How does RESPA affect Fuller Center for Housing Covenant Partners?

As a general matter, RESPA applies to "federally related mortgage loans." A "mortgage loan" is a loan which is secured by a mortgage on residential property that houses between one and four families. This definition includes a "purchase money" or "seller finance" loan. A "federally related" mortgage loan includes the following: *(Note: Closing costs are expenses — other than the price of the property — incurred by buyers and sellers in transferring ownership of real property. These costs normally include an origination fee, an attorney's fee, real estate taxes, amounts placed in escrow, fees for inspections and surveys, and charges for title searches and title insurance.)*

1. A mortgage loan made by a lender that makes residential real estate loans aggregating more than $1,000,000 per year;

2. A loan that is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way under or in connection with a housing or urban development program administered by HUD or a housing or related program administered by any other officer or agency of the federal government;

3. Any loan that is made in whole or in part by a lender that is either regulated by or whose deposits or accounts are insured by any agency of the federal government.

4. A Covenant Partner's failure to follow RESPA's disclosure and closing requirements cannot be corrected retroactively. If there is any chance whatsoever that a covenant partner will exceed the $1 million threshold in a year, then the RESPA rules should be followed for all mortgages originated during that year

RESPA rules must be observed by covenant partners that originate mortgage loans aggregating more than $1 million per year. In calculating the $1,000,000 threshold, the affiliate should include the face amount of all first mortgages, as well as any "silent second" or other deferred subordinate mortgages. For Covenant Partners whose loan originations fall below the $1 million-per-year threshold, the acceptance of federal funding for a project (such as NSP, HOME or CDBG funding) or the maintenance of FDIC insured bank accounts could bring a covenant partner within the scope of RESPA, but neither the RESPA regulations nor any other published guidance offers a clear answer to this question. After reviewing the legislative history for RESPA and discussing these questions with a HUD representative, The Fuller Center is of the opinion that — as a technical federal law matter — RESPA applies **only** to affiliates that originate mortgages (including all first, second and other deferred subordinated mortgages) having an aggregate face amount of at least $1 million per year.

A covenant partner should confirm whether state law requires it to comply with RESPA, even if it does not meet the $1 million threshold.

Although covenant partners that originate less than $1 million per year in mortgages may not be legally required to comply with RESPA, covenant partners should nevertheless consider complying with RESPA as a best practice. There are several reasons for this — compliance with RESPA is standard operating procedure in the residential real estate market; some state and/or federal subsidy providers may require compliance with RESPA as a condition to receipt of a subsidy; and, if a covenant partner later chooses to leverage its mortgages through a loan or discount program, the lender or purchaser may not be willing to accept mortgages that were not originated or administered pursuant to RESPA.