FREQUENTLY ASKED QUESTIONS

RESPA at 50

KEY REFORMS TO RESPA SECTION 8 TO BETTER SERVE THE MODERN MORTGAGE MARKET

1. **Why did Congress enact RESPA?**

   RESPA was passed as a consumer protection statute at a time when home shoppers were almost totally dependent on real estate agents for information about home sales and the homebuying process. This gave real estate agents enormous influence over consumers seeking homes. The purpose of RESPA was to ensure that consumers were provided with information and the cost of settlement services. Congress believed it could reduce unnecessary or unreasonably high costs by making information about the settlement process available to home buyers in advance of settlement, thereby allowing the consumer to shop around for other offers and prohibiting kickbacks and unearned settlement service fee splits. However, there is virtually no empirical evidence that RESPA lowered costs post-enactment. Additionally, subsequent reforms to the mortgage industry regulatory environment following enactment of the Dodd-Frank Act and its implementing regulations have also called into question the necessity of RESPA Section 8.

2. **Why did MBA create this paper?**

   The Real Estate Settlement Procedures Act (RESPA) turned 50 at the end of 2024. It is time to seriously explore the continued necessity of RESPA Section 8 and the key reforms required to make a half-century-old law fit the modern mortgage industry. The purpose of this paper is to propose solutions to modernize RESPA Section 8 and ensure the law, regulation, and guidance can protect consumers and decrease costs and inefficiencies for both the lender and the borrower.

3. **What would these recommended changes mean for lenders?**

   These changes are intended to make it easier for lenders to market products by lowering compliance burdens, facilitating the use of digital advertising, and providing clear rules of the road through regulatory and supervisory changes, as well as making it simpler to set up, and operate, a successful and compliant affiliated business. These changes will also help level the playing field by changing outdated guidance (for example, by no longer judging whether an affiliate is legitimate by whether they have a physical office space) or things that do not make sense today. The recommended changes will ultimately help foster competition without jeopardizing the consumer experience.

4. How will these RESPA reforms help small lenders?

For smaller lenders, the main obstacle to making use of the exceptions to the general referral fee prohibitions in RESPA is the high compliance burden of meeting the requirements for the exceptions as well as the legal and regulatory risk of noncompliance. These recommendations lower compliance burdens and provide clarity for smaller lenders who are generally more risk-averse or unable to engage extensive outside compliance or valuation assistance.

5. What would these recommended changes mean for consumers?

These changes will simplify affiliated business disclosures to provide consumers with clear and relevant information. Additionally, because it will be easier for settlement service providers to market their products, consumers will be able to receive more information about alternative settlement service providers that may provide a cheaper or better service. None of the core consumer protections embedded in the Dodd-Frank Act that require clear disclosure and limitations of certain practices would be impacted, nor would payments for referrals be allowed.

6. What are the key marketing service agreement recommendations?

Currently, complying with the Consumer Financial Protection Bureau's (CFPB) marketing service agreement (MSA) requirement is onerous because it is difficult to measure the fair market value of an MSA. We suggest a new way for compliance with the MSA exception. The CFPB should create required disclosures for consumers who will be using a settlement service provider that is party to an MSA, making it clear that the borrower can use other settlement service providers. This disclosure will address any concerns about steering by keeping consumers informed about the marketing source.

7. What is the key desk rental recommendation?

Currently, complying with the CFPB's desk rental requirement is burdensome because it is difficult to measure the general market value of a desk rental. The CFPB should change how it determines if a desk rental agreement is an illegal hidden referral fee. The current standard should be simplified to lower compliance burdens and recognize the economic reality that location is a significant factor in the value of leased space.

8. What are the key digital marketing/ lead generation recommendations?

The CFPB's current regulations and guidance unnecessarily limit the ability for lenders to market their products to consumers. The CFPB should repeal the Advisory Opinion on Digital Mortgage Comparison-Shopping Platforms. MBA also suggests several changes to Regulation X to facilitate digital marketing. Because digital marketing is an important component and was not considered when RESPA was enacted, this paper addresses several compliance concerns and ways to provide clearer guidance.

9. What are the key affiliated business arrangement recommendations?

The rules governing affiliated business arrangements are difficult to comply with because they have not been updated in decades and place arduous restrictions on lenders working with an affiliate. MBA suggests several changes to the existing Policy on Sham Affiliate Arrangements. While the guidance is generally useful, the CFPB should remove outdated factors to reflect the modern work environment.

Additionally, the CFPB should simplify affiliated business disclosures with several changes that will provide the consumer with only relevant information and make it easier to provide these disclosures.

10. How will MBA bring about these reforms?

These recommendations are categorized by the type of change required to enact them. These recommendations will require MBA to work with the federal government and Capitol Hill, whether that be going to Congress to ask for a statutory change to RESPA, going to the CFPB for notice and comment rulemaking, rescission or changes to a specific guidance issuance, or supervisory practice. For instance, we suggest the CFPB immediately repeal the Advisory Opinion on Digital Mortgage Comparison-Shopping Platforms.