

RESPA HOME WARRANTY CLARIFICATION ACT OF 2012

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JULY 31, 2012.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. BACHUS, from the Committee on Financial Services,  
submitted the following

R E P O R T

[To accompany H.R. 2446]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2446) to clarify the treatment of homeowner warranties under current law, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “RESPA Home Warranty Clarification Act of 2012”.

**SEC. 2. TREATMENT OF HOMEOWNER WARRANTIES.**

Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended by adding at the end the following new subsection:

“(e) HOMEOWNER WARRANTIES.—

“(1) IN GENERAL.—Nothing in this section, section 2, or section 3 shall be deemed to include, or be deemed to have included, homeowner warranties or similar residential service contracts for the repair or replacement of home system components or home appliances.

“(2) NOTICE BY HOME WARRANTY COMPANY.—Any person that pays another person not employed by the person for selling, advertising, marketing, or processing, or performing an inspection in connection with, a homeowner warranty or similar residential service contract for the repair or replacement of home system components or home appliances shall include the following statement, in boldface type that is 10-point or larger, in any such warranty or contract offered or sold as an incident to or as part of any transaction involving the origination of a federally related mortgage loan:

“NOTICE: THIS COMPANY MAY PAY PERSONS NOT EMPLOYED BY THE COMPANY FOR SELLING, ADVERTISING, MARKETING, OR PROCESSING, OR PERFORMING AN INSPECTION IN CONNECTION WITH, A HOMEOWNER WARRANTY OR SIMILAR RESIDENTIAL SERVICE CONTRACT FOR REPAIRING OR REPLACING HOME SYSTEM COMPONENTS OR HOME APPLIANCES.”

“(3) NOTICE BY REAL ESTATE AGENT OR BROKER.—Any person who has contracted to receive payment from a provider of the services described in paragraph (1) for recommending the purchase of a home warranty or similar residential service contract, and is not an employee of such provider, shall provide the potential purchaser, upon first recommending the purchase of a homeowner warranty or similar residential service contract, a written notice containing the following language in boldface type that is 10-point or larger (with the bracketed matter being replaced with the information described by such bracketed matter):

“NOTICE: THIS IS TO GIVE YOU NOTICE THAT [the provider of the notice] HAS RECEIVED OR WILL RECEIVE COMPENSATION FROM [the home warranty company] FOR [the residential service for which the notice provider is being compensated]. YOU ARE NOT REQUIRED TO PURCHASE A HOME WARRANTY OR A SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.”.

#### PURPOSE AND SUMMARY

H.R. 2446, the RESPA Home Warranty Clarification Act of 2012, would amend current law to clarify that commissions paid by home warranty companies to a real estate broker or agent are permitted under the Real Estate Settlement and Procedures Act (RESPA). H.R. 2446 would also require that a home warranty company and real estate broker or agent each provide the homeowner with a written notice that specifies the compensation arrangement for the real estate broker or agent who sells, advertises, markets, processes, or performs an inspection in connection with a home warranty for the repair or replacement of appliances or home system components.

#### BACKGROUND AND NEED FOR LEGISLATION

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601) requires lenders, mortgage brokers, or servicers of federally related mortgage loans for one-to-four family residences to provide borrowers with pertinent and timely disclosures regarding the nature and costs of real estate settlement services. RESPA also prohibits referral fees or kickbacks among real estate settlement service providers to prevent settlement fees from increasing unnecessarily. RESPA also requires that a real estate settlement services provider affiliated with a lender, mortgage broker, or servicer of such loans through a business arrangement that provides a referral to a borrower also provides the borrower with a disclosure related to the business arrangement.

A home warranty is a service contract under which a home warranty company provides repair or replacement coverage for a home’s system components and/or appliances. A real estate broker or agent typically acts as a representative for the home warranty company that offers the home warranty. The real estate broker or agent receives a commission from the home warranty company for presenting the home warranty to the home buyer, if the homeowner purchases the warranty.

From 1974 to 1992, the Department of Housing and Urban Development (HUD) provided no rules or guidance about the sale of home warranties presented by real estate brokers or agents at real estate settlements. In 1992, HUD issued regulations which specified that “homeowner’s warranties” are a settlement service when “provided in connection with a prospective or actual settlement.” In

2008, in response to an individual inquiry, HUD's Office of General Counsel issued an unofficial staff interpretation letter confirming that certain compensation agreements between home warranty companies and real estate agents violated RESPA. In 2010, HUD issued an interpretive rule and subsequent guidance under which a home warranty company's compensation of a real estate broker or agent for presenting a home warranty to a borrower in connection with a real estate transaction violated RESPA.

