RESPA Essentials

RESPA Defined

First passed in **1974**, the Real Estate Settlement Procedures Act (RESPA) is a federal statute enacted by the U.S. Department of Housing and Urban Development (HUD) to govern the real estate settlement process by mandating all parties fully inform borrowers about all closing costs, lender servicing and escrow account practices, business relationships between closing service providers and other parties to the transaction. The RESPA statute covers mortgage loans on a one-to-four family residential property. These include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit.

According to HUD, the goal of the rule is to clarify and outline the settlement process and fees to consumers and eliminate illegal activity such as kickbacks and referral fees among settlement service providers. HUD's Office of Consumer and Regulatory Affairs, Interstate Land Sales/RESPA Division is responsible for enforcing RESPA.

Timeline of revisions, amendments
Minor revisions were made in **1976**. The amendment to extend coverage to controlled business arrangements was passed in **1983** and implemented in 1992. In **1990**, Section 6 mortgage servicing requirements were added.

Other changes made in **1992** included an amendment to extend RESPA to all residential mortgage loans with a lien, as it had previously only applied to purchase money loans under the 1974 rule. The rule was also revised to permit realty companies to affiliate with allied services, such as a mortgage lender and a title insurance company, and give discounts to consumers who use the package of services. Such business affiliations had to be fully disclosed in writing to buyers before they're referred from one company to another affiliated company. The 1992 RESPA rule also sanctioned the use of computer loan originations by real estate brokers to help buyers select and apply for a mortgage.

In June **1996**, HUD issued a final RESPA rule that reversed a **1992** HUD regulation permitting compensation of employees by employers for marketing settlement services of an affiliated company.

In addition, the revised RESPA rule:

- Introduced more narrow exemptions for an employer's payments to its managerial employees and to employees who don't perform settlement services in any transaction;
- Added exemption language clarifying that an employer's payments to "bona fide" employees for generating business for the employer were permissible;
- Revised certain controlled business disclosure requirements;
- Withdrew exemptions for payments by borrowers for computer loan origination services;
- Issued three HUD policy statements dealing with computer loan originations, sham controlled business arrangements, and office space, lockouts, and retaliation.

In October **2001**, HUD Secretary Mel Martinez issued a RESPA Statement of Policy 2001-1, which clarified HUD’s position on lender payments to mortgage brokers, and guidance concerning unearned fees under Section 8(b).

According to Martinez, the Statement of Policy was issued to eliminate any ambiguity concerning the department’s position with respect to those lender payments to mortgage brokers characterized as YSPs and to overcharges by settlement service providers as a result of questions raised by two pivotal court decisions, Culpepper v. Irwin Mortgage Corp. and Echevarria v. Chicago Title and Trust Co.

In June **2002**, Martinez announced the most sweeping changes to RESPA in its 30 years of existence by proposing the homebuyer's bill of rights, aimed at reforming the regulatory requirements in the federal rule. Stating the need for greater disclosure to homebuyers, Martinez said his proposed RESPA reform rule would need to:

- Change the way lender payments to brokers are recorded and reported to consumers;
- Improve HUD's Good Faith Estimate settlement cost disclosure; and,
- Remove regulatory barriers to allow market forces and increased competition to promote greater choice for consumers by allowing guaranteed packages or "bundling" of settlement services and mortgage loans.

In addition, Martinez vowed to put more emphasis on enforcement measures regarding RESPA violations. The proposal went through a 90-day comment period in which HUD received more than 80,000 comments from various sectors of the real estate industry.

In March **2004**, the new HUD Secretary, **Alphonso Jackson**, announced that the Department was withdrawing the reform rule due to the number of concerns from real estate industry and consumer groups. "There are many groups concerned that they have not had a chance to see the changes that have been made to the rule since it was proposed two years ago. They deserve to see those changes," he said.

In the summer of **2005**, HUD held a series of seven roundtables with industry members, consumer groups and small businesses to talk about RESPA reform. At that time, they unveiled the proposals that had been under consideration for the 2004 final rule, including a revised GFE form and a new Mortgage Package Offer (MPO) form. They also introduced a Settlement Services Package (SSP) concept which would allow for the bundling of settlement services separate from the package. The SSP was HUD's answer to the industry's previous request for a two-package proposal, as opposed to HUD's original single-package proposal.

As of September **2005**, HUD has taken all of the feedback they received at the roundtables and gone back to the drawing board to draft a new proposed rule. There has been no confirmed timeline as to exactly when the new rule will be released.

