

HUD Rule Regarding 'Yield Spread Premiums'

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Yield spread premiums which are fees paid by lenders to brokers who supply them with loans above a specified interest rate are a common industry practice. However, the yield spread premium is often under attack and has been the subject of a number of class actions, even being raised as a defense to foreclosure by Borrowers. Borrowers have argued that the yield spread premium is illegal.

A final version of the Statement of Policy released by HUD makes clear that a yield spread premium charged by mortgage brokers is not per se an illegal "kickback" in violation of the Real Estate Settlement Procedures Act. This Statement which became effective March 1, 1999 does away with a "safe harbor" that had been included in HUD's preliminary version. The "safe harbor" provided for a presumption that a yield spread premium was illegal if the broker complied with certain requirements.

The final version of the Statement creates a two-part test to determine whether a premium is illegal. First, HUD will consider whether services were performed or goods were provided specifically in exchange for the compensation paid to the broker. The second part of the test is to determine whether payment is "reasonably related" to the value of the goods provided or services performed.