Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6508. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 737–57A1279, Revision 2, dated February 2, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on November 18, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29792 Filed 11–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–5425–IA–02]

Real Estate Settlement Procedures Act (RESPA): Home Warranty Companies' Payments to Real Estate Brokers and Agents Interpretive Rule: Response to Public Comments

AGENCY: Office of General Counsel, HUD.

ACTION: Interpretive rule; response to public comments.

SUMMARY: On June 25, 2010, HUD issued a rule interpreting certain provisions of RESPA as applied to the payment of fees to real estate brokers and agents by home warranty companies. The public was invited to comment on the interpretive rule. After reviewing and considering the comments, HUD determined that changes are not needed to the interpretive rule. Through this document, HUD responds to certain questions raised in the comments. HUD believes that its response to these questions serves to provide additional guidance relating to matters covered in the interpretive rule and the comments.

FOR FURTHER INFORMATION CONTACT: For legal questions, contact Paul S. Ceja, Assistant General Counsel for RESPA/SAFE, telephone number 202–708–3137; or Peter S. Race, Assistant General Counsel for Compliance, telephone number 202–708–2350; Department of Housing and Urban Development, 451 7th Street, SW., Room 9262, Washington, DC 20410. For other questions, contact Barton Shapiro, Director, or Mary Jo Sullivan, 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; telephone number 202–708–0502. These telephone numbers are not toll-free. Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The requirements and prohibitions under RESPA apply to residential real estate transactions that include a federally related mortgage loan. Section 8 of RESPA prohibits giving and receiving "kickbacks" for the referral of real estate settlement services, and unearned fees, involving real estate transactions. Since 1992, HUD's RESPA regulations have defined "settlement service" to include "homeowner's warranties". 24 CFR 3500.2(11). While a referral of settlement services is not compensable under RESPA, a real estate broker or agent (or other person in a position to refer settlement service business) may be compensated for services that are actual, necessary and distinct from the primary services provided by the real estate broker or agent, if the services are not nominal, and the payment is not a duplicative charge. (*See* 24 CFR 3500.14(b), (c), (g)(1), and (g)(3)).

On June 25, 2010 (75 FR 36271), HUD issued an interpretive rule on the propriety under Section 8 of RESPA (12 U.S.C. 2607) of payments to real estate brokers and agents from home warranty companies (HWCs). The interpretive rule concluded:

(1) A payment by an HWC for marketing services performed by real estate brokers or agents on behalf of the HWC that are directed to particular homebuyers or sellers is an illegal kickback for a referral under section 8;

(2) Depending upon the facts of a particular case, an HWC may compensate a real estate broker or agent for services when those services are actual, necessary and distinct from the primary services provided by the real estate broker or agent, and when those additional services are not nominal and are not services for which there is a duplicative charge; and

(3) The amount of compensation from the HWC that is permitted under section 8 for such additional services must be reasonably related to the value of those services and not include compensation for referrals of business.

75 FR at 36273.

HUD received 72 comments in response to publication of the interpretive rule. HUD reviewed all of the comments, and appreciates the input and information provided by the commenters. Some commenters supported the interpretive rule and others did not. HUD found that the comments that were not supportive of its interpretation did not present concerns or information that warrant any changes to the interpretive rule. HUD, however, has identified and is responding to seven specific questions to provide additional guidance relating to matters covered in the interpretive rule and the comments.

II. Questions and Responses

1. *Question:* Is a home warranty company's flat fee payment (*e.g.,* monthly or annual payment) to a real estate broker or agent for marketing a home warranty product directly to particular homebuyers or sellers a permissible payment under section 8 of RESPA?

HUD Response: No, as provided in the interpretive rule, payments for marketing services directed to particular homebuyers or sellers are considered to be payments for affirmatively influencing their choice of settlement service providers and would therefore violate section 8 of RESPA as an illegal kickback for a referral, regardless of whether the payment is made to the broker or agent on a "per transaction" or a "flat fee" basis.

2. *Question:* Is the list of items in footnote 2 of the interpretive rule an exhaustive list of the services that a real estate broker or agent can be legally compensated for by a home warranty company under section 8 of RESPA?

HUD Response: No, the footnote itself begins with the introduction, "For example". The list in the footnote is not exhaustive but exemplary of services that, in a particular case, may be compensable. However, as discussed in the interpretive rule, to be compensable the services must be services that are "actual, necessary and distinct from the primary services provided by the real estate broker or agent, that are not nominal, and for which duplicative fees are not charged" (*see* fn.1 of the interpretive rule). Referrals of settlement service business are not compensable services. Therefore, payments made for "services" that were fabricated to disguise a payment to a real estate broker or agent for referrals and are not, in fact, "necessary" would be illegal under section 8 of RESPA.

3. *Question:* What is meant by the statement in the interpretive rule that evidence in support of a determination that compensable services have been performed by a real estate broker or agent may include: "The real estate broker or agent is by contract the legal agent of the HWC, and the HWC assumes responsibility for any representations made by the broker or agent about the warranty product."

HUD Response: While not conclusive, the fact that a home warranty company is willing to be legally committed by the work and representations of a real estate broker or agent who is compensated by the HWC for performing services is one indicator that those services provided are "actual, necessary and distinct" and not nominal—i.e., that actual work is being performed by the real estate broker or agent for which the home warranty company is willing to assume liability. Specifically, such a legal relationship indicates that the HWC has worked with the real estate broker or agent closely enough to understand the value of the services performed by the broker or agent, and to be confident enough of the broker's or agent's services and representations, that the HWC is willing to take responsibility for those services and representations. Conversely however, if in a contract with a consumer, for example, the HWC disclaims liability for acts and representations of the real estate broker or agent in connection with the home warranty, this may indicate that no actual services of value have been performed by the real estate broker or agent.

