

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR-5180-F-05]

RIN 2502-AI61

**Real Estate Settlement Procedures Act (RESPA):
Rule to Simplify and Improve the Process of
Obtaining Mortgages and Reduce Consumer Settlement Costs;
Further Deferred Applicability Date for the Revised Definition of “Required Use”
and Solicitation of Public Comment on Withdrawal of Required Use Provision**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; request for comments.

SUMMARY: This final rule delays the effective date of the definition of “required use” as revised by HUD’s November 17, 2008, final rule amending its RESPA regulations, until July 16, 2009. The November 17, 2008, final rule revised HUD’s RESPA regulations to further the purposes of RESPA by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The final rule revised the existing definition of “required use,” which revision was directed to enhancing protections for consumers from certain practices conducted by affiliated business arrangements. The revised definition of “required use” would have become effective on January 16, 2009. However, on January 15, 2009, HUD published a final rule that delayed the effective date of the definition of “required use” from January 16, 2009, to April 16, 2009, due to litigation by the National Association of Home Builders, *et al.*, around the time of issuance of the final rule. For this same reason, HUD is further delaying the effective date of required use until July 16, 2009.

In this rule, HUD also solicits comment on withdrawing the revised definition of “required use” from the November 17, 2008, final rule. HUD will consider these comments

before pursuing new rulemaking process on this definition. Since promulgating the rule on November 17, 2008, HUD has determined to reevaluate the scope and operation of the required use provision. New rulemaking would give HUD the opportunity to present for public consideration a new proposal based upon HUD's reevaluation of the required use provision to help ensure better consumer protections.

DATES: The amendment to § 3500.1 is effective [**insert date of publication in the Federal Register**]. The effective date of the definition of "required use" in § 3500.2, as revised by HUD's final rule published on November 17, 2008, at 73 FR 68204, and further delayed by final rule published on January 15, 2009, at 74 FR 2369, is further delayed to July 16, 2009.

Comment Due Date: [**Insert date 30 days after date of publication in the FEDERAL REGISTER.**]

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt

by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Director, or Barton Shapiro, Deputy Director, Office of RESPA and Interstate Land Sales, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9158, Washington, DC 20410-8000; telephone 202-708-0502 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

On November 17, 2008 (73 FR 68204), HUD published a final rule amending its regulations to further the purposes of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601-2617) by requiring more timely and effective disclosures related to mortgage settlement costs for federally related mortgage loans to consumers. The final rule followed publication of a March 14, 2008, proposed rule (73 FR 14030) and made changes in response to public comment and in further consideration of certain issues by HUD. Additional information regarding the regulatory amendments, and the changes made by HUD at the final rule stage, is provided in the preamble to the November 17, 2008, final rule.

The November 17, 2008, final rule became effective on January 16, 2009, but provided a longer transition period for the majority of the new requirements. Other provisions, however, were scheduled to take effect on January 16, 2009. Among regulatory changes identified as being applicable upon the effective date of January 16, 2009, is the revised definition of the term “required use.” The revision of that definition became the subject of litigation, following issuance of the final rule. (National Association of Home Builders, et al. v. Steve Preston, et al., Civ. Action No. 08-CV-1324, United States District Court for the Eastern District of Virginia, Alexandria Division.)

For reasons related to the proper litigation of this case, HUD issued a final rule on January 15, 2009 (74 FR 2369) that deferred the effective date of the revised definition of “required use” for an additional 90 days until April 16, 2009. The litigation continues and HUD finds again that for reasons including the pending litigation, the applicability date of the definition of “required use” should be further delayed until July 16, 2009. The effective and

implementation dates of the remaining provisions of the November 17, 2008, final rule are not affected by the action taken in this rule.

The further delay is consistent with the direction to federal agencies, provided in a January 21, 2009, memorandum from the Director of the Office of Management and Budget to consider extending the effective date for rules published under the prior Administration, which have not yet taken effect. Additionally, the memorandum notes that the Administrative Procedure Act provides for agencies to postpone the effective date of an agency action pending judicial review (see 5 U.S.C. 705). Accordingly, this further extension is consistent with law and the new Administration's procedural directions.

With the further delay of the effective date, HUD seeks to use this time to solicit public comment on withdrawing the "required use" definition, as promulgated in the November 17, 2008, final rule and commencing new rulemaking on this definition, which would similarly strive to ensure consumers are protected from certain practices conducted by affiliated business arrangements. Since issuance of the final rule, HUD has determined to reevaluate the scope and operation of the required use provision. This issue is one of importance in the RESPA context, and HUD, regulated industries, consumers and the public generally would be better served by new rulemaking. New rulemaking would offer HUD with the opportunity to present a new proposal based upon HUD's reevaluation of the required use provision. New rulemaking would provide consumers, industry, and other interested members of the public with the opportunity to comment on a definition of "required use," developed as part of HUD's evaluation process, and for HUD to make informed decisions based on this new commentary. HUD therefore specifically seeks public comment on withdrawing the required use provision from the November 17, 2008, final rule and commencing new rulemaking on this subject.

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment as requiring public comment before extending the effective date would be contrary to the interest of justice and the public interest.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgagees, Mortgage servicing, Reporting and Recordkeeping requirements.

Accordingly, 24 CFR part 3500 is corrected by making the following amendments:

1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 et. seq.; 42 U.S.C. 3535(d).

Section 3500.1(b)(1) is revised to read as follows:

§ 3500.1 Designation and applicability.

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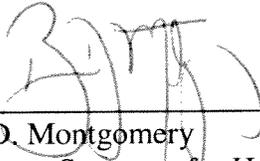
(b) * * *

(1) The definition of Required use in § 3500.2 is applicable commencing on July 16, 2009; §§ 3500.8(b), 3500.17, 3500.21, 3500.22 and 3500.23, and Appendices E and MS-1 are applicable commencing January 16, 2009.

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MAR 6 2009

Dated: _____



Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

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