Real Estate Settlement Procedures Act

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC §§2601-17) became effective on June 20, 1975. The act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. The Act also protects borrowers against certain abusive practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) promulgated Regulation X (24 CFR §3500) which implements RESPA. The National Affordable Housing Act of 1990 amended RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing. It also requires disclosures for mortgage escrow accounts at closing and annually, thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.

In October 1992 Congress amended RESPA to cover subordinate lien loans. HUD, however, decided not to enforce these provisions until Regulation X was amended to cover these loans. On February 10, 1994, Regulation X was amended to extend coverage to subordinate lien loans. The amendments were effective August 9, 1994. Exemptions from coverage of RESPA and Regulation X, set forth in section 3500.5(b), were effective March 14, 1994. Technical corrections and amendments to the rule were issued on March 30, 1994 and July 22, 1994.

LINKS

Program

On June 7, 1996, HUD amended Regulation X to clarify certain exemption provisions of RESPA, amend the controlled business disclosure requirements, and to address specific comments raised in the 1994 rule. These amendments became effective on October 7, 1996. Congress further amended RESPA by changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 in September 1996, to clarity certain definitions including the controlled business disclosure requirements which were changed to the new term affiliated business arrangements. The changes also reduced the disclosures under the Mortgage Servicing provisions of RESPA effective on May 30, 1997.

Approved – FFIEC

Coverage (§3500.5(a))

RESPA is applicable to all "federally related mortgage loans." Federally related mortgage loans include:

Loans including refinances secured by a first or subordinate lien on residential real property upon which:

- A 1-4 family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives); or
- A manufactured home is located or is to be constructed using proceeds of the loan, and to which any of the following applies:
- Loans made by a lender[1], creditor[2], dealer[3];
- Loans made or insured by an agency of the federal government;
- Loans made in connection with a housing or urban development program administered by an agency of the federal government;
- Loans made and intended to be sold by the originating lender or creditor to FNMA; GNMA, or FHLMC (or its successor)[4];
- Loans which are the subject of a home equity conversion mortgage or reverse mortgage issued by a lender or creditor subject to the regulation; or
- Installment sales contracts, land contracts or contracts for deed on otherwise qualifying residential property if the contract is funded in whole or in part by proceeds of a loan made by a lender, dealer or creditor subject to the regulation.

Exemptions (§3500.5(b))

The following transactions are exempt from coverage:

[1] A lender includes financial institutions either regulated by, or whose deposits or accounts are insured by, any agency of the Federal Government.

[2] A creditor is defined in section 103(f) of the Consumer Credit Protection Act (15 USC §1602(f)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating more than $1,000,000 per year.

[3] Dealer is defined in Regulation X to mean a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned, before the first payment is due to any lender or creditor otherwise subject to the regulation.

[4] FNMA - Federal National Mortgage Association; GNMA - Government National Mortgage Association; FHLMC - Federal Home Loan Mortgage Corporation.

- A loan on property of 25 acres or more (whether or not a dwelling is located on the property).
- A loan primarily for business, commercial or agricultural purposes (definition identical to Regulation Z, 12 CFR §226.3(a)(1)).
- A temporary loan, such as a construction loan. (The exemption does not apply if the loan is used as, or may be converted to permanent financing by the same financial institution). If the lender issues a commitment for permanent financing, it is covered by the regulation. Any construction loan with a term of two years or more is covered by the regulation, unless it's made to a bonafide contractor. "Bridge" or "swing" loans are not covered by the regulation.
- A loan secured by vacant or unimproved property where no proceeds of the loan will be used to construct a 1-4 family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender actually approves the assumption.
- A renewal or modification where the original obligation (note) is still in effect but modified.
- A bona fide transfer of a loan obligation in the secondary market. (However, the mortgage servicing transfer disclosure requirements of 24 CFR 3500.21 still apply.) Mortgage broker transactions which are table funded (the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary market transactions and therefore covered by RESPA.

The exemption does not apply if there is a transfer of title to the property.

Requirements

Special Information Booklet (§3500.6)

A financial institution is required to provide the borrower with a copy of the Special Information Booklet at the time a written application is submitted, or no later than three-business days after the application is received. If the application is denied before the end of the three business-day period, the institution is not required to provide the booklet. If the borrower uses a mortgage broker, the broker rather than the institution, must provide the booklet.

