REAL ESTATE SETTLEMENT PROCEDURES ACT

(REGULATION X)

OVERVIEW

Overview

The Real Estate Settlement Procedures Act (RESPA)12 U.S.C. 2601 et seq., as implemented by the U.S. Department of Housing and Urban Development's Regulation X (24 C.F.R. § 3500), is designed to effect certain changes in the settlement process for residential real estate that will result:

- In more effective advance disclosure to home buyers and sellers of settlement costs;
- In the elimination of kickbacks or referral fees that tend to unnecessarily increase the costs of certain settlement services;
- In a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and,
- In significant reform and modernization of local recordkeeping of land title information.

RESPA applies to all "federally related mortgage loans," which includes any loan made by a federally insured financial institution secured by a first or subordinate lien on residential real property (including a refinance of such a loan) upon which there is located or placed a structure designed for one to four family occupancy (including individual units of condominiums or cooperatives). Limited exemptions to RESPA coverage are set forth in Regulation X.

In addition to the standard information and documentation that must be provided during the application and settlement stages of a mortgage loan transaction, RESPA requires that lenders furnish detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing rights. The lender must also provide certain disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and the funds disbursed or to be disbursed from the account by the servicer. Detailed rules imposed by RESPA and Regulation X regulate the management of escrow accounts and reveal when affiliated business arrangements will not constitute a violation of the prohibitions against kickbacks and unearned fees.

Exempt Transactions

RESPA provisions found at 12 U.S.C. §2606(a) exempt extensions of credit that are:

- Primarily for business, commercial, or agricultural purposes; or,
- To government or governmental agencies or instrumentalities.

Regulation X provisions found at 24 C.F.R. §3500.5(b) also exempt transactions that are:

- A loan on property of 25 acres or more.
- Business purpose loans. An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by Regulation Z, 12 CFR 226.3(a)(1). Persons may rely on Regulation Z in determining whether the exemption applies.
- Temporary financing. Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user.
- Secured by vacant land. Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.
- Assumption without lender approval. Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and RegulationX, whether or not the lender charges a fee for the assumption.
- Loan conversions. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.
- Secondary market transactions. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and RegulationX, except as set forth in section 6 of RESPA (12 U.S.C. §2605) and §3500.21. In determining what constitutes a bona fide transfer, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see §3500.2.)

Disclosure and Reporting

The specific disclosures and other documentation that the lender is required by RESPA to provide to consumers include the following:

- A copy of the Special Information Booklet on settlement costs;
- A copy of the Good Faith Estimate of Settlement Costs;
- Uniform Settlement Statement (HUD-1 or HUD-1A);
- Computer Loan Original Fee Disclosure, where applicable;
- An Affiliated Business Arrangement Disclosure Statement, where applicable;
- Notice of Transfer of Servicing, where applicable;

- An Initial Escrow Account Notice, where applicable;
- Annual Escrow Statements, where applicable;
- Short year statement, where applicable; and,
- The Mortgage Servicing Transfer Disclosure Statement (concerning the lender's right to assign, sell or transfer the loan).

The specific content of these documents and the prescribed time periods for their delivery to consumers and the retention by the lender is set forth in Regulation X.

Enforcement

The Department of Housing and Urban Development (HUD) is responsible for enforcing compliance for all credit unions.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with RESPA.
- Reputation risk can occur when the credit union incurs fines and penalties as a result of failure to comply with RESPA.
- Strategic risk can occur when the board of directors fails to perform necessary due diligence in reviewing existing and prospective products and services for compliance with RESPA.

Additional Information

For additional information visit The Department of Housing and Urban Development online at http://www.hud.gov/ .

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OPERATIONAL REQUIREMENTS

Disclosures / Notices

Special Information Booklet (24 C.F.R. §3500.6)

A credit union must provide the borrower with a copy of the Special Information booklet either at the time a written application is submitted, or no later than three business days after the application is received.

