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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS prec § 2601

Preceding § 2601

HISTORY:

[Administrative regulations relating to real estate settlement procedures appear following *12 USCS § 2617*.]



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TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2601

§ 2601. Congressional findings and purpose

(a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs [Secretary of Veterans Affairs] submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result--

- (1) in more effective advance disclosure to home buyers and sellers of settlement costs;
- (2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;
- (3) 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
- (4) in significant reform and modernization of local recordkeeping of land title information.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 2, 88 Stat. 1724.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsec. (b), is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed words "Secretary of Veterans Affairs" have been inserted in subsec. (a) on authority of Act Oct. 25, 1988, P.L. 100-527, § 10, 102 Stat. 2640, which appears as *38 USCS § 201* note, and which provided that any reference in any Federal law to the Administrator of Veterans' Affairs shall be deemed to refer to the Secretary of Veterans Affairs.

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as a note to this section.

Short titles:

Act Dec. 22, 1974, P.L. 93-533, § 1, 88 Stat. 1724, provided: "This Act may be cited as the 'Real Estate Settlement Procedures Act of 1974'." For full classification of such Act, consult USCS Tables volumes.

Act Jan. 2, 1976, P.L. 94-205, § 1, 89 Stat. 1157, provided: "This Act may be cited as the 'Real Estate Settlement Procedures Act Amendments of 1975'." For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Effective date of Act Dec. 22, 1974. Act Dec. 22, 1974, P.L. 93-533, § 20 [19], 88 Stat. 1731, as redesignated by Act Jan. 2, 1976, P.L. 94-205, § 10, 89 Stat. 1159, provided: "The provisions of this Act, and the amendments made thereby [for full classification, consult USCS Tables volumes], shall become effective one hundred and eighty days after the date of the enactment of this Act."

Simplification and unification of disclosures required under RESPA and TILA for mortgage transactions. Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2101, 110 Stat. 3009-398, provides:

"(a) In general. With respect to credit transactions which are subject to the Real Estate Settlement Procedures Act of 1974 [*12 USCS §§ 2601 et seq.*] and the Truth in Lending Act [*15 USCS §§ 1601 et seq.*], the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') and the Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall take such action as may be necessary before the end of the 6-month period beginning on the date of enactment of this Act--

"(1) to simplify and improve the disclosures applicable to such transactions under such Acts, including the timing of the disclosures; and

"(2) to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.

"(b) Regulations. To the extent that it is necessary to prescribe any regulation in order to effect any changes required to be made under subsection (a), the proposed regulation shall be published in the Federal Register before the end of the 6-month period referred to in subsection (a).

"(c) Recommendations for legislation. If the Board and the Secretary find that legislative action may be necessary or appropriate in order to simplify and unify the disclosure requirements under the Real Estate Settlement Procedures Act of 1974 [*12 USCS §§ 2601 et seq.*] and the Truth in Lending Act [*15 USCS §§ 1601 et seq.*], the Board and the Secretary shall submit a report containing recommendations to the Congress concerning such action."

NOTES:

Code of Federal Regulations:

Comptroller of the Currency, Department of the Treasury--Organization and functions, availability and release of information, contracting outreach program, *12 CFR 4.1* et seq.

Federal Reserve System--Rules regarding availability of information, *12 CFR 261.1* et seq.

Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development--Real Estate Settlement Procedures Act, *24 CFR 3500.1* et seq.

Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development--Investigations in consumer regulatory programs, *24 CFR 3800.10* et seq.

Research Guide:**Federal Procedure:**

2 Administrative Law (Matthew Bender), ch 8, Publication of Agency Information § 8.02.

6 Administrative Law (Matthew Bender), ch 51, Judicial Review of Questions of Law and Facts § 51.01.

7 Fed Proc L Ed, Consumer Credit Protection § 15:64.

18 Fed Proc L Ed, Housing and Urban Development § 44:1.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 228.

Am Jur Trials:

88 Am Jur Trials, Resolving Real Estate Broker's Disputes, p. 321.

Am Jur Proof of Facts:

Vendor's Failure To Warn Purchaser Of Dangerous Location of Property, *12 Am Jur Proof of Facts 2d*, p. 103.

Time As Of The Essence Of Real Estate Contract, *13 Am Jur Proof of Facts 2d*, p. 581.

Forms:

13 Am Jur Legal Forms 2d, Mortgages and Trust Deeds § 179:30.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.05.

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

1 Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.

5 Debtor-Creditor Law (Matthew Bender), ch 47, Escrowees § 47.02.

Federal Taxation:

3A Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 37, Interest, Premium, and

Discount § 37.14.

3B Rabkin & Johnson, Federal, Income, Gift and Estate Taxation (Matthew Bender), ch 50C, Mortgages in Real Estate Transactions § 50C.11.

Annotations:

Construction and Application of Real Estate Settlement Procedures Act of 1974 (*12 USCS §§ 2601 et seq.*). *142 ALR Fed 511.*

Texts:

- 1 Banking Law (Matthew Bender), ch 2, Regulation of Banking § 2.04.
- 2 Banking Law (Matthew Bender), ch 37, Examinations of National Banks § 37.04.
- 3 Banking Law (Matthew Bender), ch 80, Examination and Supervision of State Member Banks § 80.39.
- 7 Banking Law (Matthew Bender), ch 150, Introduction to Consumer Credit § 150.02.
- 7 Banking Law (Matthew Bender), ch 152, Truth in Lending Act § 152.04.
- 7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.01 et seq.
- 8 Banking Law (Matthew Bender), ch 157, Home Mortgage Disclosure Act § 157.08.
- 9 Banking Law (Matthew Bender), ch 171, Application Process §§ 171.02, 171.05.
- 10 Banking Law (Matthew Bender), ch 174, Consummation § 174.11.
- 11 Banking Law (Matthew Bender), ch 194, Foreign Bank Branch Insurance § 194.04.
- 11 Banking Law (Matthew Bender), ch 195, Regulation of Banking Operations of Branches and Agencies of Foreign Banks § 195.06.

Law Review Articles:

- Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.
- Stevenson. The SEC and the New Disclosure. *62 Cornell L Rev 50*, 1976/77.
- Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.
- Field. RESPA in a Nutshell. *11 Real Prop Prob & Tr J 447*, Fall 1976.
- Owen. Kickbacks, Specialization, Price Fixing, and Efficiency in Residential Real Estate Markets. *29 Stan L Rev 931*, 1976/77.
- Dyal-Chand. From Status to Contract: Evolving Paradigms for Regulating Consumer Credit. *73 Tenn L Rev 303*, Spring 2006.

Interpretive Notes and Decisions:

- 1. Generally; purpose 2. Applicability 3. Relationship with other laws 4. Jurisdiction 5. Arbitration 6. Private right of action 7. Class actions 8. Required disclosures

1. Generally; purpose

Although statement of purpose of Real Estate Settlement Procedures Act of 1974 (RESPA) nowhere references undivided unearned fees, prohibition of such fees is consistent with *12 USCS § 2601(a)*'s goal to protect consumers from abusive practices that result in unnecessarily high settlement charges; because RESPA's stated purpose neither

requires that § 8(b) of RESPA, 12 USCS § 2607(b), be construed to prohibit undivided unearned fees nor precludes that interpretation, it does not render statutory text of § 2607(b) unambiguous. *Cohen v JP Morgan Chase & Co.* (2007, CA2 NY) 498 F3d 111.

Congress enacted Real Estate Settlement Procedures Act to ensure greater disclosure of real estate settlement fees and to protect consumers from unnecessarily high settlement charges caused by certain abusive practices. *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Where class of mortgagors alleged that mortgage corporation placed too much of mortgagors' money into escrow for taxes under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., mortgagors were entitled to summary judgment on issue of liability because conventional contracts required that account balances be zero at least once year, and damage claimed was interest lost on money held in escrow. *Fournigault v Independence One Mortg. Corp.* (2007, ND Ill) 242 FRD 486.

Mortgagor's Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., disclosure claims against loan servicer were barred under doctrine of res judicata where mortgagor filed previous complaint against servicer, which contained almost identical allegations and which was dismissed on merits; although complaint in earlier action related to different piece of property, two complaints arose from same series of loan transactions and were sufficiently related to constitute same cause of action. *Poblete v Indymac Bank* (2009, DC Dist Col) 657 F Supp 2d 86.

Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., was enacted to initiate significant reforms in real estate settlement process to insure that consumers throughout nation are provided with greater and more timely information on nature and costs of settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices. *Apgar v Homeside Lending, Inc. (In re Apgar)* (2003, BC ED Pa) 291 BR 665.

Unpublished Opinions

Unpublished: Defendant's conviction for wire fraud in violation of 18 USCS § 1343, and making false and fraudulent statements on United States Department of Housing and Urban Development (HUD)-1 settlement statement forms in violation of 18 USCS § 1001 was affirmed because defendant knew he was receiving more money than needed to purchase properties and stated importance of disclosures on HUD-1 form that was required under Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USCS §§ 2601 et seq., had "natural tendency to influence" even if HUD did not directly rely upon them. *United States v Wilkins* (2009, CA6 Tenn) 2009 FED App 72N.

2. Applicability

Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2601, protects consumers from unnecessarily high settlement charges and abusive mortgage practices, and § 8 (12 USCS § 2607(a)) of RESPA prohibits kickback and referral fee arrangements whereby any payment is made, or "thing of value" is furnished, for referral of real estate services but it does not proscribe payment to any person of bona fide salary or compensation or other payment for services actually performed under 12 USCS § 2607(c)(2). *Moreno v Summit Mortg. Corp.* (2004, CA5 Tex) 364 F3d 574, cert den (2004) 543 US 819, 125 S Ct 58, 160 L Ed 2d 27.

Court has no reason to believe 12 USCS §§ 2601 et seq. apply when nothing in complaint or amended complaint indicates that plaintiff bought from or sold residential realty to defendants, so that dismissal of that claim sua sponte is appropriate. *Kicken v Valentine Production Credit Asso.* (1984, DC Neb) 628 F Supp 1008, affd without op (1984, CA8 Neb) 754 F2d 378.

There is no basis to withstand dismissal of claim under Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.), where borrower has not alleged any violation of statute, and, even if he had, claim would still fail, for there is no allegation that loan was used to finance purchase or transfer of legal title of real property (24 CFR § 3500.50(d)(2)), and Regulation X (25 CFR § 3500.50(d)(1)) exempts transaction which is subject of suit, based on 25-acre maximum

limitation. *Dau v Federal Land Bank* (1985, ND Iowa) 627 F Supp 346, CCH Fed Secur L Rep P 92832.

Summary judgment pursuant to *Fed. R. Civ. P. 56* was denied to mortgage company and appraisal management service in first-time buyer's action alleging violations of New Jersey Consumer Fraud Act, *N.J. Stat. Ann. § 56:8-1* et seq., specifically at *N.J. Stat. Ann. § 56:8-19*, where issues of fact remained as to whether company engaged in deceptive practices in lumping appraisal fee and administrative fee together on real estate settlement statement because it was unclear whether buyer suffered ascertainable loss; however, summary judgment was granted on claim under Real Estate Settlement Practices Act, 12 USCS §§ 2601 et seq., alleging that referral fee was paid where there was no proof to support that claim, although it was denied on claim under that Act relating to fee-splitting. *Szczubelek v Cendant Mortg. Corp.* (2002, DC NJ) 215 FRD 107.

Payment of interest on escrow accounts remains beyond scope of Real Estate Settlement Procedures Act of 1974. *Flagg v Yonkers S&L Ass'n* (2004, SD NY) 307 F Supp 2d 565, affd (2005, CA2 NY) 396 F3d 178, cert den (2005) 546 US 817, 126 S Ct 343, 163 L Ed 2d 55.

Mortgagors' claim that they were charged fees for settlement services that were not provided was dismissed because alleged document preparation fees, facsimile fees, and recording fees related to actions occurring well after property transfers and therefore fell outside scope of *Real Estate Settlement Procedures Act*. *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578.

Real Estate Settlement Procedures Act of 1974, 12 USCS §§ 2601 et seq., does not federalize fraud claim simply because it touches upon real estate closing. *Williams v Berkshire Fin. Group, Inc.* (2007, ED NY) 491 F Supp 2d 320.

Summary judgment was granted in favor of purchaser with regard to her claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., because services listed by real estate company were not settlement-related and/or provide little or no benefit to purchaser; as such, they could not defeat 12 USCS § 2607(b) no services claim. *Busby v JRHBW Realty, Inc.* (2009, ND Ala) 642 F Supp 2d 1283.

Although plaintiffs alleged that loan servicing company violated Real Estate Settlement Procedure Act, 12 USCS §§ 2601 et seq., by failing to send them notice of transfer of servicing letter to their mailing address, there was no reason to charge company with any knowledge, constructive or otherwise, that plaintiffs' P.O. Box was their mailing address; plaintiffs never requested that company change their mailing address from property address to *P.O. Box*. *Rodriguez v Countrywide Homes* (2009, ED Cal) 668 F Supp 2d 1239.

3. Relationship with other laws

Since Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) specifically relates to business of mortgage insurance, and McCarran-Ferguson Act (15 USCS §§ 1011 et seq.) only protects against inadvertent federal regulation of insurance, action brought under RESPA is not barred by *McCarran-Ferguson Act*. *Patton v Triad Guar. Ins.* (2002, CA11 Ga) 277 F3d 1294, 15 FLW Fed C 183, reh, en banc, den (2002, CA11 Ga) 34 Fed Appx 392.

Homeowners' state law claim for unpaid interest on escrow account was dismissed given that federal law preempted application of state law because, pursuant to authority that was granted to it by Home Owners' Loan Act (HOLA), 12 USCS §§ 1461 et seq., Office of Thrift Supervision (OTS) had issued regulations that occupied entire field of lending regulation for federal savings and loan associations; given that HOLA dealt with institutions and Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., dealt with transactions, RESPA did not supercede HOLA and prevent OTS from asserting regulatory authority over federal savings associations with respect to escrow accounts. *Flagg v Yonkers S&L Ass'n* (2005, CA2 NY) 396 F3d 178, cert den (2005) 546 US 817, 126 S Ct 343, 163 L Ed 2d 55.

Bankruptcy court was not required to withdraw reference in adversary proceeding filed by Chapter 13 debtor against creditor where debtor essentially sought ruling and clarification of rights and responsibilities of parties because

fact that Home Owners' Loan Act, 12 USCS § 1461, et seq., or Real Estate Settlement Procedures Act, 12 USCS § 2601, et seq., were potentially implicated was not sufficient to warrant withdrawal of reference. *Anderson v Countrywide Home Loans, Inc. (In re Anderson)* (2008, ED Mich) 395 BR 7.

Mortgagor's unfair competition claims under *Cal. Bus. & Prof. Code § 17200* were preempted to extent they were based on violations of Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., and Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., because: (1) TILA governed disclosures that were required for certain loans, and thus, unfair competition claim based on TILA was within preempted category of state laws regulating loan "disclosures" under step one of Office of Thrift Supervision's (OTS) framework; and (2) since RESPA governed fees that were prohibited in connection with certain loans, unfair competition claim based on RESPA was within preempted category of state laws regulating "loan-related fees" under step one of OTS framework; however, to extent that mortgagor's unfair competition claim was based on violations of California Translation Law (CTA), *Cal. Civ. Code § 1632*, mortgagor's claim was not preempted because CTA was generally applicable state law that only incidentally affected lending; therefore, unfair competition claim based on CTA was not preempted under 15 USCS § 1461. *Reyes v Premier Home Funding, Inc. (2009, ND Cal) 640 F Supp 2d 1147*.

