded by the OIG, entities to which the real estate broker decides to make payments of its commission where such entities have no contractual right to payment by the borrower.

Comment 1

Because DHIM has no knowledge, oversight or information regarding the disbursement of real estate brokerage commissions beyond that information provided on the HUD-1, DHIM respectfully requests that this finding be cleared and removed from the report.

Conclusion

DHIM appreciates the opportunity to submit this Response to the Draft Report. As indicated at the outset, DHIM is deeply troubled by the lack of factual basis to virtually every finding in the Draft Report. Accordingly, except for the sixteen (16) matters specifically represented as outstanding pursuant to our claims, we request that all other findings are summarily dismissed and removed from the final report. As mentioned above, DHIM is in the process of refunding the fees to the borrowers with respect to each of those 16 matters. DHIM's commitment to compliance is unwavering, and we believe our compliance is clearly evidenced based on the responses provided herein.

Sincerely,

Jennifer L. Hedgepeth
Vice President/National Operations Manager

OIG Evaluation of Auditee Comments

Comment 1 The auditee's response noted that in many instances, the draft report referred to charges imposed by DHI Mortgage when, in fact, the charges were imposed by third parties. We agreed that many of the charges were imposed by the closing agents and revised the report to deemphasize responsibility for compliance. We note that HUD officials we asked to review the discussion draft would not provide definitive guidance (based solely on the information reviewed for this report) regarding the lender's and/or closing agents' responsibilities to ensure that the settlement statements in these cases complied with the Act and related regulations.

Comment 2 The auditee's response asserted that in cases in which the borrowers paid for the credit report and appraisal services at closing, designating the charges as "P.O.C." would have been a misrepresentation. We agreed, while noting that the settlement documents we reviewed displayed these charges inconsistently. Also see comment 8.

Comment 3 The auditee's response asserted that the "ABC" and "MTV" fees were not inappropriate. We agreed that if the borrower signed a contractual agreement that allowed such charges, these commission payments were appropriately included in the settlements. We revised the report to exclude this issue.

Comment 4 We revised the report to incorporate the auditee's comments and acknowledged that most of the e-mail loan document fees agreed with the escrow charge schedules filed with the State by the title companies. Also see comment 7.

Comment 5 We agreed that documentation provided in exhibit C (provided by DHI Mortgage) supported the lender inspection fee for three FHA cases. We revised the report to reflect this fact and to acknowledge DHI Mortgage's expressed intent to refund the ineligible inspection fees charged for the remaining five FHA cases.

Comment 6 We agreed with the auditee's response that Mortgagee Letter 2006-04 permits lenders to "charge and collect from mortgagors those customary and reasonable costs necessary to close the mortgage….[borrowers] may not be charged an origination fee greater than one percent on forward mortgages..." We also agree with DHI Mortgage that Mortgagee Letter 2006-04 does not state that reasonable and customary fees charged by the lender plus the origination fee may not exceed an aggregate total that exceeds 1 percent of the loan total. However, our draft finding also asserted that the document preparation, underwriting, administrative, processing, and/or application fees (or a variation thereof) duplicated services covered by the origination fee.

We revised the report to acknowledge that the auditee agreed that certain fees were arguably duplicative and planned to refund $2,734 in Application and Administration Fees charged to borrowers on 11 loans (see page 6 of the

Auditee's Response, appendix A). However, the auditee's planned action did not address the $14,405 in other potentially duplicative fees charged to 42 borrowers.

We disagree with the auditee's response which stated "fees charged for underwriting, processing and document preparation are services which are distinctly separate from the costs incorporated in the loan origination fee." Contrary to this assertion, HUD's revised guidelines (regulations) did not acknowledge these services were distinctly separate from the loan origination fee. Rather, its revised regulations issued in 2008[10] stated that the "improvements to the disclosure requirements…should make total loan charges more transparent and allow market forces to lower these charges for all borrowers, including FHA borrowers."