Between 1992 and 2010, however, HUD took no action to explicitly prohibit home warranty companies from compensating real estate brokers or agents for presenting home warranties to borrowers in connection with real estate settlements. If questions arose regarding the performance or enforcement of a home warranty contract, the holder of the warranty had legal redress through the state regulatory or judicial systems under various contract, consumer protection, or other state laws.

During a hearing on home warranties held by the Subcommittee on Insurance, Housing and Community Opportunity, witnesses testified that the sale of home warranties was not necessary or required to close a real estate transaction. These witnesses also testified that the compensation of real estate brokers or agents for the sale of home warranties should not be treated as a violation of RESPA, unless the compensation arrangement between the home warranty company and real estate broker or agent was not disclosed to the borrower.

#### HEARINGS

On July 13, 2011, the Subcommittee on Insurance, Housing and Community Opportunity held a hearing entitled "Mortgage Origination: The Impact of Recent Changes on Homeowners and Businesses," to review H.R. 2446. This was a two-panel hearing, and the following witnesses testified:

- The Honorable Sandra F. Braunstein, Director of Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System
- The Honorable Teresa Payne, Associate Deputy Assistant Secretary, Regulatory Affairs, Department of Housing and Urban Development
- Ms. Kelly Cochran, Deputy Assistant Director for Regulations, Consumer Financial Protection Bureau, Department of Treasury
- Mr. James R. Park, Executive Director, Appraisal Subcommittee, Federal Financial Institutions Examination Council
- Mr. William B. Shear, Director of Financial Markets and Community Investment, Government Accountability Office
- Ms. Anne Norton, Maryland Deputy Commissioner of Financial Regulation, on behalf of the Conference of State Bank Supervisors
- Mr. Steve A. Brown, Executive Vice President, Crye-Leike, on behalf of the National Association of Realtors
- Mr. Henry V. Cunningham, Jr., CMB President, Cunningham & Company, on behalf of the Mortgage Bankers Association

- Mr. Tim Wilson, President, Affiliated Businesses for Long & Foster Companies, on behalf of the Real Estate Services Providers Council, Inc
- Ms. Anne Anastasi, President, Genesis Abstract and President, American Land Title Association
- Mr. Mike Anderson, President, Essential Mortgage, on behalf of the National Association of Mortgage Brokers
- Mr. Marc Savitt, President, The Mortgage Center, on behalf of the National Association of Independent Housing Professionals
- Ms. Sara Stephens, President Elect, Appraisal Institute
- Mr. Don Kelly, Executive Director, Real Estate Valuation Advocacy Association (REVAA), on behalf of REVAA and the Coalition to Facilitate Appraisal Integrity Reform
- Ms. Janis Bowdler, Director, Wealth-Building Policy Project Office of Research, Advocacy, and Legislation, on behalf of the National Council of La Raza
- Ms. Ira Rheingold, Executive Director, National Association of Consumer Advocates

#### COMMITTEE CONSIDERATION

The Subcommittee on Insurance, Housing and Community Opportunity met in open session on December 8, 2011, and ordered H.R. 2446 favorably reported to the full Committee by voice vote.

The Committee on Financial Services met in open session on March 27, 2012, and ordered H.R. 2446, as amended, favorably reported to the House by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 2446, as amended, reported to the House.

During consideration of H.R. 2446 by the Committee, the following amendment and motion were considered:

1. An amendment offered by Mr. Hinojosa, no. 1, to require home warranty companies and real estate agents or brokers that receive compensation in connection with the purchase of a home warranty to provide the home buyer with a written notification regarding their selling and marketing of home warranties, was agreed to by voice vote.

2. A motion offered by Mrs. Biggert to move the previous question on H.R. 2446 was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 2446 is to make clear that commissions paid by home warranty companies to a real estate broker or agent are permitted under the Real Estate Settlement and Procedures Act (RESPA). H.R. 2446 would also require that a home warranty company and real estate broker or agent each provide homeowners with a written notice that specifies the compensation arrangement for the real estate broker or agent who sells, advertises, markets, processes, or performs an inspection in connection with a home warranty for the repair or replacement of appliances or home system components.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 14, 2012.