There was no merit to mortgagees' claims that Bankr. C.D. Cal. Form 3015-1.1A violated Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., and 11 USCS § 1322(b)(2) because it allowed Chapter 13 debtors to include reporting and other obligations in their bankruptcy plans that were not required by their mortgages; use of Form 3015-1.1A was optional, it gave bankruptcy court power to approve or reject all provisions in form on case-by-case basis, it was designed to provide necessary information concerning status of, and any additional charges to, debtor's mortgage during term of debtor's plan, and basis for inclusion of Form 3015-1.1A provisions in Chapter 13 plan was justified by need for Chapter 13 debtors to emerge from bankruptcy with their mortgage loans current. *Leff v Herrera (In re Herrera)* (2010, BAP9) 422 BR 698.

4. Jurisdiction

In action by mortgagees against providers of primary mortgage insurance alleging violations of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., court lacked subject matter jurisdiction over mortgagees' RESPA claims because, even if mortgagees alleged injury in fact pursuant to purpose behind RESPA as articulated under 12 USCS § 2601 to eliminate kickbacks or referral fees, mortgagees failed to show how any alleged injury could be redressed because mortgagees failed to allege that they were overcharged by providers and, thus, were not entitled to damages under RESPA. *Mullinax v Radian Guar., Inc. (2004, MD NC) 311 F Supp 2d 474* (criticized in *Kahrer v Ameriquest Mortg. Co. (2005, WD Pa) 418 F Supp 2d 748*) and (criticized in *Capell v Pulte Mortg. L.L.C. (2007, ED Pa) 2007 US Dist LEXIS 82570*).

Because bankruptcy court did not have general federal question jurisdiction under 28 USCS § 1331, and its jurisdiction was limited to cases under Bankruptcy Code and proceedings arising under Bankruptcy Code and arising in or related to cases under Bankruptcy Code, pursuant to 28 USCS § 1334, bankruptcy court had no jurisdiction over Chapter 13 debtor's Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., claims as to mortgage creditor's servicing of debtor's loan after debtor had filed bankruptcy; it was post-petition dispute that did not affect bankruptcy. *In re Tomasevic (2002, BC MD Fla) 279 BR 358, 39 BCD 199, 15 FLW Fed B 212*.

5. Arbitration

Defendant mortgage borrowers' federal statutory claims against plaintiff bank could be arbitrated even though arbitration agreements prohibited common law punitive damages; borrowers' federal, statutory, lender-liability claims under 12 USCS § 2601, 15 USCS § 1640, and 15 USCS § 1641(d)(1) could be arbitrated and bank's motion to compel arbitration was granted. *New South Fed. Sav. Bank v Anding (2005, SD Miss) 414 F Supp 2d 636*.

Where mortgagor filed claims alleging mortgagee violated several state and federal consumer protection statutes, to

extent arbitration agreement in parties' consumer adhesion contract was interpreted to prevent mortgagor from recovering discretionary attorney's fees and costs under Real Estate Settlement Procedures Act it was unconscionable. *Delta Funding Corp. v Harris* (2006) 189 NJ 28, 912 A2d 104, remanded (2006, CA3 NJ) 466 F3d 273.

6. Private right of action

Homeowner's claims under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., failed because there was nothing in language or structure of 12 USCS § 2603 to support homeowner's argument that Congress intended to create private cause of action for violation of this provision; with regard to claim brought under 12 USCS § 2607 there was no allegation that fee or charge was split between lenders. *Morrison v Brookstone Mortg. Co.* (2005, SD Ohio) 415 F Supp 2d 801, summary judgment gr, motion den, motion to strike den, claim dismissed, judgment entered (2006, SD Ohio) 2006 US Dist LEXIS 73389.

Homeowner's claim that mortgage broker and loan officer violated 12 USCS § 2601 by causing incurrence of "kickbacks" or "referral fees" as result of pay down of second mortgage was insufficient because plain language of § 2601 did not provide for private right of action and there were insufficient facts supporting homeowner's argument that mortgage broker and loan officer were improperly paid "kickbacks" or "referral fees" from rental property closing because mortgage broker applied \$ 22,610 from rental property refinance to pay down principal of second mortgage, which was not "kickback" or "referral fee." *Sanborn v Am. Lending Network* (2007, DC Utah) 506 F Supp 2d 917.

Punitive damages are not authorized by Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; only 12 USCS §§ 2605, 2607 and 2608 contain private rights of action, and none of these authorize punitive damages. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

7. Class actions

Putative class action seeking recovery of certain private mortgage insurance premiums will be remanded to state court, even though mortgagee contends that class members are seeking to vindicate their federal rights under Real Estate Settlement Procedures Act (RESPA) (12 USCS §§ 2601 et seq.), where members deny that challenged conduct violates RESPA, because defendant cannot create federal jurisdiction by discerning federal cause of action where plaintiff has denied one. *Blair v Source One Mortg. Servs. Corp.* (1996, DC Minn) 925 F Supp 617.

Borrowers were not entitled to certification of national class in their suit against mortgage assignee alleging violations of Real Estate Settlement Protection Act, and other federal and state law violations arising from alleged kickback scheme involving fraudulent settlement charges; borrowers failed to satisfy requirements of *Fed. R. Civ. P. 23(b)(3)* given individualized questions concerning validity of fees paid to law firm for closing services. *Reiser v Residential Funding Corp.* (2005, SD Ill) 236 FRD 425.

Based on new HUD policy statement which became controlling over prior ruling of class certification, mortgagors' action against lender regarding violations of § 8 of Real Estate Settlement Procedures Act (RESPA), specifically, 12 USCS §§ 2601, 2607, was decertified under *Fed. R. Civ. P. 23* because it was necessary to look at each transaction individually as to services provided by brokers and whether yield spread premiums to brokers were illegal unearned fees under RESPA. *Culpepper v Inland Mortg. Corp.* (2006, ND Ala) 243 FRD 453, affd (2007, CA11 Ala) 491 F3d 1260, 20 FLW Fed C 824.

8. Required disclosures

Mortgage broker's and companies' motion for summary judgment was denied on borrower's claim that they failed to make adequate disclosures under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., and Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., where there was no genuine issue of material fact that broker and companies failed to disclose fact that one company would receive yield spread premium in exchange for borrower's payment of inflated interest rate. *Brazier v Sec. Pac. Mortg., Inc.* (2003, WD Wash) 245 F Supp 2d 1136.

12 USCS § 2601

Mortgage broker's and companies' motion for summary judgment was denied on borrower's claim that they failed to make adequate disclosures under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., and Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., where there was no genuine issue of material fact that broker and companies failed to disclose existence of affiliated business arrangement between broker and one company. *Brazier v Sec. Pac. Mortg., Inc.* (2003, WD Wash) 245 F Supp 2d 1136.

Mortgagor's Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., fraud claims against financial company failed to meet requirements of *Fed. R. Civ. P. 9(b)* where mortgagor alleged that HUD-1 disbursements, which were part of disclosure process under 12 USCS §§ 2601(b)(1), 2603(a), were fraudulently filed but failed to specify when and where alleged fraud took place, what role each individual defendant, including company, played in alleged scheme, what specific misrepresentations underlay allegation of fraud, and what each defendant gained or what mortgagor lost as consequence of alleged fraud. *Poblete v Indymac Bank* (2009, DC Dist Col) 657 F Supp 2d 86.



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TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2602

§ 2602. Definitions

For purposes of this Act--

(1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which--

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or 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 such officer or agency; or

(iii) 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 a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (*15 U.S.C. § 1602(f)*), who makes or invests in residential real estate loans aggregating more than \$ 1,000,000 per year, except that for the purpose of this Act, the term "creditor" does not include any agency or instrumentality of any State;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the 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 loans), and the handling of the processing, and closing of settlement;

(4) the term "title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts;

(6) the term "Secretary" means the Secretary of Housing and Urban Development;

(7) the term "affiliated business arrangement" means 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;

(8) the term "associate" means 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; and

(9) [**Caution: This paragraph takes effect on the designated transfer date (as such date is defined in § 1062 of Act July 21, 2010, P.L. 111-203, which appears as 12 USCS § 5582), as provided by § 1100H of such Act, which appears as 5 USCS § 552a note.**] the term "Bureau" means the Bureau of Consumer Financial Protection.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 3, 88 Stat. 1724; Jan. 2, 1976, P.L. 94-205, § 2, 89 Stat. 1157; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(a), 97 Stat. 1230; Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle A, § 908(a), (b), 106 Stat. 3873; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(c)(1), 110 Stat. 3009-400.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(1), 124 Stat. 2103.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976 (effective on enactment as provided by § 12 of such Act, which appears as a note to this section), in para (1), inserted "(other than temporary financing such as a construction loan)", in clause (A), inserted "a first lien on", in clause (B)(iii), substituted "is intended to be sold by the originating lender to" for "is eligible for purchase by", deleted "or" following "Mortgage Association", substituted "a" for "from any" and "is to" for "could", and in clause (B)(iv), inserted ", except that for the purpose of this Act, the term 'creditor' does not include any agency or instrumentality of any State".

1983. Act Nov. 30, 1983 (effective 1/1/84, as provided by § 461(f) of such Act, which appears as a note to this section), in para. (5), deleted "and" following the concluding semicolon; in para. (6), substituted a semicolon for a concluding period; and added paras. (7) and (8).

1992. Act Oct. 28, 1992 (effective on enactment and not applicable retroactively, as provided by § 908(d) of such Act), in para. (1)(A), inserted "or subordinate" and ", including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property" and, in para. (3), inserted "the 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 loans),".

1996. Act Sept. 30, 1996, in para. (7), substituted "affiliated business arrangement" for "controlled business arrangement".

2010. Act July 21, 2010 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), in para. (7), deleted "and" following the concluding semicolon, in para. (8), substituted "; and" for a concluding period, and added para. (9).

Other provisions:

Effective date and suspension of application of Act Jan. 2, 1976. Act Jan. 2, 1976, P.L. 94-205, § 12, 89 Stat. 1160, provided: "The provisions of this Act and the amendments made hereby [for full classification, consult USCS Tables volumes] shall become effective upon enactment. The Secretary may suspend for up to one hundred and eighty days from the date of enactment of this Act any provision of section 4 and section 5 of the Real Estate Settlement Procedures Act of 1974, as amended by this Act [*12 USCS §§ 2603, 2604*]."

Effective date of amendments made by § 461 of Act Nov. 30, 1983. Act Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(f), 97 Stat. 1232, provides: "The amendments made by this section [amending this section, among other things; for full classification, consult USCS Tables volumes] shall become effective on January 1, 1984."

Regulations implementing amendments made by § 908 of Act Oct. 28, 1992. Act Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle A, § 908(c), 106 Stat. 3874, provides: "The Secretary of Housing and Urban Development shall issue regulations to implement the amendments made by this section [amending paras. (1)(A) and (3) of this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of *section 553 of title 5, United States Code* (notwithstanding subsections (a)(2), (b)(B) and (d)(3) of such section)."

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 1706f, 3550.2, 3500.7, 3500.14, 3500.15; 15 USCS § 6603*.

Research Guide:

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 228.

Forms:

25 Rabkin & Johnson, Current Legal Forms, § 21.30, Sales and Exchanges.

Commercial Law:

- 1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.05.
- 1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.
- 1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.18.
- 1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.
- 5 Debtor-Creditor Law (Matthew Bender), ch 47, Escrowees § 47.02.

Texts:

- 7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.05.
- 8 Banking Law (Matthew Bender), ch 157, Home Mortgage Disclosure Act § 157.08.
- 9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.
- 10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.06, 174.15.

Law Review Articles:

- Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.
- Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

1. "Settlement service" 2.--Making mortgage loan 3. Miscellaneous

1. "Settlement service"

In determining whether state requirement that interest payments be made on certain real estate tax deposits is applicable to Federal savings and loan association under Real Estate Settlement Procedures Act (*12 USCS § 2616*), state law must relate to settlement practice; since interest payment on tax escrow accounts can continue long after closing of mortgage transaction, and even throughout entire life of mortgage, it is not settlement service within meaning of *12 USCS § 2602*. *Greenwald v First Federal Sav. & Loan Asso. (1978, DC Mass) 446 F Supp 620*.

Mortgagors' claim that they were charged fees for settlement services that were not provided was dismissed because alleged document preparation fees, facsimile fees, and recording fees related to actions occurring well after property transfers and therefore fell outside scope of *Real Estate Settlement Procedures Act*. *McAnaney v Astoria Fin. Corp. (2005, ED NY) 357 F Supp 2d 578*.

In class action against lender and its subsidiary reinsurer for alleged violations of Real Estate Settlement Practices

Act (RESPA), 12 USCS §§ 2601 et seq., district court rejected claim of lender and reinsurer that non-common proof would be needed to show that class member arrangements with their private mortgage insurer qualified as "settlement service" as contemplated by 12 USCS § 2602(3); consumers alleged that lender had kickback arrangement with seven private mortgage insurers that reinsured with lender's subsidiary, and service provided by private mortgage insurers was clearly service provided in connection with real estate settlement for purposes of 12 USCS § 2602(3). *Kay v Wells Fargo & Co.* (2007, ND Cal) 247 FRD 572.

A working definition of what constitutes "settlement service" is that which either directly benefits consumer, or is performed at or before closing. *Cohen v J.P. Morgan Chase & Co.* (2009, ED NY) 608 F Supp 2d 330.

Lenders and affiliate were not entitled to judgment on pleadings under *Fed. R. Civ. P. 12(c)* on RESPA claim because borrowers alleged unfair business practice of directing borrowers to obtain primary mortgage insurance from provider who then reinsured with affiliate, with lenders receiving referral fee, which did constitute settlement service under 12 USCS §§ 2602(3) and 2607, and element of overcharging was not required for standing. *Munoz v PHH Corp.* (2009, ED Cal) 659 F Supp 2d 1094.

But for assistance in paying tax arrears, mortgage broker's tasks were normal settlement services under 12 USCS § 2602(3), arguably compensated by loan origination fee alone, and where yield spread premium (YSP), paid outside of closing, was 96% more than average and there had been no threat of foreclosure, and loan to debtor was insufficient to pay second mortgage, triable issue of fact existed as to whether YSP was earned and allowable under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq. *Apgar v Homeside Lending, Inc. (In re Apgar)* (2003, BC ED Pa) 291 BR 665.

2.--Making mortgage loan

Anti-kickback provision of Federal Real Estate Settlement Procedures Act, 12 USCS § 2607, does not apply to portion of mortgage origination fee imposed by mortgage company for commission to mortgage originator, commission to branch manager, and company's overhead, because company did not receive fee in return for referral of business to its bank owner, and making of mortgage loan is not "settlement service" under 12 USCS § 2602. *Eisenberg v Comfed Mortg. Co.* (1986, DC Mass) 629 F Supp 1157.

3. Miscellaneous

Where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees and buyers sought summary judgment on issue of disclosure under 12 USCS § 2607(c)(4)(A), title company, its subsidiary agent, and agent's subsidiary did not have to disclose realtors and realtors' limited partnerships' relationships with title company and its agent as those relationships were not affiliated business arrangements under 12 USCS § 2602(7). *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Chapter 13 debtor and trustee stated sufficient claims for private civil right of action under 12 USCS § 2605, part of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., against creditor, in its capacity as servicer of federally related mortgage loan; trustee was agent of debtor. *Miller v Ameriquest Mortg. Co. (In re Laskowski)* (2008, BC ND Ind) 384 BR 518.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2603

§ 2603. Uniform settlement statement [Caution: See prospective amendment note below.]

(a) The Secretary, in consultation with the Administrator of Veterans' Affairs [Secretary of Veterans Affairs], the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Secretary may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Secretary be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction be furnished to the seller, or to require that that part of the standard form which relates to the seller be furnished to the borrower.