Further, in its final regulatory flexibility analysis of the final rule, HUD noted that fees like those we questioned were often referred to as junk fees. Specifically, under the discussion of costs of implementing the new good faith estimate (GFE) form (which matches up the categories of settlement charges with those on the new HUD-1), HUD stated, "The reduction in the itemization of fees will lead to fewer unrecognizable items on the new GFE."[37] Footnote 37 further states that "[t]he fees in the lender-required and selected services section will still be itemized (e.g., appraisal, credit report, flood certificate, or tax service) as will those in the lender-required and borrower selected section (e.g., survey or pest inspection). There will, however be no itemization or long lists of various sub-tasks of lender fees or title fees, often referred to as junk fees." (underlined by OIG)

Accordingly, we do not consider the finding regarding the remaining fees of $14,405 to be cleared, but have decided not to refer the issue. Under the new requirements, lenders are not permitted to add on such junk fees and argue that services such as underwriting are not included under loan origination.

Comment 7 We revised the report to incorporate the auditee's comments and acknowledged that most of the courier and recording fees agreed with the escrow charge schedules filed with the State by the title companies. However, for the following reasons, we were not persuaded that the filing of fee schedules according to the State requirements constituted an accepted practice that was, therefore, compliant with FHA requirements. First, the courier and recording fees appeared to be for third-party vender services, and the mortgagee letter (2006-04) clearly stated, "FHA will not allow 'mark-ups,' i.e., charging a fee to the mortgagor for an amount greater than that charged the mortgagee by the service provider; only the actual cost for the service may be charged the mortgagor." Therefore, to the extent to which any scheduled fee exceeded an actual charge, the fee would be noncompliant. Second, we disagree with the assertion in the auditee's response that in its revised rules for the Act (which do not apply to our audit period), HUD

[10] "Real Estate Settlement Procedures Act: Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Final Rule." Federal Register 73 (17 November 2008)

was, in effect, following the practice and direction previously put in place by the State of Arizona. Although the State does provide for a rate review at the time of filing, the required support/justification for a proposed rate is not similar to the average cost pricing prescribed in HUD's revised rule and is less protective to the consumer. Specifically, the Arizona statute allows the following rate justifications:

1. The experience or judgment of the escrow agent making the filing.
2. The escrow agent's interpretation of any statistical data on which the agent relied.
3. The experience of other escrow agents.
4. Any other factors that the escrow agent deems relevant.

In contrast, HUD's revised regulations specify that "[t]he amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section." Paragraph (2), Use of Average Charge, goes on to list specific requirements for the calculation of the average charge, including items such as specification of a particular class of transactions, a period of not less than 30 calendar days and not more than 6 months, a geographic area, loan type, etc. Paragraph (2) also specifies that the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided and maintain documentation for 3 years and that a violation of any of the requirements will be deemed to be a violation of section 4 of the Act.

Comment 8 See comment 2. While we agreed that if charges were net funded as described in the auditee's response, these charges were appropriately included in the settlement totals, we note that the auditee's response did not submit documentation to support this assertion. In particular, the manner in which service charges were displayed on the HUD-1 and the disbursement sheets was inconsistent from one loan to the next. Further, the disclosures in specific case files frequently omitted information such as the amount of the charge and the service provider.[11] We revised the report to incorporate this point and note that without, for example, an appraisal amount, we could not determine whether the amount charged for the appraisal appeared excessive. In addition, we revised the report to question whether the service providers and related fees were appropriately itemized. Because of the many instances in which the disclosures were questionable, we continue to believe that this area warrants review by legal or regulatory officials.

Comment 9 We revised the report to acknowledge the auditee' response that asserted real estate commissions were properly disclosed on the HUD-1s and that settlement disbursements that split these commissions among additional parties were a

[11] Depending on the circumstances, the requirement could vary from loan to loan. For example, if the lender itself provided the service, the requirements may be different.

customary practice unrelated to the real estate transactions. However, we continue to question the auditee's interpretation of the pertinent regulations as well as the appropriateness of making such "customary" distributions as part of the settlement process. The HUD officials we asked to informally comment on the draft report did not explain why they agreed or disagreed with the auditee's response, and therefore we did not recommend corrective action.

Comment 10 The auditee's response stated that for 2 of the 35 FHA cases cited in the report, only one commission disbursement was made. However, the closing documents we received from the corresponding title company showed multiple disbursements for both of these cases; therefore, the report was not revised to omit them.