- An application includes the submission of a borrower's financial information, either written or computer-generated, for a credit decision on a federally related mortgage loan. To be considered a written application, the submission must state or identify a specific property. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan. [§3500.2(b)].

- A financial institution that complies with Regulation Z (12 CFR (226.5b) for open-end home equity plans is deemed to have complied with this section.

- The booklet does not need to be given for refinancing transactions, closed-end subordinate lien mortgage loans and reverse mortgage transactions, or for any other federally related mortgage loan not intended for the purchase of a one-to-four family residential property.

Part one of the booklet describes the settlement process, the nature of charges, and suggests questions to be asked of lenders, attorneys and others to clarify what services they will provide for the charges quoted. 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, as well as sample forms and worksheets for costs comparisons. The appendix has a listing of consumer literature on home purchasing, maintenance protection, and other related topics.

Good Faith Estimates (GFE) of Amount or Range of Settlement Costs (§3500.7)

A financial institution must provide, in a clear and concise form, a good faith estimate of the amount of settlement charges that the borrower is likely to incur. The GFE must include all charges that will be listed in section L of the HUD-1 Settlement Statement, and must be provided no later than three-business days after the written application is received. This can be an estimate of the dollar amount or range of dollar amounts for each settlement service. The estimate of the amount or range for each charge: (1) must bear a reasonable relationship to the borrower's ultimate cost for each settlement charge; and (2) must be based upon experience in the locality or area in which the property involved is located. A suggested form is set forth in Appendix C. If the application is denied before the end of the three-business-day period, the institution is not required to provide the disclosure.

- A financial institution that complies with Regulation Z (12 CFR §226.5b) for open-end home equity plans is deemed to have complied with this section.

- For “no cost” or “no point” loans, the GFE must disclose any payments to be made to affiliated or independent settlement service providers. These payments should be shown as P.O.C. (Paid Outside of Closing).

- For dealer loans, the institution is responsible for providing the GFE either directly or by the dealer.

- For brokered loans, if the mortgage broker is the exclusive agent of the institution either the institution or the broker shall provide the GFE within three business days after the broker receives or prepares the application. When the broker is not the exclusive agent of the institution, the institution is not required to provide the GFE if the broker has already provided the disclosure, but the funding lender must ascertain that the GFE has been delivered.

When the financial institution requires the use of a particular settlement service provider and requires the borrower to pay all or a portion of the cost of those services, the institution must include with the GFE the following disclosures:

- A statement that use of the provider is required and that the estimate is based on the charges of the designated provider.

- The name, address and telephone number of the designated provider.

A description of the nature of any relationship between each such provider and the institution. relationship exists if:

- The provider is an associate of the institution, as defined in Section 3(8) of RESPA (12 USC 2602(8);

- The provider has maintained an account with the institution or had an outstanding loan or credit arrangement with the institution within the last twelve months; or,

- The institution has repeatedly used or required borrowers to use the provider's services within the last twelve months.

The statement that, except for a provider that is the institution's chosen attorney, credit reporting agency, or appraiser, if the institution is in an affiliated business relationship with the provider, the institution may not require use of that provider (24 CFR §3500.15).

If the institution maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others and at the time of application has not decided which provider will be selected, the institution may comply with this section by:

- Providing a written statement that the institution will require a particular provider from an approved list, and

- Disclosing in the GFE the range of costs for the required providers and providing the name of the specific provider and the actual cost on the HUD settlement statement.

If the list is less than 5 providers of service the names, addresses, telephone numbers, and costs are required along with the business relationship.

Uniform Settlement Statement (HUD-1 or HUD-1A) (§3500.8)

The HUD-1 and HUD-1A must be completed by the person (settlement agent) conducting the closing 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 home equity plans subject to the Truth in Lending Act and Regulation Z. Appendix A contains the instructions for completing the forms.

Printing and Duplication of the Settlement Statement (§3500.9)

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A that do not require prior HUD approval such as size of pages; tint or color of pages; size and style of type or print; spacing; printing on separate pages, front and back of a single page or on one continuous page; use of multi-copy tear-out sets; printing on rolls for computer purposes; addition of signature lines; and translation into any language. Other changes may be made only with the approval of the Secretary of Housing and Urban Development.

One-Day Advance Inspection of the Settlement Statement (§3500.10)

Upon request by the borrower, the HUD-1 or HUD-1A must be completed and made available for inspection during the business day immediately preceding the day of settlement, setting forth those items known at that time by the person conducting the closing.

