

Real Estate Settlement Procedures Act (RESPA)¹

Introduction

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC §§2601-17) became effective on June 20, 1975. The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) promulgated Regulation X (24 CFR §3500) which implements RESPA. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992, Congress amended RESPA to cover subordinate lien loans. HUD, however, decided not to enforce these provisions until Regulation X was amended to cover these loans. On February 10, 1994, Regulation X was amended to extend coverage to subordinate lien loans. The amendments were effective August 9, 1994. Exemptions from coverage of RESPA and Regulation X, set forth in §3500.5(b), were effective March 14, 1994. Technical corrections and amendments to the rule were issued on March 30, 1994 and July 22, 1994.

On June 7, 1996, HUD amended Regulation X to clarify certain exemption provisions of RESPA, amend the controlled business disclosure requirements, and to address specific comments raised in the 1994 rule. These amendments became effective on October 7, 1996. Congress further amended RESPA by changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 in September 1996, to clarify certain definitions including the controlled business disclosure requirements which were changed to the new term affiliated business arrangements. The changes also reduced the disclosures under the Mortgage Servicing provisions of RESPA effective on May 30, 1997.

HUD issued a proposed rule in May 1997 that was intended to amend §3500.21 of the RESPA regulations to conform to 1996 statutory changes that eliminated unnecessary disclosures in the mortgage servicing transfer notice. Through a proposed rule published July 2002, HUD stated its intent to finalize these servicing transfer notice changes to the regulations, but

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 04-016: Revised FFIEC Examination Procedures for RESPA Servicing Rights Notice.

advised lenders that in the interim they may comply with the language found in §6(a) of RESPA and provide the servicing transfer notice in conjunction with the GFE. Until HUD finalizes a revised rule on mortgage servicing transfer notices, the Agencies will accept as in compliance with RESPA notices that conform with either the model disclosures found in Appendix MS-1 to §3500.21 of the RESPA regulations or the provisions of §6(a) of the statute.

Regulation Overview

Coverage (§3500.5(a))

RESPA is applicable to all “federally related mortgage loans.” Federally related mortgage loans include:

Loans, including refinances, secured by a first or subordinate lien on residential real property upon which:

- A 1-4 family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives), or
- A manufactured home is located or is to be constructed using proceeds of the loan; and to which any of the following applies:
- Loans made by a lender², creditor³, dealer⁴;
- Loans made or insured by an agency of the federal government;
- Loans made in connection with a housing or urban development program administered by an agency of the federal government;
- Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor)⁵;
- Loans which are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation; or
- Installment sales contracts, land contracts or contracts for deed on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, dealer or creditor subject to the regulation.

² A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by, any agency of the Federal Government.

³ A creditor is defined in §103(f) of the Consumer Credit Protection Act (15 USC §1602(f)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year.

⁴ Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned, before the first payment is due to any lender or creditor otherwise subject to the regulation.

⁵ FNMA – Federal National Mortgage Association; GNMA – Government National Mortgage Association; FHLMC – Federal Home Loan Mortgage Association.