(b) The form prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the Secretary may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the Secretary, waive his right to have the form made available at such time. Upon the request of the borrower to inspect the form prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

(c) **[Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.]** The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (*12 U.S.C. 3350(11)*)), a clear disclosure of--

- (1) the fee paid directly to the appraiser by such company; and
- (2) the administration fee charged by such company.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 4, 88 Stat. 1725; Jan. 2, 1976, P.L. 94-205, § 3, 89 Stat. 115; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(g)(1), 110 Stat. 3009-401.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(2), Title XIV, Subtitle F, § 1475, 124 Stat. 2103, 2200.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed words "Secretary of Veterans Affairs" have been inserted in subsec. (a) on authority of Act Oct. 25, 1988, P.L. 100-527, § 10, 102 Stat. 2640, which appears as *38 USCS § 201* note, and which provided that any reference in any Federal law to the Administrator of Veterans' Affairs shall be deemed to refer to the Secretary of Veterans Affairs.

Prospective amendment:

Amendment of section, effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(2), 124 Stat. 2103 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended:

"(A) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5 [*12 USCS § 2604*], in conjunction with the disclosure requirements of the Truth in Lending Act [*15 USCS §§ 1601 et seq.*] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act [*15 USCS §§ 1601 et seq.*], and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.';

"(B) by striking 'Secretary' each place that term appears and inserting 'Bureau'; and

"(C) by striking 'form' each place that term appears and inserting 'forms';".

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976, designated the existing provisions as subsec. (a), and in subsec. (a) as so designated, deleted "minimum" following "with such", and deleted "unavoidable" following "to reflect", and substituted the two sentences beginning "The Secretary may, by regulation, . . ." and "Nothing in this section . . ." for "Such form shall include all

12 USCS § 2603

information and data required to be provided for such transactions under the Truth in Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that Act, and shall also include provision for execution of the waiver allowed by section 6(c)."; and added subsec. (b).

1996. Act Sept. 30, 1996, in subsec. (a), substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsec. (c).

Other provisions:

Effective date and suspension of application of Jan. 2, 1976 amendment. Act Jan. 2, 1976, P.L. 94-205, § 12, 89 Stat. 1160, which appears as *12 USCS § 2602* note, provided that the amendment made to this section by such Act is effective Jan. 2, 1976 and that the Secretary may suspend such amendment for up to 180 days from enactment on Jan. 2, 1976.

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 2604, 2609, 2610*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection § 15:64.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 229.

Forms:

25 Rabkin & Johnson, Current Legal Forms, § 21.30, Sales and Exchanges.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.05.

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.03-156.05.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.06.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Stoppello. Federal Regulation of Home Mortgage Settlement Costs: RESPA and its Alternatives. *63 Minn L Rev 367*, 1979.

Interpretive Notes and Decisions:

1. Sufficiency of disclosure statement 2.--Demand and reconveyance fees

1. Sufficiency of disclosure statement

In case in which two borrowers argued that lender knowingly made false statement on HUD-1 Settlement Statement by listing amounts charged to borrowers for underwriting and tax services, rather than what it cost lender to perform or to subcontract those services, even if there was private right of action for alleged violations of *12 USCS § 2603*, under 2603(a), lender had to list amounts it charged borrowers for its settlement services; it was not required to list costs it incurred in providing those services. *Martinez v Wells Fargo Home Mortg., Inc. (2010, CA9 Cal) 598 F3d 549*.

Uniform Settlement Disclosure Statement required by *12 USCS § 2603*, but not in strict compliance with Regulation X (24 CFR § 82.6), does not violate intent of Congress in enacting Real Estate Settlement Procedures Act [*12 USCS § 2601(b)(1)*] where there is no harm to plaintiffs, type is easily readable, and format is essentially same as prescribed by Department of Housing and Urban Development. *Vega v First Federal Sav. & Loan Asso. (1977, ED Mich) 433 F Supp 624*, affd in part and revd in part on other grounds (1980, CA6 Mich) *622 F2d 918*, reh den, corrected on other grounds (1980, CA6) *1980 US App LEXIS 15714*.

Mortgage lenders are required to disclose costs associated with real estate closings; bank, as lender on home mortgage, was entitled to summary judgment because complaining home buyer was fully advised of mortgage interest rates prior to signing purchase agreement for home. *Tidwell v Homestar Real Estate Servs. (2003, SD Miss) 290 F Supp 2d 729*.

Homeowner's claims under Real Estate Settlement Procedures Act (RESPA) failed because there was nothing in language or structure of *12 USCS § 2603* to support homeowner's argument that Congress intended to create private cause of action for violation of this provision; with regard to claim brought under *12 USCS § 2607* there was no allegation that fee or charge was split between lenders. *Morrison v Brookstone Mortg. Co. (2005, SD Ohio) 415 F Supp 2d 801*, summary judgment gr, motion den, motion to strike den, claim dismissed, judgment entered (2006, SD Ohio) *2006 US Dist LEXIS 73389*.

In borrower's suit alleging predatory lending scheme to steal equity in her home, borrower was unable to proceed on her claim that she never received copy of HUD-1 Settlement Statement, as required by *24 CFR § 3500.10(b)*, because Real Estate Settlement Procedures Act did not provide private cause of action for its violation. *Stith v Thorne (2007, ED Va) 488 F Supp 2d 534*.

Mortgagor's Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., fraud claims against financial company failed to meet requirements of *Fed. R. Civ. P. 9(b)* where mortgagor alleged that HUD-1 disbursements, which were part of disclosure process under 12 USCS §§ 2601(b)(1), 2603(a), were fraudulently filed but failed to specify when and where alleged fraud took place, what role each individual defendant, including company, played in alleged scheme, what specific misrepresentations underlay allegation of fraud, and what each defendant gained or what mortgagor lost as consequence of alleged fraud. *Poblete v Indymac Bank (2009, DC Dist Col) 657 F Supp 2d 86*.

Borrower's claim brought under 12 USCS § 2603 against lender was dismissed where borrower alleged that lender failed to correctly and accurately comply with Real Estates Settlement Procedures Act's (RESPA's) disclosure requirements, there was no private right of action for violations of § 2603's disclosure requirements, and disclosure provisions of RESPA that did confer private right of action did not pertain to disclosures at loan's closing. *Lingad v IndyMac Fed. Bank (2010, ED Cal) 682 F Supp 2d 1142*.

Real estate buyer's claims for aiding and abetting breach of fiduciary duty against attorney who represented mortgage lender in real estate transaction in which buyer was allegedly falsely led to believe that family friend would be her co-mortgagor survived summary judgment, as there was evidence that attorney prepared HUD-1 statements in connection with transaction, that statements falsified information that was required under 12 USCS § 2603(b), that other documents involved in transaction conflicted with HUD-1 statements, and that attorney and family friend engaged in numerous private meetings. *Sheehy v New Century Mortg. Corp. (2010, ED NY) 690 F Supp 2d 51*.

Even if bank had failed to comply with 12 USCS § 2603, which provided for development and use of standard form disclosure statement called "HUD-1," regarding loans on real estate, borrower had no cause of action because § 2603 did not provide private cause of action for its violation even though other provisions in RESPA specifically stated that private remedy existed. *Surm v Peoples Trust & Sav. Bank (2006, Iowa) 713 NW2d 1*.

Unpublished Opinions

Unpublished: Complaint asserting allegations of violations of Real Estate Settlement Procedures Act (RESPA), under 12 USCS §§ 2603, 2604, 2605, and 2609, was properly dismissed for failure to state claim because facts alleged in complaint did not implicate provisions cited, or were too conclusory to meet even liberal *Fed. R. Civ. P. 12(b)(6)* standard. *Johnson v Wash. Mut. Bank, F.A. (2007, CA2) 216 Fed Appx 64*.

2.--Demand and reconveyance fees

RESPA is not violated by mortgage lenders' failure to disclose assessment of demand fees (mortgage lenders charge demand fee for preparing statement summarizing outstanding loan balance in connection with borrower's prepayment of balance of loan) and reconveyance fees (mortgage lenders charge reconveyance fee when they reconvey deed back to borrower after loan is repaid), as RESPA does not apply to such fees. *Bloom v Martin (1996, CA9 Cal) 77 F3d 318, 96 CDOS 1152, 96 Daily Journal DAR 1971, 142 ALR Fed 781*.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2604

§ 2604. Special information booklets [Caution: See prospective amendment notes below.]

(a) Distribution by Secretary to lenders to help borrowers. The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Secretary shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Form and detail; cost elements, standard settlement form, escrow accounts, selection of persons for settlement services; consideration of differences in settlement procedures. Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in clear and concise language--

- (1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;
- (2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4 [12 USCS § 2603];
- (3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;
- (4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and
- (5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Estimate of charges. Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary.

(d) Distribution by lenders to loan applicants at time of receipt or preparation of applications. Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Printing and distribution by lenders of booklets approved by Secretary. Booklets may be printed and distributed by lenders if their form and content are approved by the Secretary as meeting the requirements of subsection (b) of this section.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 5, 88 Stat. 1725; Jan. 2, 1976, P.L. 94-205, § 4, 89 Stat. 1158; Oct. 28, 1992, P.L. 102-550, Title IX, Subtitle B, § 951, 106 Stat. 3892.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(3), Title XIV, Subtitle D, § 1450, 124 Stat. 2104, 2174.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prospective amendment:

Amendment of section, effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(3), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended:

"(A) by striking 'Secretary' each place that term appears and inserting 'Bureau'; and

"(B) in subsection (a), by striking the first sentence and inserting the following: 'The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act [*15 USCS §§ 1601 et seq.*] and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.';"

Amendment of section, effective as provided by § 1400(c) of Act July 21, 2010. Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle D, § 1450, 124 Stat. 2174 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), provides:

"Section 5 of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2604*) is amended--

"(1) in the section heading, by striking 'special' and inserting 'home buying';

"(2) by striking subsections (a) and (b) and inserting the following new subsections:

" '(a) Preparation and distribution. The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the "Director") shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (*12 U.S.C. 1701x(e)*) for use in complying with the requirement under subsection (c) of this section.

" '(b) Contents. Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

" (1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum--

" (A) balloon payments;

" (B) prepayment penalties;

" (C) the advantages of prepayment; and

" (D) the trade-off between closing costs and the interest rate over the life of the loan.

" (2) An explanation and sample of the uniform settlement statement required by section 4 [12 USCS § 2603].

" (3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

" (4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

" (5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act [15 USCS §§ 1635 and 1639].

" (6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages", published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

" (7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act [15 USCS § 1637a].

" (8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

" (9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act [12 USCS § 2609] regarding such accounts.

" (10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

" (11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

" (12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

" (13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure. The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.;

"(3) in subsection (c), by inserting at the end the following new sentence: 'Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender. '; and

"(4) in subsection (d), by inserting after the period at the end of the first sentence the following: 'The lender shall provide the booklet in the version that is most appropriate for the person receiving it.'."

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as 12 USCS § 2601 note.

Amendments:

1976. Act Jan. 2, 1976 redesignated subsecs. (c) and (d) as subsecs. (d) and (e), respectively, and added a new subsec. (c); and, in subsec. (d) as redesignated, substituted "or for whom it prepares a written application" for "an application", and inserted "or preparation".

1992. Act. Oct. 28, 1992 (effective and applicable on enactment, as provided by § 2 of such Act, which appears as *42 USCS § 5301* note), in subsec. (d), substituted the sentence beginning "Such booklet shall be provided . . ." for "Such booklet shall be provided at the time of receipt or preparation of such application."

Other provisions:

Effective date and suspension of application of 1976 amendment. Act Jan. 2, 1976, P.L. 94-205, § 12, 89 Stat. 1160, which appears as *12 USCS § 2602* note, provided that the amendment made to this section by such Act is effective Jan. 2, 1976 and that the Secretary may suspend such amendment for up to 180 days from enactment on Jan. 2, 1976.

NOTES:**Related Statutes & Rules:**

This section is referred to in *12 USCS §§ 2607, 3500.2*.

Research Guide:**Federal Procedure:**

7 Fed Proc L Ed, Consumer Credit Protection § 15:64.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 229.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.05.

9 Banking Law (Matthew Bender), ch 171, Application Process §§ 171.03, 171.05.

9 Banking Law (Matthew Bender), ch 173, Applicant Notification § 173.03.

10 Banking Law (Matthew Bender), ch 174, Consummation § 174.11.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Interpretive Notes and Decisions:

1. Generally
2. Relationship with other laws
3. Private right of action
4. Disclosures; timeliness

1. Generally

Statements made on forms required by Real Estate Settlement Procedures Act (*12 USCS §§ 2601 et seq.*) concerning costs of settlement services could not serve as basis of conviction of making false statements to federal agency in violation of *18 USCS § 1001* where forms indicated that commission paid to real estate agent was \$ 7,500 on each sale when true commission was \$ 1,500 since false statement could not be considered material where agency in question was Federal Deposit Insurance Corporation (FDIC), but FDIC employee, though testifying that FDIC sometimes looked to such forms to obtain information concerning real estate loan transactions, did not testify that FDIC's examiners had looked at any of forms in question or that difference between stated amount and true amount would or could have influenced any action of FDIC. *United States v Kwiat (1987, CA7 Ill) 817 F2d 440*, cert den (*1987) 484 US 924, 98 L Ed 2d 245, 108 S Ct 284*.

Unpublished Opinions

Unpublished: Complaint asserting allegations of violations of Real Estate Settlement Procedures Act (RESPA), under *12 USCS §§ 2603, 2604, 2605, and 2609*, was properly dismissed for failure to state claim because facts alleged in complaint did not implicate provisions cited, or were too conclusory to meet even liberal *Fed. R. Civ. P. 12(b)(6)* standard. *Johnson v Wash. Mut. Bank, F.A. (2007, CA2) 216 Fed Appx 64*.

2. Relationship with other laws

Failure to make required disclosure of yield spread premium under *12 USCS § 2604(c)*, part of Real Estate Settlement Procedures Act, *12 USCS §§ 2601 et seq.*, to loan applicant within three days of receiving her application was deceptive act as matter of law, for purposes of state *Consumer Protection Act claim*. *Anderson v Wells Fargo Home Mortg., Inc. (2003, WD Wash) 259 F Supp 2d 1143* (criticized in *Pierce v Novastar Mortg., Inc. (2007, WD Wash) 2007 US Dist LEXIS 18336*).

Virginia consumer loan company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of action under Washington Consumer Protection Act (CPA), *Wash. Rev. Code § 19.86.010 et seq.*, which was filed by consumers for alleged failure to timely disclose yield spread premiums related to their mortgage agreements; Mortgage Brokers Practices Act (MBPA), *Wash. Rev. Code § 19.146.010 et seq.*, codified disclosure requirements of Real Estate Settlement Procedures Act and of Truth in Lending Act, and it allowed for claim to be brought under CPA when any portion of MBPA was violated; however, it was not clear whether company was exempted from MBPA under *Wash. Rev. Code § 19.146.020(1)(a)* because questions remained regarding authority under which company operated in *State of Washington*. *Pierce v Novastar Mortg., Inc. (2006, WD Wash) 422 F Supp 2d 1230*.

Although loans of two borrowers were not bona fide secondary market transactions that were exempt from Real Estate Settlement Procedures Act of 1974 (RESPA), *12 USCS §§ 2601 et seq.*, borrowers were not entitled to summary judgment ruling that lender's failure to adequately disclose payments to brokers on good faith estimates violated *Wash. Rev. Code §§ 31.04.027(6), 31.04.102* of Washington Consumer Loan Act, *Wash. Rev. Code §§ 31.04.005 et seq.*,

because genuine issues remained as to whether one borrower received good faith estimate and whether lender's yield spread premium disclosures in range beginning with zero were inadequate under 12 USCS § 2604(c). *Pierce v Novastar Mortg., Inc.* (2007, WD Wash) 489 F Supp 2d 1206.