Delivery (§3500.10(a) and (b))

The completed HUD-1 or HUD-1A must be mailed or delivered to the borrower, the seller (if there is one) and the lender (if the lender is not the settlement agent) and/or their agents 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.

Retention (§3500.10(e))

The financial institution must retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the institution disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred, the institution 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.

Prohibition of Fees for Preparing Federal Disclosures (§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.

Prohibition Against Kickbacks and Unearned Fees (§3500.14)

Any person who gives or receives a fee or a thing of value (payments, commissions, fees, gifts or special privileges) for the referral of settlement business is in violation of Section 8 of RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered kickbacks. Appendix B provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

Penalties and Liabilities

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 any charge paid for such settlement service.
- The possibility that the costs associated with any court proceeding together with reasonable attorney's fees could be recovered.
- A fine of not more than $10,000 or imprisonment for not more than 1 year or both, for each violation.

Affiliated Business Arrangements (§3500.15)

If a financial institution has either an affiliate relationship or a direct or beneficial ownership interest of more than 1% in a provider of settlement services and the lender directly or indirectly refers business to the provider it is an affiliated business arrangement. An affiliated business arrangement is not a violation of section 8 of RESPA and of §3500.14 of Regulation X if the following conditions are satisfied.

Prior to the referral, the person making each referral has provided to each person whose business is referred an Affiliated Business Arrangement Disclosure Statement (Appendix D). This disclosure shall specify the following:

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the financial institution; and
- The estimated charge or range of charges generally made by such provider.

This disclosure must also be provided on a separate piece of paper either at time of loan application, or with the GFE, or at the time of the referral.

The institution may not require the use of such a provider, with the following exceptions; the institution 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 institution to represent it's interest. The institution may only receive a return on ownership or franchise interest or payment otherwise permitted by RESPA.

Title Companies (§3500.16)

Financial institutions that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, to use a particular title company.

Civil liability for violating the provision that a financial institution (seller) cannot require a borrower to use a particular title company is an amount equal to three times that of all charges made for such title insurance.

Escrow Accounts (§3500.17)

On October 26, 1994, HUD issued its final rule changing the accounting method for escrow accounts, which was originally effective April 24, 1995. The rule establishes a national standard accounting method, known as aggregate accounting. Existing escrow accounts were allowed a three-year phase-in period to convert to the aggregate accounting method. The final rule also established formats and procedures for initial and annual escrow account statements.

The amount of escrow funds that can be collected at settlement or upon creation of an escrow account 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 (§3500.17(c)(2) and (3))

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.

HUD published a proposed rule on September 3, 1996, to address and clarify its existing escrow accounting procedures. Specifically, the proposed rule addresses mortgage escrow account disbursement requirements where the payee (i.e., the entity to which escrow items are owed, such as a taxing jurisdiction) offers a choice of annual or installment disbursements. In the supplementary

Federal Register material accompanying this proposal, HUD indicates that until it publishes a final rule, servicers should follow the following approach:

- Where a payee offers the option of installment disbursements or a discount for annual disbursements, the servicer should make disbursements on an installment basis, but may, at the servicers discretion make annual disbursements, in order to take advantage of the discount for the borrower; HUD encourages servicers to follow the preference of the borrower.

- Where the payee offers the option of either annual disbursements with no discount or installment payments, the servicer is required to make installment payments.

The servicer shall also analyze each account at the completion of the computation year to determine the borrowers monthly payments for the next computation year.

Escrow Accounting Methods

Servicers may use either single-item analysis or aggregate analysis method during the phase-in period for pre-rule accounts. On the conversion date (10/27/97), all pre-rule accounts must comply with the requirements for post-rule accounts. During the phase-in period, the transfer of servicing of a pre-rule account to another servicer does not convert the account to a post-rule account. After May 24, 1995, refinancing transactions must comply with the requirements for post-rule accounts.

Servicers must use the aggregate accounting method to conduct an escrow analysis of post-rule accounts.

Transfer of Servicing (§3500.17(e))

If the new servicer changes either the monthly payment amount or the accounting method used by the old servicer, then it must provide the borrower with an initial escrow account statement within 60 days of the date of transfer. When the new servicer provides an initial escrow account statement, it shall use the effective date of the transfer of servicing to establish the new escrow account computation year. In addition, if the new servicer retains the monthly payments and accounting method used by the old servicer, then the new servicer may continue to use the same computation year established by the old servicer or it may choose a different one, using a short-year statement.