Present RESPA rule provisions

Until a RESPA reform rule is finalized, those in the real estate industry must abide by the rule as it stands after the 1996 revision.

Disclosure requirements
RESPA requires that borrowers receive disclosures at various times in the transaction process. Some disclosures spell out the costs associated with the settlement, outline lender servicing and escrow account practices and describe business relationships between settlement service providers.

Specifically, when a borrower applies for a loan, HUD requires mortgage brokers and/or lenders to:

- Give the borrower a Special Information Booklet containing consumer information regarding various real estate settlement services. (Required for purchase transactions only).
- A Good Faith Estimate (GFE) of settlement costs, which lists the charges the buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use of a particular settlement provider, then the lender must disclose this requirement on the GFE.
- A Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. It also provides information about complaint resolution. If the lender fails to give the borrower these documents at the time the borrower applies for the loan, the lender must mail them within three business days of receiving the loan application.

All of the charges imposed on borrowers and sellers in connection with the real estate settlement must be disclosed on a HUD-1 Settlement Statement and presented to the buyer at the closing – or one day prior to the closing. The HUD-1 also allows for adjustments or proration of expenses paid for the property over time, for example – water bills, tax bills, homeowner association fees, condominium fees and other assessments. All closing costs are represented on this statement to identify the bottom line paid for the property by the buyer and the bottom line received by the seller.

Disclosures before the closing/settlement
According to RESPA, all Affiliated Business Arrangements (AfBA) must be disclosed to the consumer. An AfBA is an arrangement in which a person who is in a position to refer business in connection with a real estate transaction has an ownership interest in a provider of settlement services and such person refers or influences the selection of that provider. The referring party must give the AfBA disclosure to the consumer at or prior to the time of referral. The disclosure must describe the business arrangement that exists between the two providers and give the borrower an estimate of the second provider's charges.

Except in cases where a lender refers a borrower to an attorney, credit reporting agency or real estate appraiser to represent the lender's interest in the transaction, the referring party may not require the consumer to use the particular provider being referred.

Disclosures at settlement
The Initial Escrow Statement itemizes the estimated taxes, insurance premiums and other charges anticipated to be paid from the escrow account during the first twelve months of the loan. It lists the escrow payment amount and any required cushion. An Annual Escrow Statement must be also delivered to the borrower once a year.

Disclosures after settlement
Besides the Annual Escrow Statement, RESPA requires a Servicing Transfer Statement to be sent to the consumer if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer. The loan servicer must notify the borrower 15 days before the effective date of the loan transfer. The notice must include the name and address of the new servicer, toll-free telephone numbers, and the date the new servicer will begin accepting payments.

Prohibited practices
RESPA also outlines certain prohibited practices by those involved in the real estate settlement. Those sections of main interest include:

Section 6
Section 6 of RESPA provides borrowers with consumer protections relating to the servicing of their loans. If a borrower sends a “qualified written request” to his loan servicer concerning the servicing of the loan, the servicer must provide a written acknowledgment within 20 business days of receipt of the request. Not later than 60 business days after receiving the request, the servicer must make any appropriate corrections to the borrower’s account, and must provide a written clarification regarding any dispute. During this 60-day period, the servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirement of that Section.

Section 8
Section 8 of RESPA prohibits a person from giving or accepting any thing of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. These are also known as kickbacks, fee-splitting and unearned fees.

Violations of Section 8 are subject to criminal and civil penalties. According to HUD, a person who violates Section 8 may be fined up to $10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.

Section 9
Section 9 of RESPA prohibits home sellers from requiring home buyers to purchase their settlement services from a particular company either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

Section 10
Section 10 of RESPA limits the amount of money a lender may require the borrower to hold in an escrow account for payment of taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

RESPA also prohibits a lender from charging excessive amounts for the escrow account. The lender may require a borrower to pay into the escrow account no more than 1/12 of the total of all disbursements payable during the year, plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year. The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any excess of $50 or more must be returned to the borrower.

RESPA enforcement
RESPA also outlines enforcement measures for any violation of the rule.

Civil law suits
Individuals have one year to bring a private law suit to enforce violations of Section 8 or 9, according to HUD. A person may bring an action for violations of Section 6 within three years. Lawsuits for violations of Section 6, 8, or 9 may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred.
HUD, a state attorney general or state insurance commissioner may bring an injunctive action to enforce violations of Section 6, 8 or 9 of RESPA within three years.

Loan servicing complaints
Section 6 provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), must contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.

Other enforcement actions
Under Section 10, HUD has authority to impose a civil penalty on loan servicers who do not submit initial or annual escrow account statements to borrowers.