



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

March 11, 2011

Michael H. Krimminger
FDIC Acting General Counsel
550 17th Street, NW
Washington, DC 20429

Dear Mr. Krimminger,

This letter is provided in response to an inquiry from FDIC staff as to how HUD would analyze coverage under the Real Estate Settlement Procedures Act (12 U.S.C. 2601-2617) (RESPA) when a mortgage lender obtains the funds to close a mortgage loan through a financing arrangement with a warehouse lender that involves a repurchase agreement. We have concluded that this type of financing arrangement is not materially different from other forms of warehouse lending for purposes of analysis under RESPA. Therefore, in determining coverage under RESPA, HUD would analyze financing arrangements secured by repurchase agreements consistently with the analysis of traditional warehouse line of credit arrangements.

Late last year, HUD published a request for information from the public on how various financing mechanisms are used to provide funding for residential mortgage loans, and how mortgage financing mechanisms have evolved in recent years. 75 Fed.Reg. 71724 (November 24, 2010). In response, HUD received 25 comments from both industry and consumer groups.¹ The comments particularly focused on warehouse lender financing mechanisms that utilize repurchase agreements with mortgage lenders. The comments indicated that such financing mechanisms have become a common industry practice.

In the context of this letter, we are discussing a “repurchase agreement” as a contractual arrangement among distinct, unaffiliated entities, under which the mortgage lender agrees to sell a mortgage loan to an investor but uses the repurchase agreement with a warehouse lender as a financing mechanism. Furthermore, we contemplate that such a repurchase agreement includes

¹ HUD's request for information and the responses are available online at <http://www.regulations.gov> (FR-5459-N-01; Docket ID: HUD-2010-0121).

an absolute and unconditional obligation requiring the mortgage lender to repurchase the mortgage loan from the warehouse lender within a short period from the time that the warehouse lender provides financing, whether or not a default occurs.²

In evaluating such an arrangement under RESPA, HUD would apply its regulations on "table funding" (24 CFR § 3500.2) and "secondary market transactions" (24 CFR § 3500.5(b)(7)) in the same manner for the repurchase agreement as it would for a traditional line of credit arrangement between a warehouse lender and a mortgage lender. The use of the repurchase agreement, rather than a line of credit agreement, to protect the warehouse lender's interests does not change the application of RESPA.³

This discussion is intended to apply only to the kind of repurchase agreement described in this letter, and is not intended to be applied more broadly. I hope this discussion will be helpful to the FDIC in carrying out its oversight responsibilities. We continue to appreciate the support and cooperation offered by the FDIC staff in understanding how to best attain compliance with RESPA by FDIC-member banks.

Sincerely,

Helen R. Kanovsky
General Counsel

² HUD also would look at whether the parties actually comply with the repurchase obligation requirement in the agreement, to assure that the agreement is not illusory.

³ HUD makes RESPA enforcement determinations based upon factual circumstances surrounding the transaction, including analysis under the RESPA statute and HUD's regulations of the real interests and functions of the parties to the financing arrangement, particularly when any arrangement involves an affiliate relationship or the warehouse lender directly or indirectly controls the activities of the mortgage lender.