3. Private right of action

There exists no explicit or implied private civil remedy for violations of 12 USCS § 2604(c). *Collins v FMHA-USDA* (1997, CA11 Fla) 105 F3d 1366, 10 FLW Fed C 708, cert den (1997) 521 US 1127, 138 L Ed 2d 1028, 117 S Ct 2528, reh den (1997) 521 US 1145, 138 L Ed 2d 1055, 118 S Ct 25.

Mortgagors lacked private right of action under 12 USCS § 2604(c), where they claimed that mortgage company failed to provide them with good-faith estimate of charges that they were likely to incur in connection with settlement of their mortgage, because Real Estate Settlement Procedures Act (RESPA) (12 USCS §§ 2601 et seq.) provides explicitly for private right of action in some instances, but not under section requiring good-faith estimate of charges. *Brophy v Chase Manhattan Mortg. Co.* (1996, ED Pa) 947 F Supp 879.

Where plaintiff homeowner alleged that she refinanced existing mortgage on her home, that defendants, title company and its principal, in connection with predatory lending scheme that targeted African-Americans, acted as settlement agents for refinancing without providing homeowner with good faith estimate of settlement costs as required by 12 USCS § 2604(c), claim failed because no private right of action existed for violations of § 2604(c). *Beard v Worldwide Mortg. Corp.* (2005, WD Tenn) 354 F Supp 2d 789.

Borrowers' cause of action pursuant to Real Estate Procedures Act (RESPA), 12 USCS §§ 2601 et seq., wherein they alleged that financial corporations did not provide them with good faith estimate of amount or range of charges for specific settlement services that they were likely to incur in connection with settlement, and that they were not provided with copy of Informative Costs Handbook, was dismissed because private cause of action did not exist under RESPA for violations to 12 USCS § 2604(c). *De Jesus-Serrano v Sana Inv. Mortg. Bankers, Inc.* (2007, DC Puerto Rico) 552 F Supp 2d 191, summary judgment gr, claim dismissed, judgment entered (2007, DC Puerto Rico) 552 F Supp 2d 196.

Court granted defendants' *Fed. R. Civ. P. 12(b)(6)* motion to dismiss plaintiffs allegations that defendants failed to provide plaintiff with proper "Good Faith Estimate" of amount or range of settlement charges prior to closing, in violation of 12 USCS § 2604(c); there was no private cause of action for violation of § 2604(c), or any regulations relating to it because no evidence existed to establish that Congress intended to create private right of action, which was one of prerequisites to finding implied right of action under *Cort v. Ash. Carr* (2007, WD Tenn) 476 F Supp 2d 859.

Court granted defendants' motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)* that portion of plaintiff's complaint that alleged defendants had violated Real Estate Settlement Procedures Act, 12 USCS §§ 2604(c) and 2607, specifically that defendants failed to provide plaintiff with proper "Good Faith Estimate" of amount of range of settlement charges prior to closing; no private right of action existed for claims that were brought under 12 USCS § 2604(c), and plaintiff had presented no argument as to why RESPA one-year statute of limitations should have been tolled *Johnson v Equity Title & Escrow Co. of Memphis, LLC* (2007, WD Tenn) 476 F Supp 2d 873.

In case in which home buyer apparently mistakenly cited to 12 USCS § 2607(a) rather than 12 USCS § 2604(c) when she alleged that there were never any proper disclosures made to her, buyer's claims against real estate settlement company and mortgagee nonetheless failed since § 2604(c) did not provide for private right of action; § 2607(a) applied to kickbacks, it did not apply to disclosures. *Makomi Bamba v Res. Bank* (2008, DC Dist Col) 568 F Supp 2d 32.

Borrower failed to sufficiently plead claims under Real Estate Settlement Procedures Act against lender and servicer because there was no private civil remedy under 12 USCS § 2604(c) for failure to provide good faith estimate and he failed to provide specific facts to meet requirements for alleging violations of 12 USCS § 2605. *Delino v Platinum Cmty. Bank* (2009, SD Cal) 628 F Supp 2d 1226.

In action in which borrowers alleged that lender failed to provide them with reasonable good faith estimate of amounts required to be placed into their escrow account in violation of 24 CFR § 3500.7 and 24 CFR § 3500, app. C, borrowers failed to state claim under Real Estate Settlement Procedures Act because cited regulations corresponded directly with 12 USCS § 2604(c), which did not contain explicit or implicit private right of action, and borrowers did not explain how alleged violations gave rise to cause of action independent of § 2604. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

Unpublished Opinions

Unpublished: There was no private right of action for violation of 12 USCS § 2604(c) and borrower did not alleged enough facts to suggest, raise reasonable expectation of, or render plausible claims brought under either 12 USCS §§ 2607 or 2605(e). *Frazile v EMC Mortg. Corp.* (2010, CA11 Fla) 2010 US App LEXIS 11931.

Unpublished: Homeowner's 12 USCS § 2604 claim against several defendants failed to state claim as Real Estate Settlement Procedures Act did not explicitly provide private right of action. *Silvas v GMAC Mortg., LLC* (2009, DC Ariz) 2009 US Dist LEXIS 118854.

4. Disclosures; timeliness

Mortgage broker's motion for summary judgment was denied on borrower's claim that he failed to make timely disclosures under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., and Truth in Lending Act, 15 USCS §§ 1601 et seq.; there was question of fact regarding whether disclosure was timely because parties disagreed as to date of borrower's loan application. *Brazier v Sec. Pac. Mortg., Inc.* (2003, WD Wash) 245 F Supp 2d 1136.

Although loans of two borrowers were not bona fide secondary market transactions that were exempt from Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USCS §§ 2601 et seq., borrowers were not entitled to summary judgment ruling that lender's failure to adequately disclose payments to brokers on good faith estimates violated RESPA because genuine issues remained as to whether one borrower received good faith estimate and whether lender's yield spread premium disclosures in range beginning with zero were inadequate under 12 USCS § 2604(c). *Pierce v Novastar Mortg., Inc.* (2007, WD Wash) 489 F Supp 2d 1206.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2605

§ 2605. Servicing of mortgage loans and administration of escrow accounts [Caution: See prospective amendment notes below.]

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing. Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor or loan servicing at time of transfer.

(1) Notice requirement. Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice.

(A) In general. Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings. The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing. The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice. The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or an other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee or loan servicing at time of transfer.

(1) Notice requirement. Each transferee servicer to whom the servicing of an federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice.

(A) In general. Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings. The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing. The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice. Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) Treatment of loan payments during transfer period. During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries.

(1) Notice of receipt of inquiry.

(A) In general. If any servicer of a federally related mortgage loan receives a qualified written request from the

borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request. For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that--

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry. Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall--

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating. During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 603 of the Fair Reporting Act [15 USCS § 1681a]).

(f) Damages and costs. Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals. In the case of any action by an individual, an amount equal to the sum of--

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$ 1,000.

(2) Class actions. In the case of a class action, an amount equal to the sum of--

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$ 1,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of--

(i) \$ 500,000; or

(ii) 1 percent of the net worth of the servicer.

(3) Costs. In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability. A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error

and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Administration of escrow accounts. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

(h) Preemption of conflicting State laws. Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) Definitions. For purposes of this section:

(1) Effective date of transfer. The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer. The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include--

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act [12 USCS § 1823(c)] or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing. The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 10 [12 USCS § 2609], and making the payments 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 loan.

(j) Transition.

(1) Originator liability. A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability. A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date. The Secretary shall, by regulations that shall take effect not later than April 20, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) Servicer prohibitions [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as 15 USCS § 1601 note.].

(1) In general. A servicer of a federally related mortgage shall not--

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

(2) Force-placed insurance defined. For purposes of this subsection and subsections (l) and (m), the term "force-placed insurance" means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) Requirements for force-placed insurance [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

(1) Written notices to borrower. A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless--

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing--

(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) Sufficiency of demonstration. A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

(3) Termination of force-placed insurance. Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall--

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

(4) Clarification with respect to Flood Disaster Protection Act. No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973 [*42 USCS § 4012a(e)*].

(m) Limitations on force-placed insurance charges [Caution: This subsection is effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.]. All charges, apart from charges subject to

State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

HISTORY:

(Act Dec. 22, 1974, P.L. 93-533, § 6, as added Nov. 28, 1990, P.L. 101-625, Title IX, Subtitle C, § 941, 104 Stat. 4405; April 10, 1991, P.L. 102-27, Title III, § 312, 105 Stat. 154; Sept. 23, 1994, P.L. 103-325, Title III, § 345, 108 Stat. 2239; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(a), 110 Stat. 3009-399.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(4), Title XIV, Subtitle E, § 1463, 124 Stat. 2104, 2182.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 2605 (Act Dec. 22, 1974, P.L. 93-533, § 6, 88 Stat. 1726) was repealed by Act Jan. 2, 1976, P.L. 94-205, § 5, 89 Stat. 1158, effective on enactment, as provided by § 12 of such Act, which appears as *12 USCS § 2602* note. Such section provided for advance disclosure of real estate settlement costs.

Prospective amendment:

Amendment of subsec. (j)(3), effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(4), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that subsec. (j)(3) of this section is amended:

"(A) by striking 'Secretary' and inserting 'Bureau'; and

"(B) by striking ', by regulations that shall take effect not later than April 20, 1991,';"

Amendment of subsections. (e)-(g), effective as provided by § 1400(c) of Act July 21, 2010. Act July 21, 2010, P.L. 111-203, Title XIV, Subtitle E, § 1463(b)-(d), 124 Stat. 2184 (effective as provided by § 1400(c) of Act July 21, 2010, P.L. 111-203, which appears as *15 USCS § 1601* note.), provides:

"(b) Increase in Penalty Amounts. Section 6(f) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(f)*) is amended--

"(1) in paragraphs (1)(B) and (2)(B), by striking '\$ 1,000' each place such term appears and inserting '\$ 2,000'; and

"(2) in paragraph (2)(B)(i), by striking '\$ 500,000' and inserting '\$ 1,000,000'.

"(c) Decrease in Response Times. Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(e)*) is amended--

"(1) in paragraph (1)(A), by striking '20 days' and inserting '5 days';

"(2) in paragraph (2), by striking '60 days' and inserting '30 days'; and

"(3) by adding at the end the following new paragraph:

" '(4) Limited extension of response time. The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.' "

"(d) Prompt Refund of Escrow Accounts Upon Payoff. Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (*12 U.S.C. 2605(g)*) is amended by adding at the end the following new sentence: 'Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.' "

Amendments:

1991. Act April 10, 1991 added subsec. (j).

1994. Act Sept. 23, 1994, in subsec. (a)(1)(B), substituted "at the choice of the person making a federally related mortgage loan--

"(i) for each of the most recent"

for "for each of the most recent", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcl. (II) as redesignated, substituted "or" for "and" following the concluding semicolon, and added new cl. (ii).

1996. Act Sept. 30, 1996 substituted subsec. (a) for one which read:

"(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing.

(1) In general. Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan--

"(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

"(B) at the choice of the person making a federally related mortgage loan--

"(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that--

"(I) for any loan application during the 12-month period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for only the most recent calendar year completed, and for any loan application during the 12-month period beginning 1 year after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

"(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

"(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

"(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

"(2) Model disclosure statements. Not later than 90 days after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period upon the origination. The estimate shall be as one of the following range of possibilities--between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

"(3) Signature of applicant. Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, that the applicant has read and understood the disclosure and that is evidenced by the

signature of the applicant at the place where such statement appears in the application."

2010. Act July 21, 2010 (effective as provided by § 1400(c) of such Act, which appears as *15 USCS § 1601* note), added subsecs. (k)-(m).

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 2609, 2610, 2614, 3500.2, 3500.5, 3500.12, 4901, 5220; 15 USCS § 1641*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:67, 69.

Commercial Law:

- 1 Debtor-Creditor Law (Matthew Bender), ch 1, Truth in Lending § 1.07.
- 1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.
- 1A Debtor-Creditor Law (Matthew Bender), ch 8, Fair Debt Collection § 8.03.
- 1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense §§ 13.03, 13.18.
- 1A Debtor-Creditor Law (Matthew Bender), ch 16, Fair Credit Reporting § 16.05.

Annotations:

Application of Equitable Estoppel Against Nonsignatory to Compel Arbitration Under Federal Law. *43 ALR Fed 2d 275*.

Enforcement of Arbitration Agreement Contained in Real Estate Contract by or Against Nonsignatory Under State Law. *10 ALR6th 669*.

Texts:

- 7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.05, 156.08, 156.09.
- 9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.
- 10 Banking Law (Matthew Bender), ch 174, Consummation § 174.06.
- 10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abbound. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Emerging Issues Analysis

Robert M. Jaworski on Back to the Future with the Mortgage Reform and Anti-Predatory Lending Act (Part of Dodd-Frank)

Robert M. Jaworski analyzes the Mortgage Reform and Anti-Predatory Lending Act (in Dodd-Frank Act), including the significant changes that it makes to the Truth in Lending Act (e.g., incentives for qualified mortgages, anti-steering prohibitions, defenses to foreclosure, disclosure & servicing requirements, & appraisal-related rules) and RESPA (e.g., changes to rules re: qualified written requests); and what this reform suggests about the future.

Interpretive Notes and Decisions:

1. Generally 2. Applicability 3. Limitation of actions 4. Collateral estoppel; res judicata 5. Arbitration 6. Private right of action 7. Class actions 8. Relationship with bankruptcy 9. Damages 10. Required notices and responses; timeliness

1. Generally

While borrowers argued on appeal that fact issue existed with respect to whether fee charged by lender for payoff statement requested pursuant to Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, was reasonable, that argument was not raised prior to when judgment that was entered against them and was not part of appeal; because, pursuant to *Fed. R. Civ. P. 59(e)*, this issue was never properly raised in district court and that court did not address it, appellate court declined to address it for first time on appeal. *Watt v GMAC Mortg. Corp. (2006, CA8 Ark) 457 F3d 781*.

Because there was potential factual overlap between consumer's claim that mortgage corporation improperly charged him fees in violation of Truth in Lending Act and consumer's claims under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., at minimum with respect to whether corporation refunded admitted \$ 5.00 overcharge in compliance with RESPA, 12 USCS § 2605(e)(2)(A), and possibly also with respect to "Attorney Outsourcing Fees" and "Unpaid Other Fees" that corporation charged consumer, corporation's motion for summary judgment on consumer's RESPA claim was granted without prejudice, subject to being renewed upon completion of discovery. *Mazzei v Money Store (2004, SD NY) 349 F Supp 2d 651*.

Where borrowers failed to state claim regarding alleged violations of loan servicing provisions of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, by mortgage companies, and borrowers had already amended their complaint twice, no further amendment under *Fed. R. Civ. P. 15(a)* was permitted on ground that it would be both futile and inequitable. *Jones v ABN AMRO Mortg. Group, Inc. (2008, ED Pa) 551 F Supp 2d 400*.

In action in which borrowers alleged that lender improperly conducted initial escrow analysis and failed to provide tax estimate that realistically estimated annual property taxes for home, borrowers failed to state claim for violation of 12 USCS § 2605(g) because borrowers did not assert facts supporting allegation that lender failed to make timely escrow payments. *Sarsfield v Citimortgage, Inc. (2009, MD Pa) 667 F Supp 2d 461*.

As loan servicer was not named party and lender was not loan servicer subject to suit under Real Estate Settlement Practices Act (RESPA), summary judgment in favor of lender was appropriate on *RESPA count*. *Madera v Ameriquest Mortg. Co. (In re Madera) (2007, BC ED Pa) 363 BR 718*.