- Part One of the booklet describes the settlement process and the nature of charges, and suggests questions to be asked of lenders, attorneys, and others to clarify their services. It also contains information on the rights and remedies available under RESPA and alerts the borrower to unfair or illegal practices.
- Part Two of the booklet contains an itemized explanation of settlement services and costs, and sample forms and worksheets for cost comparisons.
- The Appendix of the Special Information Booklet contains a listing of government offices from which to obtain consumer information and literature on home purchasing and other related topics.

Good Faith Estimates (GFE) of Settlement Costs (24 C.F.R. §3500.7)

A credit union must provide, in a clear and concise form, a good faith estimate of the amount of, or range of, settlement charges the borrower is likely to pay.

1. The GFE must include all charges that will be listed in section L of the HUD-1 Settlement Statement.
2. The GFE must be provided no later than three business days after receipt of the written application.
3. The GFE may disclose either an estimate of the dollar amount or a range of dollar amounts for each settlement service.
4. The estimate of the amount or range for each charge must:

    - Bear a reasonable relationship to the borrower's ultimate cost for each settlement charge.
    - Be based upon experience in the locality in which the property involved is located.

Uniform Settlement Statement (HUD-1 or HUD-1A) (24 C.F.R. §3500.8)

The HUD-1 and HUD-1A must be completed by the person conducting the closing (settlement agent) and must conspicuously and clearly itemize all charges related to the transaction. The HUD-1 is used for transactions in which there is a borrower and seller. For transactions in which there is a borrower and no seller (refinancings and subordinate lien loans), the HUD-1 may be completed by using the borrower's side of the settlement statement. Alternatively, the HUD-1A may be used. However, no settlement statement is required for open-end home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A of 24 CFR 3500 contains the instructions for completing the forms.

The completed HUD-1 or HUD-1A must be delivered to the borrower, the seller, and the lender at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. The HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement if the borrower or borrower's agent does not attend the settlement.

Computer Loan Originations (CLO)

A borrower that intends to pay for the service of a CLO operator should be given the computer loan origination fee disclosure. This disclosure should include the charges to be paid, the services to be rendered, and a disclosure that the fee may be avoided by contacting directly a lender or mortgage broker. (See Appendix E of the regulation for a sample CLO disclosure form.)

Affiliated Business Arrangements (24 C.F.R. §3500.15)

RESPA and Regulation X prohibit a lender from receiving kickbacks or unearned fees. 12 U.S.C. §2607, 24 C.F.R.§3500.14. If the credit union has either an affiliate relationship or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services and the credit union directly or indirectly refers business to the provider, it is a controlled business arrangement that violates RESPA and Regulation X, unless:

- The credit union discloses on a separate piece of paper either at the time of loan application or with the GFEs:
    1. The nature of the relationship (explaining the ownership and financial interest) between the provider and the credit union.
    2. The estimated charge or range of charges generally made by such provider.
- The credit union does not require the use of such a provider, with the following exceptions: the credit union may require a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the credit union to represent its interest.
- The credit union receives only a return on ownership or franchise interest or payment otherwise permitted by RESPA in section 3500.14(g).

Initial Escrow Account Statement (24 C.F.R. §3500.17(g))

After analyzing each escrow account, the servicer must submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan. The initial escrow account statement must include:

- The monthly mortgage payment;
- The portion going to escrow;
- Itemized estimated taxes, insurance, premiums, and other charges;
- The anticipated disbursement dates of those charges;
- The amount of the cushion; and,
- A trial running balance.

A credit union may incorporate the initial escrow statement into the HUD-1 or HUD-1A settlement statement. If not, the credit union must issue the initial escrow statement in a separate document in the format suggested in HUD Public Guidance available in accordance with 24 C.F.R. §3500.3.

Annual Escrow Account Statement

A servicer shall submit to the borrower an annual statement for each escrow account within 30 days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting an annual escrow account statement to the borrower. Annual escrow account statements must contain:

- The account history;
- Projections for the next year;
- Current mortgage payment and portion going to escrow;
- Amount of last year's mortgage payment and the portion going to escrow;
- Total amount paid into the account during the past year;
- Amount paid from the account with each charge separately identified;
- Balance at the end of the period;
- Explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable; and,
- The reasons why the estimated low monthly balance was not reached.

