REAL ESTATE SETTLEMENT ACT (REGULATION X)

DEFINITIONS

Definitions (Section 3500.2)

Affiliated business arrangement
An arrangement in which:
(A) A person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and,
(B) Either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

Application
The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan. Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Associate
One who has one or more of the following relationships with a person in a position to refer settlement business:
(A) A spouse, parent, or child of such person;
(B) A corporation or business entity that controls, is controlled by, or is under common control with such person;
(C) An employer, officer, director, partner, franchisor, or franchisee of such person; or,
(D) Anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

Dealer
In the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, ``dealer'' means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract
Generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests

to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a ``creditor'' as defined under the definition of ``federally related mortgage loan'' in this part, the dealer is the lender for purposes of this part.

Effective date of transfer

Defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan or mortgage loan

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or,

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and,

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary or any other officer or agency of the Federal Government; or,

(2) Under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a ``creditor'', as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term ``creditor'' does not include any agency or instrumentality of any State, and the term ``residential real estate loan'' means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition, by a mortgage broker; or,

(F) Is the subject of a home equity conversion mortgage, also frequently called a ``reverse mortgage,'' issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate

An estimate, prepared in accordance with section 5 of RESPA (12 U.S.C. 2604), of charges that a borrower is likely to incur in connection with a settlement.

HUD-1 or HUD-1A settlement statement (also HUD-1 or HUD-1A)

The statement that is prescribed by the Secretary in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4- family residential property.

Lender

The secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under ``federally related mortgage loan'' in this section. See also Sec. 3500.5(b)(7), secondary market transactions.

Managerial employee

An employee of a settlement service provider who does not routinely deal directly with consumers, and who either hires, directs, assigns, promotes, or rewards other employees or independent contractors, or is in a position to formulate, determine, or influence the policies of the employer. Neither the term ``managerial employee'' nor the term ``employee'' includes independent contractors, but a managerial employee may hold a real estate brokerage or agency license.

Manufactured home

Defined in 24 C.F.R.§3280.2.

Mortgage broker

A person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally related mortgage loan, and who renders services as described in the definition of ``settlement services'' in this section. A loan correspondent

approved under Sec. 202.8 of this title for Federal Housing Administration programs is a mortgage broker for purposes of this part.

Mortgaged property
The real property that is security for the federally related mortgage loan.

Person
Individuals, corporations, associations, partnerships, and trusts.

Public Guidance Documents
Documents that HUD has published in the Federal Register, and that it may amend from time-to-time by publication in the Federal Register. These documents are also available from HUD at the address indicated in 24 CFR 3500.3.

Refinancing
A transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of ``refinancing'' as to transactions with the same lender is similar to Regulation Z, 12 CFR 226.20(a)):
(1) A renewal of a single payment obligation with no change in the original terms;
(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;
(3) An agreement involving a court proceeding;
(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and,
(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z
The regulation issued by the Board of Governors of the Federal Reserve System (12 C.F.R. Part 226) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 et seq.), and includes the Commentary on Regulation Z.

Required use
A situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below

the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

RESPA
The Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq.

Secretary
The Secretary of Housing and Urban Development.

Servicer
The person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and,

(2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the RTC; the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.) is assigned to HUD); the National Credit Union Administration (NCUA); the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA); and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

Servicing
Receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement
The process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.

Settlement service

Any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);
(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);
(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;
(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;
(5) Rendering of services by an attorney;
(6) Preparation of documents, including notarization, delivery, and recordation;
(7) Rendering of credit reports and appraisals;
(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;
(9) Conducting of settlement by a settlement agent and any related services;
(10) Provision of services involving mortgage insurance;
(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;
(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;
(13) Provision of services involving real property taxes or any other assessments or charges on the real property;
(14) Rendering of services by a real estate agent or real estate broker; and,
(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet

The booklet prepared by the Secretary pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Secretary publishes the form of the special information booklet in the Federal Register. The Secretary may issue or approve additional booklets or alternative booklets by publication of a Notice in the Federal Register.

State

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding

A settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see 24 C.F.R. §3500.5(b)(7)).

Thing of value
Includes any payment, advance, funds, loan, service, or other consideration.

Title company
Any institution, or its duly authorized agent, that is qualified to issue title insurance.