Unpublished Opinions

Unpublished: Complaint asserting allegations of violations of Real Estate Settlement Procedures Act (RESPA), under 12 USCS §§ 2603, 2604, 2605, and 2609, was properly dismissed for failure to state claim because facts alleged in complaint did not implicate provisions cited, or were too conclusory to meet even liberal *Fed. R. Civ. P. 12(b)(6)* standard. *Johnson v Wash. Mut. Bank, F.A. (2007, CA2) 216 Fed Appx 64.*

2. Applicability

Borrowers failed to state claim for relief under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601-2617, because while 12 USCS § 2605 imposed duty on lenders to provide certain statements in response to borrower requests, such statements were not enumerated among those for which statute prohibited fee charges. *Watt v GMAC Mortg. Corp. (2006, CA8 Ark) 457 F3d 781.*

Borrowers' complaint alleging violations of 12 USCS § 2605 failed to state claim because entity that collected its mortgage payments, which turned out to be operating illegal Ponzi scheme, did not fit loan servicer definition under 12 USCS § 2605(i)(2)-(3). *Jones v ABN AMRO Mortg. Group, Inc. (2010, CA3 Pa) 606 F3d 119.*

Borrower's counterclaim alleging violation of 12 USCS § 2605(e)(1)(A) must fail, even though his counsel's request for information relating to loan was not responded to, where letter just sought information about validity of loan and mortgage documents, making no inquiry as to account balance or credit for payments, because request did not relate to "servicing" of loan within meaning of statute. *MorEquity, Inc. v Naeem (2000, ND Ill) 118 F Supp 2d 885.*

In action brought by plaintiff, whose ex-husband forged note and mortgage on plaintiff's home, against various defendants who were involved with securing note and mortgage, claim under 12 USCS § 2605, Real Estate Settlement Procedures Act, was dismissed where complaint showed that plaintiff had been provided with required servicing disclosures at time loan applications were made. *Welch v Centex Home Equity Co., L.L.C. (2004, DC Kan) 323 F Supp 2d 1087.*

Although 12 USCS § 2605 provided for private right of action, § 2605 was limited to lender's obligation to notify borrower if there was any possibility that loan could have been assigned, sold, or transferred, and lender's obligation to pay any taxes or insurance if funds had been placed in escrow with lender for that purpose; 12 USCS § 2605 did not, however, impose upon creditor or lessor duty to disclose upon homeowner HUD Settlement Statement; because there was no allegation by homeowner, nor evidence to support such claim, that mortgage broker or loan officer either transferred, or intended to transfer, assign, or sell homeowner's loan to another lender without notice in violation of 12 USCS § 2605, mortgage broker and loan officer were entitled to judgment as matter of law as to homeowner's 12 USCS § 2605 claim. *Sanborn v Am. Lending Network (2007, DC Utah) 506 F Supp 2d 917.*

Company's motion to dismiss property owners' claims for violation of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., was granted because property owners did not identify provisions of RESPA that company allegedly violated, property owners did not alleged that company was loan servicer under 12 USCS § 2605, and court was not required to guess as to manner in which company's conduct allegedly violated RESPA. *Izenberg v ETS Servs., LLC (2008, CD Cal) 589 F Supp 2d 1193.*

An email exchange between plaintiff's attorney and third party was not qualified written request under plain meaning of Real Estate Settlement Procedures Act; statute's requirements that qualified request be made in writing, include full name and account number of borrower or otherwise enable servicer to identify borrower, and be received by creditor, were noticeably lacking in plaintiff's email to third party. *Gorham-Dimaggio v Countrywide Home Loans, Inc. (2008, ND NY) 592 F Supp 2d 283.*

Borrower failed to sufficiently plead claims under Real Estate Settlement Procedures Act against lender and servicer because there was no private civil remedy under 12 USCS § 2604(c) for failure to provide good faith estimate and he failed to provide specific facts to meet requirements for alleging violations of 12 USCS § 2605. *Delino v Platinum Cmty. Bank (2009, SD Cal) 628 F Supp 2d 1226.*

Borrower's 12 USCS § 2605 claim against lender was dismissed where borrower had not alleged that lender was either lender or loan servicer to whom requirements of § 2605 applied, but had merely alleged that he was not certain exactly which of defendants was actually servicer of his loan at any given time. *Lingad v IndyMac Fed. Bank* (2010, ED Cal) 682 F Supp 2d 1142.

Debtors had stated actionable claim under RESPA because loan servicing company had failed to explain why it could not produce certain documents that had been requested by debtors. *Price v America's Servicing Co.* (In re Price) (2009, BC ED Ark) 403 BR 775.

Where bankruptcy debtor alleged that mortgage loan servicer charged unauthorized late fees, misapplied payments, and failed to credit payments of interest, principal, and escrow charges, debtor failed to allege any violation of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; debtor failed to identify any requirement of 12 USCS § 2605 which servicer violated, such as nondisclosure or inaction, and allegations that servicer mismanaged mortgage account did not allege violation of RESPA. *Jacques v U.S. Bank N.A.* (In re Jacques) (2009, BC ED NY) 416 BR 63.

Unpublished Opinions

Unpublished: Summary judgment under *Fed. R. Civ. P. 56(c)* was properly granted because borrower failed to make allegations against loan servicer concerning alleged violations of 12 USCS § 2605, part of Real Estate Settlement Procedures Act, and Act did not provide for liability for related companies of servicer. *McCarley v KPMG Int'l* (2008, CA11 Ala) 2008 US App LEXIS 19733.

3. Limitation of actions

In case in which pro se homeowner alleged that three mortgage lenders did not provide timely notice of transfer of servicing of his mortgage loan as required by 12 USCS § 2605(b), lenders' motion for summary judgment was granted since homeowner's claim was barred by three-year limitations period in 12 USCS § 2614; violation of 15-day rule occurred in 1995 and homeowner did not sue until 2005. *Williams v Countrywide Home Loans, Inc.* (2007, SD Tex) 504 F Supp 2d 176, affd (2008, CA5 Tex) 269 Fed Appx 523 and (criticized in *Wentz v Saxon Mortg.* (In re Wentz) (2008, BC SD Ohio) 393 BR 545).

Where mortgagors sued mortgagee, asserting claims under Real Estate Settlement Practices Act (RESPA), 12 USCS §§ 2601 et seq., Fair Debt Collection Practices Act, 15 USCS §§ 1692e, 1692(f), and Utah Mortgage Lending and Servicing Act, *Utah Code Ann. §§ 70D-1-1 through 70D-1-21*, summary judgment was granted to mortgagee as July 2002 \$ 3,098.76 payment was in accord and satisfaction of pre-July 2002 dispute, and there was no dispute that mortgagors failed to properly make many payments thereafter; though they claimed that their \$ 500 monthly payments were more than sufficient to cover fixed monthly payment of \$ 419.92, mortgagors had fundamental misunderstanding of their obligations under mortgage, particularly as to escrow funds. Moreover, their claims, at least with respect to RESPA, were barred pursuant to 12 USCS § 2614 by three-year statute of limitations. *Cook v Chase Manhattan Mortg. Corp.* (2007, DC Utah) 509 F Supp 2d 986, affd (2007, CA10) 256 Fed Appx 223.

Although borrowers' RESPA claim governing disclosure requirements under 12 USCS § 2605 was not barred by three-year limitations period of 12 USCS § 2614, borrowers had to explain why their claims under 12 USCS §§ 2607 and 2608 were not barred by one-year limitations period of § 2614. *Kelley v Mortgage Elec. Registration Sys.* (2009, ND Cal) 642 F Supp 2d 1048.

Plaintiffs' cause of action for alleged violation of 12 USCS § 2605 was barred by three year statute of limitations set forth in 12 USCS § 2614 because plaintiffs received notice of assignment by November 2001 and did not file their lawsuit until April 2006. *Poskin v TD Banknorth, N.A.* (2009, WD Pa) 687 F Supp 2d 530.

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to

residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; complaint lacked sufficient allegations of transfer of borrower's loan for purposes of 12 USCS § 2605(b) and that such transfer fell within three-year limitations period under 12 USCS § 2614. *Saldade v Wilshire Credit Corp.* (2010, ED Cal) 2010 US Dist LEXIS 21034, complaint dismd, in part, judgment entered (2010, ED Cal) 2010 US Dist LEXIS 28220, complaint dismd, in part, judgment entered (2010, ED Cal) 686 F Supp 2d 1051.

Mortgagors' claims, which was apparently brought under 12 USCS § 2605 against law firm and others, was time-barred where claims were filed more than three years after alleged violations occurred. *Weingartner v Chase Home Fin., LLC* (2010, DC Nev) 702 F Supp 2d 1276.

Chapter 13 debtors' claims against mortgagee arising out of refinancing transaction that were predicated on alleged violations of Truth in Lending Act, 15 USCS §§ 1601 et seq.; Massachusetts Consumer Credit Cost Disclosure Act, *Mass. Gen. Laws ch. 140D, § 1* et seq.; Real Estate Settlement Procedures Act, *Mass. Gen. Laws ch. 183, § 63*; 12 USCS § 2605; Massachusetts consumer protection statute, *Mass. Gen. Laws ch. 93A*; and common law arose at time of refinancing; to extent that debtors relied on "continuing violation" theory with respect to refinancing claims, that argument was inconsistent with binding First Circuit case law. *Robert v Household Fin. Corp. II (In re Robert)* (2010, BC DC Mass) 432 BR 464.

4. Collateral estoppel; res judicata

Debtor was not barred by Rooker-Feldman doctrine, res judicata, or collateral estoppel from bringing claims against loan servicer, alleging violations of Real Estate Settlement Procedures Act, 12 USCS § 2605; claims raised did not compromise integrity of state court foreclosure judgment obtained by mortgage lender, claims were personal against servicer and could not have been raised in response to mortgage foreclosure action brought by mortgage lender in state court, and claims did not involve issues that were part of mortgage foreclosure proceeding brought by mortgage lender in state court, nor were issues actually litigated in proceeding or essential to foreclosure judgment. *Faust v Deutsche Bank Nat'l Trust Co. (In re Faust)* (2006, BC ED Pa) 353 BR 94.

Debtors' claim under RESPA was not barred by res judicata doctrine where it was not until after debtors filed bankruptcy that they requested information that by 12 USCS § 2605(e) they were entitled to receive; thus, debtors could not have raised their RESPA cause of action during state court foreclosure action because it did not exist at that time. *Sanchez Rodriguez v R&G Mortg. Corp. (In re Sanchez Rodriguez)* (2007, BC DC Puerto Rico) 377 BR 1.

Unpublished Opinions

Unpublished: In case brought under 12 USCS § 2605(e) in which home owner appealed district court's entry of summary judgment in favor of loan servicer, owner had not shown that there was genuine issue of material fact as to whether his loan was in default when foreclosure complaint was filed in early 2007; in his response to servicer's motion for summary judgment and his motion for reconsideration, he merely asserted that he paid amount sufficient to resolve escrow deficiency reflected in March escrow statement, but as district court and even owner himself noted, his September escrow statement showed that deficiency increased again in late 2006. *Sellers v GMAC Mortg. Group, Inc.* (2008, CA11 Fla) 2008 US App LEXIS 22700.

5. Arbitration

Where mortgagors, husband and wife, asserted claims against businesses under Real Estate Settlement Procedures Act, at 12 USCS § 2605, based on businesses' role as servicers of promissory note executed by husband, claims of both mortgagors related to note and/or relationships that resulted from note and thus were subject to broad, mandatory, binding arbitration clause in note; doctrine of equitable estoppel barred wife, who had not signed note, from asserting claims related to note and, at same time, avoiding burdens imposed by note. *Blinco v Green Tree Servicing LLC* (2005, CA11 Fla) 400 F3d 1308, 18 FLW Fed C 248.

Where mortgagors, husband and wife, asserted claims against businesses under Real Estate Settlement Procedures Act, at 12 USCS § 2605, based on businesses' role as servicers of promissory note executed by husband, even though businesses were not signatories to note, they could invoke mandatory, binding arbitration clause in note; because mortgagors' claims derived from "relationship" that "result[ed] from" note (i.e., loan servicing), arbitration clause easily encompasses both businesses as alleged servicers of note. *Blinco v Green Tree Servicing LLC* (2005, CA11 Fla) 400 F3d 1308, 18 FLW Fed C 248.

6. Private right of action

In Real Estate Settlement Procedures Act (RESPA) case, district court entry of judgment against two homeowners was affirmed because their cause of action arose under § 10 of RESPA, 12 USCS § 2609, which did not provide for private right of action, not § 6 of RESPA, 12 USCS § 2605, as argued by homeowners. *Hardy v Regions Mortg., Inc.* (2006, CA11 Ala) 449 F3d 1357, 19 FLW Fed C 575.

Claims brought by homeowner against mortgage company under Real Estate Settlement Procedure Act (RESPA), 12 USCS §§ 2601 et seq., were barred because RESPA did not provide private right of action under 12 USCS § 2609 and homeowner failed to show any actual damage as required by 12 USCS § 2605. *Byrd v Homecomings Fin. Network* (2005, ND Ill) 407 F Supp 2d 937 (criticized in *Barany-Snyder v Weiner* (2007, ND Ohio) 2007 US Dist LEXIS 5137).

In action in which borrowers alleged that lender failed to properly conduct escrow account analysis to determine amount that they were required to deposit into their escrow account in violation of 24 CFR § 3500.17(c)(2) and that lender violated 24 CFR § 3500.17(g)(1)(i) by failing to provide initial escrow account statement providing reasonable estimate of taxes, insurance premiums, and other charges that lender should have reasonably anticipated, borrowers failed to state claim under Real Estate Settlement Procedures Act because § 3500.17(c)(2) and (g)(1)(i) related to 12 USCS § 2609, which did not confer private right of action, and borrowers did not explain how alleged violations of regulations related to their private right of action under 12 USCS § 2605. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

Borrowers' claim under Real Estate Settlement Procedures Act, 12 USCS § 2605, failed on motion to dismiss because there was no private right of action under that section; however, claim brought under 12 USCS § 2607 remained because borrowers alleged that defendants received kickbacks in course of refinancing and that provision specifically addressed private remedies. *Urbina v Homeview Lending, Inc.* (2009, DC Nev) 681 F Supp 2d 1254.

Mortgagor's 12 USCS § 2605 claim against mortgagee's assignee was dismissed where complaint failed to allege that assignee was loan servicer, that any written correspondence concerned servicing of mortgagor's loan, or that he had suffered actual damages. *Jensen v Quality Loan Serv. Corp* (2010, ED Cal) 702 F Supp 2d 1183, motion gr, dismd (2010, ED Cal) 2010 US Dist LEXIS 72393.

Chapter 13 debtor and trustee stated sufficient claims for private civil right of action under 12 USCS § 2605, part of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2601 et seq., against creditor, in its capacity as servicer of federally related mortgage loan; trustee was agent of debtor. *Miller v Ameriquest Mortg. Co. (In re Laskowski)* (2008, BC ND Ind) 384 BR 518.

Unpublished Opinions

Unpublished: While plaintiff daughter argued she assumed her mother's mortgage, she was never added to loan, depriving her of standing to bring claims under Fair Debt Collection Practices Act, 15 USCS §§ 1692c-g, 1692j, Real Estate and Settlement Procedure Act, 12 USCS § 2605(f), Truth in Lending Act, 15 USCS § 1640(a), and 815 ILCS 505/1(e) of Illinois Consumer Fraud and Deceptive Business Practices Act against defendant mortgagee; thus, her claims were subject to dismissal for lack of standing, for failure to state claim under 28 USCS § 1915(e)(2)(B)(ii). *Johnson v Ocwen Loan Servicing* (2010, CA11 Fla) 2010 US App LEXIS 5339.

Unpublished: There was no private right of action for violation of *12 USCS § 2604(c)* and borrower did not alleged enough facts to suggest, raise reasonable expectation of, or render plausible claims brought under either *12 USCS §§ 2607* or *2605(e)*. *Frazile v EMC Mortg. Corp. (2010, CA11 Fla) 2010 US App LEXIS 11931*.