Short-year Statements

Short-year statements will end the escrow account computation year and establish the beginning date of the new computation year. Short-year statements may be provided upon the transfer of servicing and are required upon loan payoff. The statement is due to the borrower within 60 days after receiving the pay-off funds.

Mortgage Servicing Transfer Disclosures (24 C.F.R. §3500.21)

The disclosures related to the transfer of mortgage servicing are required for first mortgage liens of federally related mortgage loans, including all refinancing transactions

of such loans. HUD has exempted from the requirements of this section any subordinate lien and has excluded all open-end lines of credit (home equity plans), whether secured by a first or subordinate lien, that are covered under the Truth in Lending Act and Regulation Z. In addition, these requirements shall not apply when the application for credit is denied within three business days after receipt of the application.

A credit union that receives an application for a federally related mortgage loan is required to disclose to the borrower at the time of application, or within three business days after its submission:

- Whether the servicing of the loan may be assigned, sold, or transferred.
- The percentages of loans (rounded to the nearest quartile (25 percent)) made by the credit union in each of the last three calendar years for which servicing has been assigned, sold or transferred or, in the alternative, a statement that the credit union has previously assigned, sold, or transferred the servicing of federally related mortgage loans.
- The best available estimate of the percentage of loans to be made by the credit union that may be assigned, sold, or transferred during the 12-month period beginning on the date of origination.
- A summary of the information that will be provided to the borrower if the loan is transferred.
- A disclosure of the duty of the credit union to:
    1. Provide a written acknowledgment of the borrower's qualified written request for information relating to the loan within 20 business days.
    2. Make corrections, if necessary, or provide a written explanation of why the account is correct, within 60 days of notice.
    3. Withhold, during the 60-day period, information about any overdue payment to a credit reporting agency.
- A written acknowledgment that the applicant has read and understood the disclosure, evidenced by the signature of the applicant.

When the servicing of a federally related mortgage loan is assigned, sold, or transferred, the transferor servicer (present servicer) must provide a disclosure not less than 15 days before the effective date of the transfer. The same notice from the transferee servicer (new servicer) must be provided not more than 15 days after the effective date of the transfer. Both notices may be combined into one notice delivered to the borrower not less than 15 days before the effective date of the transfer. The disclosure must include:

- The effective date of the transfer of servicing.
- The name, address for consumer inquiries, and toll-free or collect-call telephone number of the transferee servicer.
- A toll-free or collect-call telephone number for a person employed by the transferor servicer that can be contacted by the borrower to answer servicing questions.
- The date on which the transferor servicer will cease accepting payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates must either be the same or consecutive dates.
- Any information about the effect of the transfer on the availability of optional insurance and any action the borrower must take to maintain coverage.

- A statement that the transfer does not affect any other terms or conditions of the mortgage, except as related directly to servicing. During the 60-day period beginning on the date of transfer, no late fee can be imposed on a borrower who has made the payment to the wrong servicer. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:
- Transfers between affiliates.
- Transfers resulting from mergers or acquisitions of servicers or subservicers.
- Transfers between master servicers, when the subservicer remains the same.

Prohibition of Fees for Preparing Federal Disclosures (24 C.F.R. §3500.12)

For loans subject to RESPA, no fee may be charged for preparing the settlement statement or the escrow account statement or any disclosures required by the Truth in Lending Act.

Written Programs / Documentation

Prohibition Against Kickbacks and Unearned Fees (24 C.F.R. §3500.14)

Any person who, pursuant to any agreement or understanding, gives or receives a fee or a thing of value (including payments, commissions, fees, gifts, or special privileges) for the referral of settlement business violates RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered kickbacks.

Title Companies (24 C.F.R. §3500.16 and 12 U.S.C. §2608)

Credit unions that hold legal title to the property being sold (i.e., sellers of property) are prohibited from requiring borrowers, either directly or indirectly, to use a particular title company.

Escrow Accounts (24 C.F.R. §3500.17)

The amount of escrow funds that can be collected at settlement is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth of the estimated total annual payments from the account.

