

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner**

24 CFR Part 3500

[Docket No. R-95-1774:FR-3805-I-01]

**Real Estate Settlement Procedures
Act; Business Purpose Loans; RESPA
Interpretive Rule 1995-1**

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

ACTION: Interpretive rule 1995-1.

SUMMARY: This interpretive rule sets forth the Department's interpretation regarding Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 which amended the Real Estate Settlement Procedures Act (RESPA) by adding a new Section 7.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement Staff, Room 5241, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-4560. Hearing or speech-impaired individuals may call (202) 708-9300 (TDD) or 1-800-877-8339 (Federal Information Relay Service TDD). (Other than the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (Pub. L. 103-324, 108 Stat. 2160, approved September 23, 1994) (the 1994 Act) added a new Section 7 to the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) which states in relevant part: "This Act [RESPA] does not apply to credit transactions involving extensions of credit—(1) primarily for business,

commercial, or agricultural purposes. * * * *"

The legislative background of the amendment states:

The language of the amendment is modeled after § 226.3 of Regulation Z, the Truth in Lending Act regulation. The Conferees intend the Department of Housing and Urban Development, the agency responsible for RESPA regulation, to use the Truth in Lending Act as a basis for its regulations but also to retain discretion to define what constitutes a transaction "primarily for a business, commercial or agriculture purpose." House Report 103-652, to accompany H.R. 3474, August 2, 1994, at page 172.

On February 10, 1994, the Department published an amendment to Regulation X (59 FR 6505, revised on March 30, 1994, 59 FR 14748) (the 1994 amendments) which implemented the Housing and Community Development Act of 1992, and also created certain exemptions from coverage of RESPA. Under § 3500.5 of that rule the exemption for business purpose loans is described as follows:

(2) An extension of credit primarily for a business, commercial, or agricultural purpose. The definition of such an extension of credit for purposes of this exemption generally parallels Regulation Z, 12 CFR 226.3(a)(1), and persons may rely on Regulation Z in determining whether the exemption applies. Notwithstanding the foregoing, the exemption in this section for business purpose loans does not include any loan to one or more persons acting in an individual capacity (natural persons) to acquire, refinance, improve, or maintain 1- to 4-family residential property used, or to be used, to rent to other persons. An individual who voluntarily chooses to act as a sole proprietorship is not considered to be acting in an individual capacity for purposes of this part.

Thus, the Department has already adopted the business, commercial and agricultural exemptions of RESPA as required by the new Section 7, with the exception of an "individual" undertaking financing transactions regarding 1-4 family residential rental properties. The RESPA statute and regulations had always covered 1 to 4

family residential properties, and presumably the second, third or fourth units were predominately used for rental purposes. In revising the RESPA rule in February 1994, the Department concluded that all 1 to 4 family investment transactions by individuals, whether or not for owner-occupied properties, were substantially similar in character to the purchase or refinance transactions of individuals for occupancy purposes. Therefore, the Department determined that the RESPA protections ordinarily should be afforded to individual consumers (natural persons) in transactions involving 1 to 4 family residential mortgage loans. However, if an individual applies for the loan in the name of a sole proprietorship, and the lender will allow the loan to be closed in such name, the transaction is a business purpose loan and exempt from RESPA coverage.

Accordingly, the Department is issuing Interpretive Rule-1995-1, to read as follows:

**Section 3500.5(b)(2) Coverage of
RESPA**

After consideration of Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (September 23, 1994), the Department reaffirms the determination set forth in its RESPA rule published on February 10, 1994, and amended on March 30, 1994, effective August 9, 1994, that transactions by individuals involving 1-4 family residential rental properties are covered by RESPA. The Department concludes that this position as set forth in § 3500.5(b)(2) is consistent with Section 7 of RESPA and its legislative history.

Authority: 42 U.S.C. 3535(d).

Dated: February 14, 1995.

Nicolas Retsinas,

*Assistant Secretary for Housing, Federal
Housing Commissioner.*

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