7. Class actions

In action alleging that bank had violated *12 USCS § 2605(g)*, part of Real Estate Settlement Procedures Act, putative class, at least arguendo, met typicality requirements of *Fed. R. Civ. P. 23(a)*; those requirements were related to commonality requirement, and bank's arguments with respect to each revealed no meaningful differences. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In action alleging that bank had violated *12 USCS § 2605(g)* class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because class proceedings would at most settle limited slice of litigation, and litigation would likely require substantial individualized proceedings to resolve class members' claims; thus, proposed class issues were not shown to predominate over those individualized issues that likely would need to be resolved. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In action alleging that bank had violated *12 USCS § 2605(g)* class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because availability of effective alternative to class action device and problems inherent in conducting hundreds of follow-on procedures means that class action was not superior; availability of statutory damages, plus all actual damages, plus all reasonable attorneys fees and costs, provided substantial incentive for individual suits. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In borrowers' action alleging that bank had violated *12 USCS § 2605(g)* class certification under *Fed. R. Civ. P. 23(b)(3)* was inappropriate because likely administrability problems involved in proposed class action were extensive and real, and putative efficiency gains were limited; there was substantial chance that court would be enmeshed in lengthy individualized proceedings litigating mental anguish of temporarily having lender-placed home insurance, in which expenditure of judicial resources would be geometrically greater than resources needed to litigate threshold legal question underlying borrowers' class proposal. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In action against bank alleging violations of *12 USCS § 2605(g)*, part of Real Estate Settlement Procedures Act (RESPA), putative class satisfied commonality requirements of *Fed. R. Civ. P. 23(a)*; at minimum, claims shared common allegation that bank's alleged policy, consisting of not paying insurance bills out of borrower's escrow account unless it received bill from insurer, violated RESPA. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In action alleging violations of *12 USCS § 2605(g)*, putative class satisfied numerosity requirements of *Fed. R. Civ. P. 23(a)*; it was comprised of nearly one thousand persons who had properties in Illinois, but were not necessarily residents of Illinois, making joinder impracticable. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In borrowers' putative class action alleging violations of *12 USCS § 2605(G)*, named plaintiffs and their counsel were adequate class representatives under *Fed. R. Civ. P. 23(a)(4)*; there was no challenge to counsel, and borrowers passed this undemanding hurdle because they had at least some knowledge concerning their claims and they traveled to be deposed. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

In action alleging that bank had violated *12 USCS § 2605(g)* class certification under *Fed. R. Civ. P. 23(b)(2)* was inappropriate because damages rather than injunctive relief formed crux of action; borrowers sought statutory damages and also requested individualized follow-on procedures to prove up consequential and other damages, including putative claims for emotional distress, highly plaintiff-specific issue. *Hyderi v Wash. Mut. Bank, FA (2006, ND Ill) 235 FRD 390*.

8. Relationship with bankruptcy

Creditor mortgage lender's argument that it had no rights against Chapter 13 debtors until escrow expenses were paid, as they became due as provided in *12 USCS § 2605(g)*, ignored terms of loan documents; there was right to pre-petition escrow payments each time debtors failed to make payment and it was "claim" against debtors. *Campbell v Countrywide Home Loans, Inc.* (2008, CA5 Tex) 545 F3d 348.

District court reversed bankruptcy court's judgment finding that mortgage company violated debtor's rights under *12 USCS § 2605* when it placed payments debtor made on promissory note into special escrow account after debtor sought protection under Chapter 13 of Bankruptcy Code. Court found that *11 USCS § 502* governed process which bankruptcy court had to use to determine propriety of claims and resolve disputes, and that process trumped alternative remedial procedure found in *RESPA. Ameriquest Mortg. Co. v Nosek (In re Nosek)* (2006, DC Mass) 354 BR 331 (criticized in *Holland v EMC Mortg. Corp. (In re Holland)* (2007, BC DC Mass) 374 BR 409) and (criticized in *Payne v Mortg. Elec. Registration Sys., Inc. (In re Payne)* (2008, BC DC Kan) 387 BR 614).

Even though bankruptcy debtors made only minimal payments on their mortgage debt, debtors were entitled to reduction in mortgage creditor's claim by way of recoupment based on creditor's violation of Real Estate Settlement Procedures Act by failing to correct debtors' account and failing to respond to debtors' repeated requests for explanation of why their account was deemed to be in default; thus, creditor was not entitled to claim amount of payment which was not credited, escrow charges for insurance which debtors actually maintained, and all late charges, attorney fees, and costs, and creditor was liable for debtors' attorney fees and costs. *In re Thompson* (2006, BC ED Wis) 350 BR 842.

Allegations of violations of Real Estate Settlement and Procedures Act (RESPA), *12 USCS §§ 2601 et seq.*, brought by Chapter 13 debtors, could not be dismissed on pleadings because, from review of complaint itself, it was not possible to determine whether loan servicer fully responded to debtors' qualified written request for loan information in compliance with *12 USCS § 2605*, part of *RESPA. Hopkins v First NLC Fin. Servs. (In re Hopkins)* (2007, BC ED Pa) 372 BR 734.

Bankruptcy court found that debtor's claim alleging that mortgage company violated *12 USCS § 2605* when it failed to respond to written request she sent company, seeking information about amount she owed on debt, was not preempted by Bankruptcy Code; although court denied mortgage company's motion to dismiss debtor's claim, it required debtor to amend her complaint to explain how company's failure to respond to her request caused her injury. *Holland v EMC Mortg. Corp. (In re Holland)* (2007, BC DC Mass) 374 BR 409.

Where Chapter 13 debtors alleged that mortgagee violated *12 USCS § 2605(e)(2)* by failing to timely respond to qualified written request, claim was not preempted by *11 USCS § 502* because two statutes were not in irreconcilable conflict and informational gathering provisions of *12 USCS § 2605* complemented *Bankruptcy Code and Bankruptcy Rules. Figard v PHH Mortg. Corp. (In re Figard)* (2008, BC WD Pa) 382 BR 695.

Chapter 13 trustee acted as agent of debtor in role of disbursing agent (collecting plan payments from debtor and distributing funds to creditors in accordance with chapter 13 plan) and in role of final reporter to court; trustee was thus authorized to send "qualified written request" to debtor's loan servicer under *12 USCS § 2605(e)(1)(B)*. *Miller v Ameriquest Mortg. Co. (In re Laskowski)* (2008, BC ND Ind) 384 BR 518.

Where Chapter 13 debtors' mortgage lender misapplied payments, failed to correct its mistakes, and then repeatedly tried to collect payments from debtors that were not owed, preliminary injunction was issued against lender pursuant to *Fed. R. Civ. P. 65* because debtors were likely to prevail on merits of their case; lender's response to debtors' qualified written request was inadequate under Real Estate Settlement and Procedures Act, *12 USCS § 2605. Moffitt v America's Servicing Co. (In re Moffitt)* (2008, BC ED Ark) 390 BR 368.

Unpublished Opinions

Unpublished: Cross-motions for summary judgment in Chapter 13 debtor's claim that creditor breached its implied

duty of good faith and fair dealing and breached its duty under *12 USCS § 2605(e)* were core matters under *28 USCS § 157(b)*; debtor's claims were integrally related to proof of claim that creditor filed regarding mortgage debt, and debtor's objection to claim was awaiting outcome of adversary proceeding. *Coleman v Countrywide Home Loans, Inc. (In re Coleman)* (2009, BC DC Dist Col) 2009 Bankr LEXIS 4401.

9. Damages

Mortgagor is not entitled to recover damages for personal injury or economic loss for mortgagee's failure to comply with provisions of *12 USCS § 2605*, because (1) § 2605 is not broad consumer protection statute but is intended only to streamline real estate settlement procedures, authorizing pecuniary damages flowing from failure to follow them, and (2) mortgagor has not provided any evidence that he intended to refinance or sell his home or that he was denied such opportunities as result of mortgagee's violations. *Katz v Dime Sav. Bank, F.S.B. (1997, WD NY) 992 F Supp 250* (criticized in *Johnstone v Bank of Am., N.A. (2001, ND Ill) 173 F Supp 2d 809*) and (criticized in *Wanger v EMC Mortgage Corp. (2002, 5th Dist) 103 Cal App 4th 1125, 127 Cal Rptr 2d 685, 2002 CDOS 11451, 2002 Daily Journal DAR 13287*) and (criticized in *Wright v Litton Loan Servicing LP (2006, ED Pa) 2006 US Dist LEXIS 15691*) and (criticized in *McLean v GMAC Mortg. Corp. (2008, SD Fla) 2008 US Dist LEXIS 36143*).

Borrower could recover actual damages for emotional distress resulting from lender's violations of *12 USCS § 2605(e)(3)*. *Johnstone v Bank of Am., N.A. (2001, ND Ill) 173 F Supp 2d 809*.

Debtors sufficiently stated claim against loan servicing company for violating *12 USCS § 2605(e)* by alleging that servicing company did not respond to written requests that it cease sending mortgage statements to debtors following their Chapter 7 bankruptcy discharge and by also alleging that servicing company continued to send statements and reported delinquent payments to credit bureaus; debtors sufficiently pled actual damages where they claimed that they were unable to obtain financing as result of negative credit ratings. *Hutchinson v Del. Sav. Bank FSB (2006, DC NJ) 410 F Supp 2d 374*.

Borrower's claim for failure to give sufficient notice of loan transfer under contract and under provisions of *12 USCS § 2605*, failed because borrower failed to provide any evidence that he suffered any injury of any nature with respect to failure of notification for which defendant mortgage company would have been responsible. *Spencer v Hutchens (2006, MD NC) 471 F Supp 2d 548, costs/fees proceeding, judgment entered (2006, MD NC) 2006 US Dist LEXIS 83784*.

Because taxes and property insurance were timely paid, there were no damages and claim under *12 USCS § 2605(f)* failed. *Reese v JPMorgan Chase & Co. (2009, SD Fla) 22 FLW Fed D 81*.

Homeowner failed to state claim under Real Estate Settlement Procedures Act because he failed to allege any pecuniary loss attributable to violation under *12 USCS § 2605*. *Allen v United Fin. Mortg. Corp. (2009, ND Cal) 660 F Supp 2d 1089*.

Punitive damages are not authorized by Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601 et seq.*; only *12 USCS §§ 2605, 2607* and *2608* contain private rights of action, and none of these authorize punitive damages. *Sarsfield v Citimortgage, Inc. (2009, MD Pa) 667 F Supp 2d 461*.

Borrower's claim under Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607*, was barred by one year limitation period of *12 USCS § 2614*; however, although RESPA claim under *12 USCS § 2605* was timely, borrower failed to allege damages. *Garcia v Wachovia Mortg. Corp. (2009, CD Cal) 676 F Supp 2d 895* (criticized in *Valdez v America's Wholesale Lender (2009, ND Cal) 2009 US Dist LEXIS 118241*).

Pursuant to *12 USCS § 2605(f)* and *La. Rev. Stat. Ann. § 51:1409*, because plaintiff mortgagor had not demonstrated any cognizable injury arising from 2008 Broker Price Opinion (BPO) fee, she had not carried her burden on defendant mortgagee's motion for summary judgment. *Fitch v Wells Fargo Bank, N.A. (2010, ED La) 423 BR 630*.

Debtors' mortgagee, which improperly assessed additional late fees and charges and failed to credit debtors for payments made during their plan in violation of automatic stay under 11 USCS § 362, and failed to respond to qualified written request in violation of 12 USCS § 2605, was assessed actual and punitive damages. *Payne v Mortg. Elec. Registration Sys., Inc. (In re Payne)* (2008, BC DC Kan) 387 BR 614.

Debtors' recovery of damages and attorney's fees for persistent, but minor errors in calculation by creditor mortgagee under 12 USCS § 2605(f) was limited to \$ 3,500 in attorney's fees. *In re Fitch* (2008, BC ED La) 390 BR 834.

Unpublished Opinions

Unpublished: Loan servicer was properly granted summary judgment on borrowers' RESPA claims under 12 USCS § 2605 because borrowers offered no competent evidence demonstrating that any of their alleged injuries, including emotional distress, were caused by any RESPA violations by servicer. *McLean v GMAC Mortg. Corp. (2010, CA11 Fla) 2010 US App LEXIS 20234.*

10. Required notices and responses; timeliness

District court erred in refusing to allow borrower to amend his complaint to invoke 12 USCS § 2605(a), part of Real Estate Settlement Procedures Act, against lender because borrower was entitled to litigate his claim that lender failed to comply with § 2605(a) as he alleged that he did not receive notice from lender that note was negotiable. *Catencamp v Cendant Timeshare Resort Group -- Consumer Finance, Inc. (2006, CA7 Wis) 471 F3d 780.*

Loan servicer committed 2 violations of 12 USCS § 2605(e)(2) as matter of law, where mortgagors sent "qualified written requests" to servicer seeking to rectify alleged account error on June 25, 1997 and August 26, 1997, and servicer admits it was unable to resolve matter until November 26, 1997, because servicer concedes that it failed to take action within requisite 60-day time period on either request. *Rawlings v Dovenmuehle Mortg., Inc. (1999, MD Ala) 64 F Supp 2d 1156.*

Where bank remedied interest rate and mortgage account information within days of discovering mistake and before taxpayers brought suit, safe harbor provision in 12 USCS § 2605(f)(4) applied and bank was entitled to summary judgment on taxpayers' Real Estate Settlement Procedures Act claim. *United States v Vong (2007, DC Minn) 2007-1 USTC P 50521, 99 AFTR 2d 2477.*

Borrower could not pursue claim against mortgage refinancing lender under 12 USCS § 2605, part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq.; borrower never made written request to lender as was required under 12 USCS § 2605(e)(1)(A) to trigger lender's duty to provide information. *Jefferies v Ameriquest Mortg. Co. (2008, ED Pa) 543 F Supp 2d 368.*

Borrowers failed to state claim regarding alleged violations of loan servicing requirements under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605, by mortgage companies because, while complaint alleged that mortgage companies transferred servicing to certain other entities, loan documents unequivocally named mortgage companies as loan servicers and there was no evidence of any transfer. *Jones v ABN AMRO Mortg. Group, Inc. (2008, ED Pa) 551 F Supp 2d 400.*

Borrowers failed to state claim regarding alleged violations of qualified written request (QWR) provisions under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2605(e), by mortgage companies because borrowers failed to allege that they sent any written correspondence to any of mortgage companies or that any correspondence met requirements of RESPA QWR. *Jones v ABN AMRO Mortg. Group, Inc. (2008, ED Pa) 551 F Supp 2d 400.*

Defendants, mortgagor and corporation, complied with Real Estate Settlement Procedures Act (RESPA) based on two letters because (1) defendants' first letter, which was dated seventeen days after date of borrower's inquiry letter,

clearly fulfilled defendants' obligation under *12 USCS § 2605(e)(1)(A)* to acknowledge receipt of borrower's letter within twenty days; and (2) defendants' second letter, which was sent twenty-five days later, clearly fulfilled defendants' obligation under § 2605(e)(2) because letter clearly provided reasons for which defendants believed account of borrower was correct as determined by defendants, information requested by borrower, and telephone number of customer service department which could have provided further assistance within sixty days. *Mazzei v Money Store (2008, SD NY) 552 F Supp 2d 408.*

Homeowners failed to state claim against loan servicing company under *12 USCS § 2605(g)* for failing to use escrowed funds to timely pay their home insurance renewal premium and causing policy to lapse because company assigned its duties to another loan servicer prior to expiration of payment deadline; under *24 CFR § 3500.17(k)*, prior to expiration of deadline, company was not in default of its statutory obligations. *Marks v Quicken Loans, Inc. (2008, SD Ala) 561 F Supp 2d 1259.*