- Escrow Account Analysis
  Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer shall

use an escrow disbursement date that is on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer shall analyze each account anew at the completion of the computation year to determine the borrower's monthly payments for the next computation year.

- Escrow Accounting Methods
  Servicers shall use only aggregate accounting to conduct an escrow analysis. The rule prescribes the arithmetic operations for both the aggregate analysis and the single-item accounting methods.

- Transfer of Servicing
  If the new servicer changes the payment or accounting method, it must provide an initial escrow account statement within 60 days of the date of servicing transfer. When a new servicer provides an initial escrow account statement upon the transfer, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

- Shortages, Surpluses, and Deficiencies
  Servicers must analyze escrow accounts to determine whether a surplus, shortage, or deficiency exists prior to adjusting the account. Adjustments must be made according to the requirements outlined in §3500.17(f). A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

- Timely Payments
  The servicer shall pay escrow disbursements by the disbursement date. In calculating the disbursement date, the servicer must use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Servicers Must Respond to Borrower's Inquiries (24 C.F.R. §3500.21)

A credit union servicer must respond to a borrower's qualified written inquiry and take appropriate action within established time frames after receipt of the inquiry. Generally, the credit union must provide written acknowledgment within 20 business days and take certain specified actions within 60 business days of receipt of such inquiry. During the 60-business-day period following receipt of a qualified written request from a borrower relating to a disputed payment, a credit union may not provide information on any overdue payment, or relating to this period or the qualified written request, to any consumer reporting agency.

Recordkeeping

HUD-1 or HUD-1A Retention (24 C.F.R. §3500.10(e))

The credit union must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the credit union disposes of its interest in the

mortgage and does not service it. If the loan is transferred, the credit union shall provide a copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as part of the transfer. The owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

Kickbacks and Unearned Fees Retention (24 C.F.R. §3500.14(h))

Documents must be retained for five years from the date of execution.

Affiliated Business Arrangements Retention (24 C.F.R. §3500.15(d))

Documents must be retained for five years after the date of execution.

Servicing Disclosure Statement Retention (24 C.F.R. §3500.21(c))

The applicant's signed acknowledgment of the Servicing Disclosure Statement must be retained for five years after the date of settlement.

Record Keeping for Escrow Accounts (24 C.F.R. §3500.17(l))

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Short Year Statements (24 C.F.R. §3500.17)

Each servicer shall keep records that are easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer shall maintain the records for each escrow account for at least five years after the servicer last serviced the account.

Enforcement / Liability

Administrative Enforcement Authority

The Department of Housing and Urban Development (HUD) is responsible for enforcing compliance for all credit unions.

Penalties and Liabilities

Escrow Accounts
A servicer's failure to submit to a borrower an initial or annual escrow account statement shall constitute a violation of RESPA. For each such violation a civil penalty of $55 may be assessed, except that the total of the assessed penalties shall not exceed $110,000 for any one servicer for violations that occur during any consecutive 12-month period. If the violation is due to intentional disregard, a penalty of $110 is assessed for each failure to submit the statement, without any annual cap on liability.

Kickbacks
Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees, including:

- Civil liability to the parties affected, equal to three times the amount of the referral fee, kickback, or unearned fee.
- The possibility that the costs associated with any court proceeding and reasonable attorney's fees could be recovered.
- A fine of no more than $10,000 or imprisonment for no more than 1 year or both, for each violation.

Mortgage Servicing
In an action brought by an individual, failure to comply with any provision of §3500.21 will result in actual damages, attorneys fees, and additional damages (in the case of a pattern or practice of noncompliance), as the court allows, up to $1,000. In class action suits, each borrower will receive actual and additional damages, as the court allows, up to $1,000 for each member of the class, except that the total amount of damages in any class action may not exceed the lesser of $500,000 or 1 percent of the net worth of the servicer.

Title Companies
Civil liability to the buyer for violating the provision that a credit union (seller) cannot require a borrower to use a particular title company is an amount equal to three times all charges made for the title insurance.