Shortages, Surpluses, and Deficiency Requirements (§3500.17(f))

The servicer shall conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists as defined under Section 3500.17(b).

If the escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to $50. If the surplus is less than $50, the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments. These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

If the escrow account analysis discloses a shortage of less than one month's escrow payments, then the servicer has three possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it;
- the servicer may require the borrower to repay the shortage amount within 30 days; or,
- the servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If the shortage is more than or equal to one month's escrow payment, then the servicer has two possible courses of action:

- the servicer may allow the shortage to exist and do nothing to change it; or,
- the servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

If the escrow account analysis discloses a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer;

- may allow the deficiency to exist and do nothing to change it;
- may require the borrower to repay the deficiency within 30 days; or,
- may require the borrower to repay the deficiency in two or more equal monthly payments.

If the deficiency is greater than or equal to one month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or require the borrower to repay the deficiency in two or more equal monthly payments.

These provisions apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

Initial Escrow Account Statement (§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; itemize estimated taxes, insurance premiums, and other charges; the anticipated disbursement dates of those charges; the amount of the cushion; and a trial running balance.

Annual Escrow Account Statement (§3500.17(i))

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.

The annual escrow account statements must contain the account history; projections for the next year; current mortgage payment and portion going to escrow; amount of past year's monthly mortgage payment and portion that went into the escrow account; total amount paid into the escrow account during the past year; amount paid from the account for taxes, insurance premiums, and other charges; balance at the end of the period; explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, the reasons why the estimated low monthly balance was not reached.

Short-year Statements (§3500.17(i)(4))

Short-year statements can be issued to 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.

Timely Payments (§3500.17(k))

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.

Record Keeping (§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.

Penalties (§3500.17(m))

Failure to provide an initial or annual escrow account statement to a borrower can result in the financial institution or the servicer being assessed a civil penalty of $55 for each such failure, with the total for any 12 month period not to exceed $110,000. If the violation is due to intentional disregard, the penalty is $110 for each failure without any annual cap on liability.

Mortgage Servicing Disclosures (§3500.21)

The disclosures related to the transfer of mortgage servicing are required for first mortgage liens, including all refinancing transactions. Subordinate lien loans and open-end lines of credit (home equity plans), that are covered under the TILA and Regulation Z are exempt from this section.

A financial institution that receives an application for a federally related mortgage loan is required to provide the servicing disclosure statement to the borrower at the time of application if there is a face-to-face interview, otherwise within three business days after receipt of the application.

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

- The effective date of the transfer.
- 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 an employee 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. The dates must either be the same or consecutive dates.
- Any information concerning 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 the terms or conditions of the mortgage (except as related to servicing).
- A statement of the borrower's rights in connection with complaint resolution.

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 service or subservicers.
- Transfers between master servicers, when the subservicer remains the same.

Servicers Must Respond to Borrower's Inquiries (§3500.21(e))

A financial institution 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 financial institution must provide written acknowledgment within 20 business days, and take certain specified actions within 60 business days of receipt of such inquiry. The inquiry must include the name and account number of the borrower and the reasons the borrower believes the account is in error.

During the 60 business day period following receipt of a qualified written request from a borrower relating to a disputed payment, a financial institution may not provide information regarding any overdue payment, and relating to this period or the qualified written request, to any consumer reporting agency.

Relationship to State Law (§3500.21(h))

Financial institutions complying with the mortgage servicing transfer disclosure requirements of RESPA are considered to have complied with any State law or regulation requiring notice to a borrower at the time of application or transfer of a mortgage. State laws shall not be affected by the act, except to the extent that they are inconsistent and then only to the extent of the inconsistency. The Secretary of Housing and Urban Development is authorized, after consulting with the appropriate federal agencies, to determine whether such inconsistencies exist.

Penalties and Liabilities (§3500.21(f))

Failure to comply with any provision of section 3500.21 will result in actual damages, and where there is a pattern or practice of noncompliance any additional damages in an amount not to exceed $1,000. In class action cases, each borrower will receive actual damages 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 one percent of the net worth of the servicer. In addition, costs of the action and attorney fees in case of any successful action.