

EXEMPTIONS FROM COVERAGE UNDER SECTIONS 4 AND 5
OF RESPA FOR CERTAIN SUBORDINATE LOANS PROVIDED
BY ASSISTANCE PROGRAMS FOR LOW- AND MODERATE-INCOME PEOPLE

Several entities that operate housing assistance loan programs for low- and moderate-income persons have requested an exemption from the requirements of the Real Estate Settlement Procedures Act of 1974 (RESPA) and its implementing regulations: specifically, the requirement in section 5(c) to provide a “good faith estimate [(GFE)] of the amount or range of charges the borrower is likely to incur” and the requirement in section 4 to prepare and provide at or before closing the standard form statement of settlement costs (HUD-1/1A). (12 U.S.C. §§ 2603 and 2604; 24 CFR §§ 3500.7 and 3500.8.) The exemption requests have come from state housing finance agencies, municipal governments, nonprofit organizations, and the private partners of all of those entities. The programs that these entities operate provide, among other things, no-cost, zero percent interest, forgivable, or deferred payment loans that the recipients use for downpayment and closing cost assistance; housing rehabilitation and energy efficiency rehabilitation assistance; and foreclosure avoidance assistance. All of the assistance provided by these programs is secured by liens on the recipients’ homes.

Funding for the assistance programs operated by these entities comes from a variety of federal sources, including, but not limited to: HUD’s Community Development Block Grant, Neighborhood Stabilization, Section 108 Loan Guarantee, and HOME Investment Partnership Programs; the Internal Revenue Service’s tax-exempt mortgage revenue bond program; the Federal Home Loan Bank System’s Affordable Housing Program (AHP); the Department of Energy’s home rehabilitation and energy efficiency rehabilitation programs; and the Department of the Treasury’s Housing Finance Agency Hardest Hit Fund.

The purposes of RESPA include effective advance disclosures to homebuyers and sellers. Sections 4 and 5 of RESPA and their implementing regulations were designed, in part, to help borrowers understand their mortgage loan costs and terms, to encourage borrowers to do comparison-shopping for mortgage loans, and to allow borrowers to compare the estimate of settlement costs disclosed on the GFE with the actual costs at closing. The program administrators who have requested an exemption from the requirements of sections 4 and 5 have explained why they believe that providing a GFE and HUD-1/1A is both difficult for their programs and of limited or no value to the recipients of these kinds of assistance loans. They note that the GFE and HUD-1/1A forms are intended primarily to disclose the mortgage loan costs and terms of amortizing first or subordinate mortgages. Most of the assistance programs provide non-amortizing, forgivable loans with low or no settlement costs. The administrators further explained that the GFE and HUD-1/1A are of little value to the recipients of their program assistance because, unlike other borrowers, their recipients cannot find similar alternative loan terms or lower closing costs by using the GFE to do comparison-shopping. Similarly, the recipients do not benefit from using the HUD-1/1A to compare the estimate of costs with the actual costs at closing because the costs are fixed and very low. In addition, the recipients receive specific disclosures that explain the terms of their particular assistance program.

Section 19(a) of RESPA authorizes the Secretary of HUD “to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of [RESPA].” (12 U.S.C. § 2617(a).) I have considered the entities’ requests for an exemption and have determined that, for subordinate loan transactions that include certain characteristics: (1) the GFE and HUD-1/1A forms would be difficult to complete in a way that would help the recipients understand the transactions; and (2) for the same reasons that make the forms difficult to complete, the completed GFE and HUD-1/1A forms are likely to confuse recipients who would receive them. In addition, for these subordinate loan transactions, no fees, or only limited fixed fees, are assessed to the recipients, so comparison-shopping would not be effective, and recipients will be provided with basic program-specific disclosures that include the terms of the loan.

Therefore, pursuant to section 19(a) of RESPA, I hereby exempt from the requirements of sections 4 and 5 of RESPA subordinate loan transactions that include all of the characteristics described below. As a result of this exemption, HUD’s regulations implementing sections 4 and 5 of RESPA also do not apply to the transactions covered by the exemption. This exemption does not extend to other sections of RESPA, including the prohibitions in section 8. This exemption remains in effect unless withdrawn in writing.

CHARACTERISTICS OF LOAN TRANSACTIONS THAT QUALIFY
FOR THIS EXEMPTION FROM SECTIONS 4 AND 5 OF RESPA
AND THE IMPLEMENTING REGULATIONS

A. Type of loan: Subordinate lien.

AND

B. Purpose of the loan:

1. Downpayment, closing cost, or other similar homebuyer assistance, such as principal or interest subsidies; or
2. Property rehabilitation assistance; or
3. Energy efficiency assistance; or
4. Foreclosure avoidance or prevention.

AND

C. Loan carries an interest rate of -0- percent.

AND

D. Repayment term:

1. Repayment is forgiven, incrementally, or at a date certain; or
2. Repayment is forgiven, incrementally, or at a date certain, subject to certain ownership and occupancy conditions; e.g., the recipient must maintain the property as his or her primary residence for 5 years; or
3. Repayment is deferred for a minimum of 20 years; or
4. Repayment is deferred until sale of the property; or
5. Repayment is deferred until the property is no longer the primary residence of the recipient.

AND

E. Settlement Cost: The total of settlement costs assessed to the recipient for the subordinate loan is less than one percent of the amount of the subordinate loan and includes, at most, charges for the following items:

1. Recordation fee;
2. Application fee; and/or
3. Housing counseling fee.

AND

F. At or before settlement, the recipient/mortgagor receives a written disclosure that effectively describes the loan terms, repayment conditions, and any costs associated with the loan.

Dated: 10/6/10

Shaun Donovan,
Secretary