Mortgage loan servicing company prevailed as to mortgagor's Fair Debt Collection Practices Act (FDCPA), *15 USCS §§ 1692 et seq.*, claims because although it was "debt collector" for purposes of FDCPA, it had not attempted to collect mortgage debt, it had timely notified mortgagor that his account had been transferred to it for servicing as required by *12 USCS § 2605(b)*, complaint filed in state law foreclosure proceeding brought against mortgagor constituted initial "communication" as defined in *15 USCS § 1692a(2)*, that complaint satisfied requirements of validation notice under former *15 USCS § 1692g* because it contained all of required notifications in conspicuous and straightforward manner that would have been understood by least sophisticated consumer, and FDCPA did not require company to send additional validation notice just because servicing of mortgage was transferred to it. *Oppong v First Union Mortg. Corp. (2008, ED Pa) 566 F Supp 2d 395.*

Under *12 USCS § 2605(e)(2)*, lender did not have duty to respond to borrower who executed mortgage or occupants who resided at mortgaged property because borrower never submitted written request to lender and occupants were not borrowers. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292.*

Because Bankruptcy Code and Rules could not preempt another federal statute, and Code and Rules did not impliedly repeal Real Estate Settlement Procedures Act (RESPA) since two did not conflict, bankruptcy court could not choose to enforce bankruptcy discovery rules by quashing debtors' Qualified Written Request as defined by *12 USCS § 2605(e)(2)(B)*; although appellant debtors could have obtained same information through provisions in *Fed. R. Bankr. P. 9014(c)* as through RESPA, bankruptcy court could not arbitrarily enforce one over other. *In re Conley v Cent. Mortg. Co. (2009, ED Mich) 414 BR 157.*

Borrower's *12 USCS § 1605(e)(2)* claim against bank was dismissed where his letter to bank demanding rescission of loan did not concern servicing of loan, and thus, it was not qualified written request. *Sipe v Countrywide Bank (2010, ED Cal) 690 F Supp 2d 1141.*

Borrower's *12 USCS § 1605(e)(2)* claim against lender was dismissed where he failed to allege any facts explaining what information, if any, lender failed to provide at closing, and conclusory allegation that lender and others had engaged in pattern and practice of noncompliance with requirements of *12 USCS § 2605* was not supported by any other factual allegations. *Sipe v Countrywide Bank (2010, ED Cal) 690 F Supp 2d 1141.*

Mortgage foreclosure prevention counselor requested itemized pay-off figure for loan, including arrearages; debtor requested documents, including HUD (U.S. Department of Housing and Urban Development) Settlement Sheet, disclosure statement pursuant to Truth in Lending Act (TILA), *15 USCS §§ 1601 et seq.*, note and notice of right of rescission; and, mortgage servicer admitted that it did not respond to two letters and thus violated provisions of Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601 et seq.* *Maxwell v Fairbanks Capital Corp. (In re Maxwell) (2002, BC DC Mass) 281 BR 101.*

Letter from Chapter 11 debtors to representative of lender did not constitute qualified written request, within

meaning of *12 USCS § 2605(e)(1)(A)*, because letter only summarized debtors' view of loan payment history and did not contain request for information or statement that account was in error. *Thorian v Baro Enters., LLC (In re Thorian)* (2008, BC DC Idaho) 387 BR 50, 49 BCD 208.

Failure on part of plaintiff to produce copy of letter that they claimed was "qualified written request" within meaning of § 2605(e)(1)(B) of Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601 et seq.*, resulted in judgment against plaintiff because there was no showing by any party that such letter had ever been received by mortgage company against which RESPA claim was being asserted. *Beal Bank, SSB v Prince (In re Prince)* (2009, BC MD Tenn) 414 BR 285.

Unpublished Opinions

Unpublished: Where mortgagors sued mortgagee pursuant to Real Estate Settlement Procedures Act of 1974, summary judgment was properly granted to mortgagee as, applying *12 USCS § 2605(e)*, mortgagors did not make any qualifying written inquires requiring response in pertinent timeframe; moreover, they presented no evidence that mortgagee failed to credit their account properly, as was required by Utah's Mortgage Lending and Servicing Act, pursuant to Utah Code Ann. § 70D-1-7(4); alternatively, at least two exceptions applied to mortgagee's crediting obligation, including (1) where payment was insufficient to pay principal, interest, late charges, and reserves then due, or (2) where matter had been referred to attorney. *Cook v Chase Manhattan Mortg. Corp.* (2007, CA10) 256 Fed Appx 223.

Unpublished: Court did not need to decide whether June 28 letter was qualified written request because even if it was, corporation responded to it as Real Estate Settlement Procedures Act (RESPA) required by sending writing within 60 days explaining why it believed account was correct, and otherwise complying with RESPA and borrowers made no showing that corporation's response did not comply with RESPA; as for other two letters, borrowers filed suit before applicable time limits expired, and thus, those claims were not ripe. *Harris v Am. Gen. Fin., Inc.* (2007, CA10 Kan) 259 Fed Appx 107.

Unpublished: District court properly granted summary judgment to home mortgage servicer on mortgagors' claim brought under Real Estate Settlement Procedures Act because servicer complied with its statutory obligations under *12 USCS §§ 2605(e)(1), (2)*, as it acknowledged receipt of mortgagors' qualified written requests within applicable 20-day response period and provided mortgagors with written explanation of why it believed that their loan was correctly serviced and transmitted name and telephone number of employee who could provide them with further assistance. *Chipka v Bank of Am.* (2009, CA11 Ga) 2009 US App LEXIS 26705.

Unpublished: Homeowner's *12 USCS § 2605* claim survived motion to dismiss where complaint sufficiently identified letters' senders, recipients, and dates of dispatch to raise plausible claim. *Silvas v GMAC Mortg., LLC* (2009, DC Ariz) 2009 US Dist LEXIS 118854.

Unpublished: Chapter 13 debtor's claim that creditor breached his mortgage contract under *12 USCS § 2605(e)* by failing to timely and adequately respond to his request for account reconciliation under Real Estate Settlement Procedures Act (RESPA) failed because debtor delivered his request for detailed accounting to creditor's foreclosure counsel rather than to creditor; counsel could not reasonably be considered to have had notice that debtor was invoking RESPA. *Coleman v Countrywide Home Loans, Inc. (In re Coleman)* (2009, BC DC Dist Col) 2009 Bankr LEXIS 4401.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2606

§ 2606. Exempted transactions [Caution: See prospective amendment note below.]

(a) In general. This Act does not apply to credit transactions involving extensions of credit--

- (1) primarily for business, commercial, or agricultural purposes; or
- (2) to government or governmental agencies or instrumentalities.

(b) Interpretation. In prescribing regulations under section 19(a) [*12 USCS § 2617(a)*], the Secretary shall ensure that, with respect to subsection (a) of this section, the exemption for credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in section 7(1) [7(a)(1)] of the Real Estate Settlement Procedures Act of 1974 [subsec. (a)(1) of this section] shall be the same as the exemption for such credit transactions under section 104(1) of the Truth in Lending Act [*15 USCS § 1603(1)*].

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 7, as added Sept. 23, 1994, P.L. 103-325, Title III, § 312, 108 Stat. 2221; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(b), 110 Stat. 3009-399.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(5), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsec. (a), is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, popularly known as the Real Estate Settlement Procedures Act of 1974, and appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

12 USCS § 2606

A prior § 2606 (Act Dec. 22, 1974, P.L. 93-533, § 7, 88 Stat. 1726, 1727) was repealed by Act Jan. 2, 1976, P.L. 94-205, §§ 5, 6, 89 Stat. 1158, effective on enactment on Jan. 2, 1976, as provided by § 12 of such Act, which appears as *12 USCS § 2602* note. Such section provided for disclosure of the previous selling price of existing real property.

The bracketed section designator "7(a)(1)" has been inserted in subsec. (b) to indicate the section probably intended by Congress.

Prospective amendment:

Amendment of subsec. (b), effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(5), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that subsec. (b) of this section is amended by striking "Secretary" and inserting "Bureau".

Amendments:

1996. Act Sept. 30, 1996 designated the existing text as subsec. (a), inserted the subsection heading, and added subsec. (b).

NOTES:

Research Guide:

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02, 156.04.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abbound. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Interpretive Notes and Decisions:

Borrower's Real Estate Settlement Procedures Act, *12 USCS §§ 2601* et seq., claims against lender were dismissed with prejudice where he failed to allege any facts regarding his principal purpose in obtaining loans, his purported loan application indicated that loan was for investment purposes, and thus, it appeared that loan was for business purposes rather than personal purposes. *Daniels v SCME Mortg. Bankers, Inc.* (2010, CD Cal) 680 F Supp 2d 1126.

Unpublished Opinions

Unpublished: Because borrower's loan with city was business loan and not consumer loan, borrower's debt was not

covered by *15 USCS § 1692a*, and he had no claim under *12 USCS § 2606(a)*; there also was no facts to support allegation of misuse of credit report for violation of *15 USCS § 1681b*, and borrower had no private cause of action under *15 USCS § 56*. *Lingo v City of Albany Dep't of Cmty. & Econ. Dev.* (2006, CA11 Ga) 195 Fed Appx 891, reh, en banc, den (2006, CA11 Ga) 218 Fed Appx 980 and cert den (2007, US) 127 S Ct 2274, 167 L Ed 2d 1110.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2607

§ 2607. Prohibition against kickbacks and unearned fees [Caution: See prospective amendment note below.]

(a) Business referrals. No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments. Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, or (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business); (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone[,] (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 5(c) [12 USCS § 2604(c)] are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a

face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Secretary and by State officials; costs and attorney fees; construction of State laws.

(1) Any person or persons who violate the provisions of this section shall be fined not more than \$ 10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of section 8(c)(4)(A) [subsec. (c)(4)(A) of this section] if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 8, 88 Stat. 1727; Jan. 2, 1976, P.L. 94-205, § 7, 89 Stat. 1158; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(b), (c), 97 Stat. 1231; Feb. 5, 1988, P.L. 100-242, Title V, Subtitle C, § 570(g), 101 Stat. 1950; June 13, 1991, P.L. 102-54, § 13(d)(4), 105 Stat. 275; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(c)(2), (d), 110 Stat. 3009-400.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(6), (7), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The comma has been enclosed in brackets in subsec. (c)(4)(A)(ii) to indicate the probable intent of Congress to delete it.

Prospective amendment:

Amendment of subsecs. (c)(5) and (d), effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(6), (7), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that the Real Estate Settlement Procedures Act of 1974 is amended:

"(6) in section 8(c)(5) (*12 U.S.C. 2607(c)(5)*), by striking 'Secretary' and inserting 'Bureau';

"(7) in section 8(d) (*12 U.S.C. 2607(d)*)--

"(A) in the subsection heading, by inserting ' Bureau and' before 'Secretary'; and

"(B) by striking paragraph (4), and inserting the following:

" '(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010 [*12 USCS §§ 5511 et seq.*].';".

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976 (effective on enactment as provided by § 12 of such Act, which appears as *12 USCS § 2602* note), in subsec. (c), deleted "or" preceding "(2)" and added ", or (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, or (4) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Administrator of Veterans' Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture".

1983. Act Nov. 30, 1983 (effective 1/1/84, as provided by § 461(f) of such Act, which appears as *12 USCS § 2602* note), in subsec. (c), redesignated cl. (4) as cl. (5), added a new cl. (4), and added the sentence beginning "For purposes . . ."; and, in subsec. (d), substituted para. (2) for one which read: "In addition to the penalties provided by paragraph (1) of this subsection, any person or persons who violate the provisions of subsection (a) shall be jointly and severally liable to the person or persons whose business has been referred in an amount equal to three times the value or amount of the fee or thing of value, and any person or persons who violate the provisions of subsection (b) shall be jointly and severally liable to the person or persons charged for the settlement services involved in an amount equal to three times the amount of the portion, split, or percentage. In any successful action to enforce the liability under this paragraph, the court may award the court costs of the action together with a reasonable attorney's fee as determined by the court.", and added paras. (3)-(6).

1988. Act Feb. 5, 1988, in subsec. (c)(5), substituted "clause (4)(B)" for "clause 4(B)".

1991. Act June 13, 1991, in subsec. (c), substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1996. Act Sept. 30, 1996, in subsec. (c)(4), substituted "affiliated business arrangements" for "controlled business arrangements" and substituted subpara. (A) for one which read: "(A) at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 5(c) are provided,"; and, in subsec. (d)(6), substituted "affiliated business arrangements" for "controlled business arrangements".

Transfer of functions:

For provisions abolishing the Federal Home Loan Bank Board and transferring its functions, see §§ 401-406 of Act Aug. 9, 1989, P.L. 101-73, which appear as *12 USCS § 1437* note.

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 1706f, 2614, 3500.14, 3500.15, 3500.19*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:64, 66, 67, 69-71.

8 Fed Proc L Ed, Courts and Judicial System § 20:444.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 230.

66 Am Jur 2d, Registration of Land Titles § 8.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 2, High Rate Home Equity Loan Protections § 2.02.

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit §§ 6.05, 6.09.

1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.18.

Annotations:

Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services. *80 ALR3d 318*.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.05, 156.07-156.09.
 9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Berger. Court Awarded Attorney's Fees: What Is "Reasonable"? *126 U Pa L Rev* 281, 1977/78.

Emerging Issues Analysis

Courts Continue To Disagree About RESPA Liability For Charges That Are Not "Split" With Third Parties

Federal courts are struggling with the scope of § 8(b) of RESPA. Regarding the reach of § 8(b), some courts hold that the statute's plain language precludes liability § 8(b) unless the fee for settlement services is split with a third party. Others hold that a defendant may be liable for charging a fee for settlement services even if the fee is not split. This commentary by Michael Leffel of Foley & Lardner addresses the different approaches.

Interpretive Notes and Decisions:

1. Generally 2. Purpose 3. Relationship with other laws 4.--Preemption 5. Limitation of actions 6. Parties; standing 7.--Class actions 8.--Defendants 9.--Private right of action 10. What constitutes violation 11.--Breach of contract 12.--Discounted fees 13.--Excessive fees; overcharging 14.--Fee-splitting 15.--Particular fees 16.--Unearned fees 17.--Yield spread premiums (YSPs) 18. Pleadings 19. Burden of proof 20. Evidence and witnesses 21.--Discovery; protective orders 22. Defenses 23. Damages 24. Attorneys' fees 25. Appeal and review 26.--Agency interpretation

1. Generally

To come within scope of prohibitions under *12 USCS § 2607*, charge need not be imposed pursuant to state statute or local regulation, or even be result of specific demand by counterparty; regular payment of \$ 2 or \$ 3 gratuities upon which prompt service is preconditioned is as much part of charge imposed upon customers as is statutorily imposed segment. *United States v Gannon* (1982, CA7 Ill) 684 F2d 433, cert den (1981) 454 US 940, 70 L Ed 2d 248, 102 S Ct 475.

Ordinary definition of "any " as used in *12 USCS § 2607(a)-(b)* indicates that charges are neither restricted to particular type of charge (such as overcharge) nor limited to specific part, and it is to be noted that there is conspicuous absence of term "overcharge" within text of statute, and phrase "such settlement services" refers to preceding phrase "settlement services involved in violation" as used in § 2607(d)(2); thus, defendant is liable for charges assessed home buyer for settlement services as whole, and not just for overcharges and Congress created private right of action to impose damages where kickbacks and unearned fees have occurred--even where there is no overcharge. *Carter v Welles-Bowen Realty, Inc.* (2009, CA6 Ohio) 553 F3d 979, 2009 FED App 24P.

Plaintiff home buyers could pursue *12 USCS § 2607(a)* claim against defendants, real estate agency, title company, and their shared co-owners, even absent allegations of overcharges because injury could be shown by harm other than overcharges; § 2607(a) violation presented possibility for other harm, including lack of impartiality in referral. *Carter v*

Welles-Bowen Realty, Inc. (2009, CA6 Ohio) 553 F3d 979, 2009 FED App 24P.