4. *Question:* Why is it a relevant factor in analyzing a potential section 8 violation that a home warranty company's payment to a real estate broker or agent was made under an exclusive-representation arrangement?

HUD Response: Section 8 of RESPA prohibits payments for referrals and unearned fees. Stated another way, referrals are not compensable services under section 8. See 24 CFR 3500.14(b). HUD's interpretive rule states that, in initially evaluating whether a payment from an HWC to a real estate broker or agent is a violation of section 8, HUD may look at whether the payment is tied to an arrangement that prohibits the broker or agent from receiving from a competitor comparable payment for comparable actual services. In other words, such an exclusive-representation arrangement between the HWC and the real estate broker or agent is evidence of an unlawful-payment-for-referral arrangement whereby the real estate broker or agent is only being paid for steering customers exclusively to the HWC and its products. However, as it is further noted in the interpretive rule, if it is determined that the HWC's payment is only for compensable services, the existence of an exclusive-representation arrangement would be permissible under section 8.

5. *Question:* Does the interpretive rule prohibit payments from an HWC to real estate brokers or agents for general advertising services performed by the brokers or agents on behalf of the HWC?

HUD Response: No. The interpretive rule specifically prohibits compensation for marketing performed by a real estate broker or agent on behalf of an HWC when the marketing is directed to selling the HWC's home warranty product to particular homebuyers or sellers. HUD would evaluate the permissibility of compensation provided by an HWC to real estate brokers or agents for other advertising by applying the definition of "referral" in § 3500.14(f) of HUD's RESPA regulations. For example, a reasonable payment for an advertisement by an HWC in a real estate broker's or agent's publication or on the broker's or agent's website would not, in and of itself, be a payment for a referral under RESPA. If the marketing services for which the HWC is paying the real estate broker or agent are services directed to a homebuyer or seller that have the effect of "affirmatively influencing" the selection by the homebuyer or seller of the HWC's home warranty product in connection with the real estate settlement, then those marketing services would be subject to RESPA's prohibitions on referral payments.

6. *Question:* Is a home warranty always considered to be a "settlement service" for purposes of RESPA coverage?

HUD Response: No. RESPA's kickback and referral fee prohibitions are applicable in the context of "settlement services", a term that is defined broadly under RESPA and HUD's RESPA regulations. RESPA defines "settlement services" to include "any service provided in connection with a real estate settlement" and provides a nonexclusive listing of such services (12 U.S.C. 2602(3)). In its regulations HUD has long defined "settlement service" to include "any service provided in connection with a prospective or actual settlement * * *" (24 CFR 3500.2). As noted above and in the interpretive rule, "homeowner's warranties" have been specifically included in HUD's definition of "settlement service" since 1992 (24 CFR 3500.2(11)). Therefore, when a home warranty is "provided in connection with a prospective or actual settlement", it is a "settlement service" under HUD's regulatory interpretation of RESPA.

In determining whether services involving a home warranty are provided in connection with a prospective or actual settlement, HUD would consider, among other things: (i) Whether the charge for the home warranty is paid out of the proceeds at the settlement; and (ii) if the charge is not paid at settlement, whether the timing of the purchase of and payment for the home warranty indicates that the purchase is so removed from the settlement that it is not provided "in connection with" a settlement within the meaning of RESPA and HUD's regulations. Items paid in connection with a RESPA-covered transaction, of course, may be paid and disclosed on the HUD–1/1A settlement statement as paid outside of closing (P.O.C.) or through the accounting at settlement.

7. *Question:* Does the interpretive rule apply to situations beyond home warranty company payments to real estate brokers and agents, for example to payments by other settlement service providers to real estate brokers and agents?

HUD Response: The interpretive rule is specifically directed to home warranty company payments to real estate brokers and agents. However, the analysis in the interpretive rule is based on an interpretation of the RESPA statute and HUD's existing regulations, which analysis may be applicable to payments made by other settlement service providers to real estate brokers or agents.

III. Confirmation of June 25, 2010, Interpretive Rule

Again, HUD appreciates the input and information provided by the members of the public and representatives of industry who responded to HUD's solicitation of public comment on the June 25, 2010, interpretive rule. After consideration of the comments, HUD confirms its June 25, 2010, interpretation of certain provisions of RESPA as applied to the payment of fees to real estate brokers and agents by home warranty companies. The interpretive rule therefore stands without change.

Finally, some commenters asked whether the interpretive rule has prospective or retroactive effect. An interpretive rule does not change existing law. As noted in the concluding paragraph of the rule, the interpretive rule represents HUD's interpretation of its existing regulations. This interpretive rule, therefore, does not constitute a change in HUD's interpretation of RESPA or the RESPA regulations, but is an articulation of HUD's interpretation of RESPA and the implementing regulations that specifically applies to home warranty company payments to real estate brokers and agents.

Authority: 12 U.S.C. 2601–2617; 42 U.S.C. 3535(d).

Dated: November 23, 2010.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2010–30243 Filed 11–30–10; 8:45 am]

BILLING CODE 4210–67–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2011. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.,* the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–10 with Table I–11 in order to provide an updated correlation, appropriate for calendar year 2011, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–11 will be used to value benefits in plans with valuation dates during calendar year 2011.

PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2011, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2011.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–10 and adding in its place Table I–11 To read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age