

APPLIED COMPLIANCE TRACK: RESPA Section 8

(Closed to Media)

September 29, 2025

Moderator:

Alisha Sears, Director, Regulatory Counsel, Mortgage Bankers Association

Panelists:

Holly Bunting, Partner, Mayer Brown LLP

Suzanne Garwood, Assoc. Gen Counsel, JPMorgan Chase

Matthew Sheldon, Partner, Goodwin

Michael Y. Kieval, Partner, Weiner Brodsky Kider PC

Agenda

- RESPA Refresher
- Compliance Scenarios
 - Marketing and Promotional
 - Broker Compensation
- View from In-House
- More Compliance Scenarios
 - Joint Ownership
 - Enforcement
 - Marketing and Promotional
- Questions



RESPA Background (Briefly)

RESPA Section 8 Overview

RESPA Section 8(a) prohibits giving and accepting kickbacks or other things of value pursuant to any agreement or understanding to refer settlement service business or business incident to a real estate settlement service in connection with a federally related mortgage loan. 12 U.S.C. § 2607(a).

RESPA Section 8(b) bars giving and accepting any portion, split, or percentage of charges made or received for real estate settlement service business, unless for services actually performed. 12 U.S.C. § 2607(b).

RESPA Section 8(c) permits certain payments and arrangements, including:

- Bona fide salary or compensation or other payment for goods or facilities actually furnished, or services actually performed. 12 U.S.C. § 2607(c)(2).
- Affiliated business arrangements. 12 U.S.C. § 2607(c)(4).

Regulation X also specifies additional payments and activities permitted by Section 8, such as:

- Normal promotional and educational activities. 12 C.F.R. § 1024.14(g)(1)(vi). This Regulation X provision was addressed in the CFPB's October 2020 FAQs, which clarified the facts and conditions under which an item or activity was deemed compliant.
- Employer's payments to its own employees for referral activities. 12 C.F.R. § 1024.14(g)(1)(vii).

RESPA Section 8 Overview – Section 8(a) Elements

Fee, kickback, or thing of value

- Thing of value is broadly defined in RESPA and Regulation X. 12 U.S.C. § 2602(2); 12 C.F.R. § 1024.14(d).
- “Payment” is used synonymously with the giving or receiving of a “thing of value” in Regulation X, 12 C.F.R. § 1024.14 and § 1024.15, and does not require the transfer of money. 12 C.F.R. § 1024.14(d).

Agreement or understanding

- An agreement or understanding need not be written or verbalized. It may be established by practice, pattern, or course of conduct.
- For example, when a thing of value is received repeatedly or connected in any way with the volume or value of business referred, receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding. 12 C.F.R. § 1024.14(e).

Incident to or part of a real estate settlement service involving a federally related mortgage loan

- To be a violation, the referral(s) must be directly or indirectly incident to or part of a real estate settlement service involving a federally related mortgage loan. 12 U.S.C. § 2602(1); 12 C.F.R. § 1024.2(b).
- “Settlement service” is defined broadly as any service provided in connection with a real estate settlement, including (but not limited to) origination of a loan, closing or title services, title insurance, property surveys, inspections and appraisals, rendering of credit reports and appraisals, and services of attorneys, real estate agents, and mortgage brokers. 12 U.S.C. § 2602(3); 12 C.F.R. § 1024.2(b).

For referrals

- Referrals include any oral or written action directed to a person that has the effect of **affirmatively influencing** a person’s selection of a provider of a settlement service or business incident to or part of a settlement service. 12 C.F.R. § 1024.14(f)(1).
- Additionally, referrals include requiring the use by the person paying for the service of a particular provider of settlement service-related business. 12 C.F.R. 1024.14(f)(2) and 1024.2(b).
- Prohibited referrals are not limited to those directed to consumers. They might be directed to a number of sources, such as appraisers, real estate agents, title companies and agents, lenders, or mortgage brokers. 12 C.F.R. 1024.14(b) and (f).

RESPA Section 8 – Statute of Limitations

- **Multiple potential RESPA statute of limitation periods depending on claim and plaintiff**
 - **Consumer Litigation:** Generally, 1 year (12 USC § 2614), but:
 - (1) potential for equitable tolling; and
 - (2) potential for continuing violation argument in some contexts.
 - **CFPB Claims:** Generally, 3 years (12 USC § 2614), but:
 - CFPB previously took several positions indicating it believed it was not subject to this year limit in all instances; and
 - CFPB could also claim conduct was UDAAP, which has a three-year limitations period from the date of discovery under Dodd-Frank.
- **Note:** State Anti-kickback Statutes also provide alternative statute of limitations formulations



Marketing and Promotional Activities

Marketing and Promotional Scenario

Fact Pattern:

A mortgage lender is hosting an educational seminar at a local hotel conference space and has invited every real estate agent in the same zip code to attend. Coffee and pastries are provided as refreshments. The lender's internal counsel will make a presentation on recent state-law changes impacting mortgage loans and real estate transactions. The presentation is CE-approved for the agents.