Hon. SPENCER BACHUS,  
*Chairman, Committee on Financial Services,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2446, the RESPA Home Warranty Clarification Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2446—RESPA Home Warranty Clarification Act of 2011*

Under current law, entities that provide settlement services for real estate transactions involving federally related mortgages may pay or accept fees to recommend a specific service provider only if that provider actually performs the service for which the fee was

paid. (Settlement services include activities such as document preparation, title searches, and property appraisals.) H.R. 2446 would amend current law to allow such fees to be paid for home warranty services or service contracts to repair or replace home appliances and other components of a home, regardless of who provides the service.

The bill also would require new disclosures to the purchaser of a home when the transaction involves a federally related mortgage. Specifically, H.R. 2446 would require:

- Providers of home warranty services to note instances when persons not employed by the provider are paid to perform certain services, and
- Real estate brokers and agents to disclose the receipt of compensation to recommend home warranty or other residential services.

Based on information from the Bureau of Consumer Financial Protection and other agencies with authority to regulate activities related to federally related mortgages, CBO expects that implementing the requirements in the bill would not significantly increase the workload of any of the affected agencies. CBO estimates that enacting H.R. 2446 would increase direct spending; therefore, pay-as-you-go procedures apply. However, CBO expects that such effects on spending would be insignificant, that is, less than \$500,000 annually. Further, CBO estimates that enacting the bill would not affect revenues or discretionary spending.

H.R. 2446 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The disclosure and notice requirements in H.R. 2446 are private-sector mandates, as defined in UMRA. According to industry sources, the cost to provide such notices would be small. Therefore, CBO estimates that the cost to the private sector of complying with the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Paige Piper/Bach (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

H.R. 2446 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1—Short title*

“RESPA Home Warranty Clarification Act of 2012.”

*Section 2—Treatment of homeowner warranties*

Section 2 stipulates that section 8 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2607), regarding a “prohibition against kickbacks and unearned fees,” as well as RESPA sections 2 and 3 regarding Congressional findings and definitions, would not apply to home warranties. A company that pays a real estate broker or agent that sells, advertises, markets, processes, or performs an inspection in connection with a home warranty and during the origination of a mortgage would be required to provide a borrower with a specific disclosure in conjunction with the offer or sale of the home warranty. A real estate broker or agent contracted to receive payment from a home warranty company for selling or marketing its home warranty product, must—upon recommending that a borrower purchase the product—provide the borrower with a specific disclosure.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974**

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## PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 8. (a) \* \* \*

\* \* \* \* \*

(e) *HOMEOWNER WARRANTIES.*—

(1) *IN GENERAL.*—*Nothing in this section, section 2, or section 3 shall be deemed to include, or be deemed to have included, homeowner warranties or similar residential service contracts for the repair or replacement of home system components or home appliances.*

(2) *NOTICE BY HOME WARRANTY COMPANY.*—*Any person that pays another person not employed by the person for selling, advertising, marketing, or processing, or performing an inspection in connection with, a homeowner warranty or similar residential service contract for the repair or replacement of home system components or home appliances shall include the following statement, in boldface type that is 10-point or larger, in any such warranty or contract offered or sold as an incident to or*

as part of any transaction involving the origination of a federally related mortgage loan:

**“NOTICE: THIS COMPANY MAY PAY PERSONS NOT EMPLOYED BY THE COMPANY FOR SELLING, ADVERTISING, MARKETING, OR PROCESSING, OR PERFORMING AN INSPECTION IN CONNECTION WITH, A HOMEOWNER WARRANTY OR SIMILAR RESIDENTIAL SERVICE CONTRACT FOR REPAIRING OR REPLACING HOME SYSTEM COMPONENTS OR HOME APPLIANCES.”**

(3) **NOTICE BY REAL ESTATE AGENT OR BROKER.**—Any person who has contracted to receive payment from a provider of the services described in paragraph (1) for recommending the purchase of a home warranty or similar residential service contract, and is not an employee of such provider, shall provide the potential purchaser, upon first recommending the purchase of a homeowner warranty or similar residential service contract, a written notice containing the following language in boldface type that is 10-point or larger (with the bracketed matter being replaced with the information described by such bracketed matter):

**“NOTICE: THIS IS TO GIVE YOU NOTICE THAT [the provider of the notice] HAS RECEIVED OR WILL RECEIVE COMPENSATION FROM [the home warranty company] FOR [the residential service for which the notice provider is being compensated]. YOU ARE NOT REQUIRED TO PURCHASE A HOME WARRANTY OR A SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER”.**

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