Any issues under RESPA?

Compliance considerations:

- Should the lender charge the real estate agents for the CE credit?
- Should the lender also make a marketing pitch during the presentation?
- What if the lender serves lunch instead of a simple breakfast?
- Can the lender give away door prizes?



Broker Compensation

RESPA Broker Compensation Scenario

Fact pattern:

State Bank (FDIC-regulated, less than \$10bn in assets) makes mortgage loans exclusively on a wholesale basis—originated by third-party Mortgage Brokers. State Bank pays compensation to the Mortgage Brokers on closed loans based on a predetermined number of basis points (and in full compliance with the LO Comp Rule), for finding the consumers, taking the loan applications, and performing at least four other services in connection with each origination, focusing heavily on advising and assisting the applicant/borrower. By using the Mortgage Brokers, State Bank saves the cost of having to employ its own MLO sales team and maintain loan production offices. State Bank determines how much compensation to pay (when it negotiates Mortgage Broker compensation agreements) based on what other lenders—bank and non-bank—pay mortgage brokers in each market. State Bank does monitor to ensure that the required services are being performed by the Mortgage Brokers, but does not obtain or conduct any valuation of those services apart from determining the market rate for mortgage brokers.

Questions:

- **Is the conduct in question a RESPA 8 violation?**
- **What is a mortgage broker paid to do?**
- **Why is mortgage brokering not a *per se* RESPA 8 violation?**
- **How should mortgage broker compensation be determined/justified?**
- **How would your analysis be different if State Bank were instead an Independent Mortgage Banker?**



View from In-House

View from In-House



RESPA is still the law

State Enforcement

Statutes of Limitations

Industry Partnerships

Modernization



Joint Ownership Issues

Joint Venture Ownership Scenario

Fact pattern:

A mortgage lender is considering pursuing various options for partnering with a growing local real estate brokerage. The real estate brokerage is open to different ideas, but is particularly interested in additional revenue sources and/or capital investment.

- If the mortgage lender creates a mortgage lending joint venture and offers to allow the brokerage to purchase ownership shares, does the brokerage have to provide present day funds for the purchase?
 - Can the mortgage lender require that the principals of the brokerage remain at the brokerage or they have to sell back their personal shares? Remain in the brokerage industry in general?
- Could the mortgage lender buy the brokerage outright? Require the principals to remain?
- Could the two companies do a co-marketing agreement and incentivize their respective customers to use the other entity?



RESPA Enforcement

RESPA Enforcement Scenario

Fact pattern:

Loan Officer and Title Company used to send mailers to potential refi customers. They shared the cost of buying the leads, printing, and mailing. Initially, the split was fifty-fifty. The amount of the split changed over time, with at least four different cost splits. The mailers named both parties and provide their web addresses. The mailer prominently featured a toll-free number specific to this marketing campaign that went to the loan officer, and the loan officer could tell that the call came in response to the mailer. Now, five years after the campaign ended, Lender (Loan Officer's former employer) is served with a RESPA kickback complaint brought on a class action basis.

Questions:

- **Is the conduct in question a RESPA 8 violation?**
- **What facts suggest that it is a violation?**
- **What facts suggest that it is not a violation?**
- **RESPA 8 has a one-year statute of limitations – is Lender out of the woods?**
- **What other defenses should Lender consider?**
- **Is Loan Officer in trouble if he was not named personally in the case?**
 - **What could happen to him?**



(More) Marketing and Promotional Activities

Marketing and Promotional Scenario

Fact Pattern:

A loan officer has been friends with a local real estate agent since high school, and the two regularly meet for lunch or drinks after work. They will occasionally split the tab, but the loan officer generally pays the check. They refer business to each other and have done some joint marketing in the past.

Any issues under RESPA?

Compliance considerations:

- How often is “regularly”?
- Should the loan officer be talking business during these outings?
- What if they don’t keep track of who pays, but they think they probably each pay the tab equally?
- Any parameters that a lender should have?



Questions