"Such settlement services" in 12 USCS § 2607(d)(2) referred to preceding phrase "settlement services involved in violation," thus, plaintiff home buyers could pursue 12 USCS § 2607(a) claim against defendants, real estate agency, title company, and their shared co-owners, even absent allegations of overcharges because injury could be shown by harm other than overcharges; § 2607(a) violation presented possibility for other harm, including lack of impartiality in referral. *Carter v Welles-Bowen Realty, Inc. (2009, CA6 Ohio) 553 F3d 979, 2009 FED App 24P.*

Phrase "No person shall give and no person shall accept" in 12 USCS § 2607(b) is clear and unambiguous and must be read in conjunctive. *Morales v Countrywide Home Loans, Inc. (2008, CD Cal) 531 F Supp 2d 1225.*

2. Purpose

Purpose of 12 USCS § 2607 is to eliminate payment of unearned fees in connection with settlement services provided in federally related mortgage transactions, and subsection (b) is characterized as prohibiting acceptance of any portion of any charge for rendering of real estate settlement service other than for services actually performed. *United States v Gannon (1982, CA7 Ill) 684 F2d 433, cert den (1981) 454 US 940, 70 L Ed 2d 248, 102 S Ct 475.*

Although statement of purpose of Real Estate Settlement Procedures Act of 1974 (RESPA) nowhere references undivided unearned fees, prohibition of such fees is consistent with 12 USCS § 2601(a)'s goal to protect consumers from abusive practices that result in unnecessarily high settlement charges; because RESPA's stated purpose neither requires that § 8(b) of RESPA, 12 USCS § 2607(b), be construed to prohibit undivided unearned fees nor precludes that interpretation, it does not render statutory text of § 2607(b) unambiguous. *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111.*

3. Relationship with other laws

Since Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) specifically relates to business of mortgage insurance, and McCarran-Ferguson Act (15 USCS §§ 1011 et seq.) only protects against inadvertent federal regulation of insurance, action brought under RESPA is not barred by *McCarran-Ferguson Act. Patton v Triad Guar. Ins. (2002, CA11 Ga) 277 F3d 1294, 15 FLW Fed C 183, reh, en banc, den (2002, CA11 Ga) 34 Fed Appx 392.*

Where lenders' collection of unearned post-closing fee in connection with their refinancing of homeowner's mortgage might have violated § 8(b) of Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USCS § 2607(b), disclosure of fee to homeowner before payment did not preclude homeowner from pursuing claim for deceptive business practices under *N.Y. Gen. Bus. Law § 349* because collecting fees in violation of RESPA might have satisfied misleading element of § 349. *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111.*

Title insurance companies were not entitled to dismissal of suit filed by consumers under Washington Consumer Protection Act, *Wash. Rev. Code § 19.86.020*, and Real Estate Settlement Procedures Act, 12 USCS § 2607, based on payment of inducements to middlemen in violation of *Wash. Rev. Code §§ 48.30.140, 48.30.150* and *Wash. Admin. Code § 284-30-800*; considering gradual erosion of rationale for filed rate doctrine, cautionary note of Washington Supreme Court in *Tenore*, and uneasy fit between animating purposes of doctrine and facts of case, district court declined to extend Washington law to apply filed rate doctrine to bar consumers' claims. *Blaylock v First Am. Title Ins. Co. (2007, WD Wash) 504 F Supp 2d 1091.*

Title insurance companies were not entitled to dismissal of suit filed by consumers under Washington Consumer Protection Act, *Wash. Rev. Code § 19.86.020*, and Real Estate Settlement Procedures Act, 12 USCS § 2607, based on payment of inducements to middlemen in violation of *Wash. Rev. Code §§ 48.30.140, 48.30.150* and *Wash. Admin. Code § 284-30-800*; primary jurisdiction doctrine did not bar consumers' claims because Washington State Office of Insurance Commission's system of title insurance regulation was not so comprehensive that judicial action in instant action threatened to disrupt it. *Blaylock v First Am. Title Ins. Co. (2007, WD Wash) 504 F Supp 2d 1091.*

Consumers' claim against mortgage company under unlawful prong of California Unfair Competition Law, *Cal. Bus. & Prof. Code § 17200* et seq., failed as matter of law because mortgage company's "mark-ups" for tax services and flood certifications performed by third-party vendors were not prohibited by § 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), Regulation X, 24 C.F.R. § 3500.1, or *Cal. Fin. Code § 50505*. *Morales v Countrywide Home Loans, Inc.* (2008, CD Cal) 531 F Supp 2d 1225.

In case in which home buyer apparently mistakenly cited to 12 USCS § 2607(a) rather than 12 USCS § 2604(c) when she alleged that there were never any proper disclosures made to her, buyer's claims against real estate settlement company and mortgagee nonetheless failed since § 2604(c) did not provide for private right of action; § 2607(a) applied to kickbacks, it did not apply to disclosures. *Makomi Bamba v Res. Bank* (2008, DC Dist Col) 568 F Supp 2d 32.

Lender's alleged violations of 15 USCS § 1601(a) and 12 USCS § 2607(b) were not enforceable under 73 Pa. Stat. Ann. § 201-3 (2008) because statutes of limitations for underlying TILA and RESPA claims had run. *Morilus v Countrywide Home Loans, Inc.* (2008, ED Pa) 651 F Supp 2d 292.

Borrowers' argument that lender's alleged violations of Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., and Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607(b), constituted per se violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-2(4)(xxi), was rejected by court because borrowers offered no legal authority to support their argument and borrowers' TILA and RESPA claims were time-barred. *Garczynski v Countrywide Home Loans, Inc.* (2009, ED Pa) 656 F Supp 2d 505.

Unpublished Opinions

Unpublished: In case in which two customers alleged that they were charged excessive fee for title insurance in violation of 12 USCS § 2607(b), district court correctly granted title company's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss; § 2607(b) did not govern excessive fees because it was not price control provision. *Morrisette v Novastar Home Mortg., Inc.* (2008, CA11 Ala) 2008 US App LEXIS 14228.

Unpublished: In case in which customer alleged that she was charged excessive fee for title insurance in violation of 12 USCS § 2607(b), district court correctly granted two title companies' *Fed. R. Civ. P. 12(b)(6)* motion to dismiss; § 2607(b) did not govern excessive fees because it was not price control provision. *Moody v Commonwealth Land Title Ins. Co.* (2008, CA11 Ala) 2008 US App LEXIS 14229.

4.--Preemption

Borrowers' suit against their mortgage lender was dismissed for failure to state claim where they failed to assert that third party received kickback, and where their claims were preempted by federal law that regulated savings associations. *Haehl v Wash. Mut. Bank, F.A.* (2003, SD Ind) 277 F Supp 2d 933.

Affiliated business arrangement must comply with enumerated conditions of § 8(c)(4) of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607(c)(4), exception and HUD's 10-factor test in order to avoid Real Estate Settlement Procedures Act violation. *Robinson v Fountainhead Title Group Corp.* (2008, DC Md) 252 FRD 275.

Unpublished Opinions

Unpublished: In case in which two customers alleged that they were charged excessive fee for title insurance in violation of 12 USCS § 2607(b), district court correctly granted title insurance company's *Fed. R. Civ. P. 12(b)(6)* motion to dismiss; § 2607(b) required customers to allege that no services were rendered in exchange for settlement fee, and customers had merely claimed that they were charged inflated fee for title insurance. *Morrisette v Novastar Home Mortg., Inc.* (2008, CA11 Ala) 2008 US App LEXIS 14228.

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of 12 USCS § 2607(b), district court correctly granted two title companies' *Fed. R. Civ. P. 12(b)(6)* motion to dismiss. Section 2607(b) required customer to allege that no services were rendered in exchange for settlement fee, and customer had merely claimed that she was charged inflated fee for title insurance. *Moody v Commonwealth Land Title Ins. Co.* (2008, CA11 Ala) 2008 US App LEXIS 14229.

5. Limitation of actions

In suit under RESPA's anti-kickback and fee-splitting provisions in connection with purchase of title insurance, statute of limitations found at 12 USCS § 2614 began to run on date of closing, i.e., when purchasers paid for their title insurance, because that was when title insurance agents earned allegedly prohibited "thing of value." *Snow v First Am. Title Ins. Co.* (2003, CA5 Miss) 332 F3d 356.

Plaintiff's claims under 12 USCS § 2607, part of Real Estate Settlement and Procedures Act of 1974 (RESPA) were time barred and plaintiffs were not entitled to equitable tolling because defendants did not affirmatively conceal conduct that allegedly violated RESPA and plaintiffs did not exercise due diligence to discover cause of action. *Egerer v Woodland Realty, Inc.* (2009, CA6 Mich) 556 F3d 415, 2009 FED App 53P.

Borrower's claim that lender violated 12 USCS § 2607(b) by engaging in kickbacks and failing to disclose property appraisal charge on mortgage documents was time-barred under 12 USCS § 2614 because it was not filed within one year of date of closing of mortgage transaction. *Morilus v Countrywide Home Loans, Inc.* (2008, ED Pa) 651 F Supp 2d 292.

District Court for Eastern District of California holds that equitable tolling may, in appropriate circumstances, suspend limitations period of 12 USCS § 2607 until borrower discovers or has reasonable opportunity to discover fraud or nondisclosures that form basis of Real Estate Settlement Procedures Act action. *Brewer v Indymac Bank* (2009, ED Cal) 609 F Supp 2d 1104.

Borrowers admitted that they consummated loans in 2005, however, they did not file their complaint until October 8, 2008; as such, Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., claims were time barred because they were filed more than one year after borrowers entered into relevant agreements. *Ayala v World Sav. Bank, FSB* (2009, CD Cal) 616 F Supp 2d 1007.

Although borrowers' RESPA claim governing disclosure requirements under 12 USCS § 2605 was not barred by three-year limitations period of 12 USCS § 2614, borrowers had to explain why their claims under 12 USCS §§ 2607 and 2608 were not barred by one-year limitations period of § 2614. *Kelley v Mortgage Elec. Registration Sys.* (2009, ND Cal) 642 F Supp 2d 1048.

Borrowers' claims against lender for violations of Truth in Lending Act and 12 USCS § 2607(b) were time-barred under 15 USCS § 1640(e) and 12 USCS § 2614 because borrowers' action against lender was commenced more than two years after they executed loan at issue and borrowers did not allege any facts that would support equitable tolling. *Garczynski v Countrywide Home Loans, Inc.* (2009, ED Pa) 656 F Supp 2d 505.

Borrower's claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607, was barred by one year limitation period of 12 USCS § 2614; however, although RESPA claim under 12 USCS § 2605 was timely, borrower failed to allege damages. *Garcia v Wachovia Mortg. Corp.* (2009, CD Cal) 676 F Supp 2d 895 (criticized in *Valdez v America's Wholesale Lender* (2009, ND Cal) 2009 US Dist LEXIS 118241).

Mortgagor's claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., asserted in amended complaint under 12 USCS § 2607 differed in both time and type from claims set forth under 12 USCS § 2605 in original complaint because it focused on alleged agreements between mortgagee and mortgage broker and fees that were imposed at closing; mortgagee could not have reasonably anticipated that RESPA claim based on dealings with mortgage brokers would become part of litigation based on facts mortgagor alleged in amended complaint; accordingly,

mortgagor's RESPA claim did not relate back to filing of her original complaint and was time-barred under one-year statute of limitations set forth in *12 USCS § 2614*. *Palmer v Homecomings Fin., LLC* (2010, DC Dist Col) 677 F Supp 2d 233.

Lender and loan servicer were granted summary judgment on borrower's Truth in Lending Act, *15 USCS §§ 1601* et seq., and Real Estate Settlement Procedures Act, *12 USCS §§ 2607* et seq., claims where borrower had filed action nearly three years after signing loan transaction documents, thus, claims were untimely under *15 USCS § 1640(e)* and *12 USCS § 2607(a)*, and borrower had not offered shred of evidence to support allegation that loan documents lender and loan servicer had produced were fraudulent. *Vatományuk v Quality Loan Serv. Corp.* (2010, WD Wash) 699 F Supp 2d 1242.

Mortgagor's *12 USCS § 2607* claim against mortgagee assignee was time-barred under *12 USCS § 2614* where mortgagor filed claim more than three years after he had obtained loan, and equitable tolling did not apply because mortgagor failed to allege how he was misled or otherwise prevented from discovering facts bearing on his claim. *Jensen v Quality Loan Serv. Corp* (2010, ED Cal) 702 F Supp 2d 1183, motion gr, dismd (2010, ED Cal) 2010 US Dist LEXIS 72393.

Unpublished Opinions

Unpublished: *12 USCS § 2607(b)* did not provide for cause of action where plaintiff home buyer argued that defendants, settlement agents and title insurer, split title insurance premiums that were charged in excess of insurer's rates filed pursuant to *Ala. Code § 27-25-6*. *Hazewood v Found. Fin. Group, LLC* (2008, CA11 Ala) 2008 US App LEXIS 22263.

Unpublished: Borrowers' *12 USCS § 2607* illegal fee claim, relating to loans that closed more than one year before complaint was filed, was not subject to dismissal for untimeliness because one-year limitation of *12 USCS § 2614* is subject to equitable tolling and concealment was adequately pleaded; moreover, same analysis applied to timeliness under *15 USCS § 1640(e)* of borrowers' Truth in Lending claim under *15 USCS § 1601*. *Bassett v Ruggles* (2009, ED Cal) 2009 US Dist LEXIS 83349.

6. Parties; standing

In lawsuit alleging violation of Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601* et seq., although complaint was not model of clarity, plaintiffs did allege that their mortgage loans were federally related; thus, plaintiffs' allegations established that they had standing to assert their RESPA claims, their complaint satisfied requirements of *Fed. R. Civ. P. 8(a)(1)*, and dismissal of their claims for lack of subject matter jurisdiction was error. *Gardner v First Am. Title Ins. Co.* (2002, CA8 Minn) 294 F3d 991, 52 FR Serv 3d 1255.

In case in which home buyer sued parent company and its subsidiary, arguing that they had violated *12 USCS § 2607* because parent company paid millions of dollars to individual title companies and in exchange those title companies entered into exclusive referral agreements with it, and companies appealed district court's denial of their motion to dismiss for lack of standing, since statutory text of RESPA did not limit liability to instances in which plaintiff was overcharged, buyer had established injury sufficient to satisfy Article III; RESPA gave buyer statutory cause of action. *Edwards v First Am. Corp.* (2010, CA9 Cal) 610 F3d 514.

Borrower was charged for service fee lender paid to mortgage broker and, thus, had standing under *12 USCS § 2607(d)(2)* to challenge fee as illegal kickback, where borrower was given higher interest rate, which, over life of loan, would have equaled brokerage service fee. *McWhorter v Ford Consumer Fin. Co.* (1997, ND Ga) 33 F Supp 2d 1059.

Title insurer's Real Estate Settlement Procedures Act (RESPA) (*12 USCS §§ 2601* et seq.) claim does not fail for lack of standing, where Seventh Circuit has already affirmed that \$ 200 of alleged \$ 300 fee paid to escrow agent was kickback, and insurer stands in shoes of customers who paid fees, because RESPA allows any person "charged for

settlement service" to recover from any person accepting any kickback for business under § 2607. *Lawyers Title Ins. Corp. v Dearborn Title Corp.* (1998, ND Ill) 22 F Supp 2d 820.

Where plaintiffs did not contend that they paid too much for primary mortgage insurance (PMI), did not contend that PMI, or any other settlement service they received was of inferior quality, and did not contend that any portion of their PMI payments were kicked-back to lenders or used to underwrite any of insurers' below-market sales of pool insurance in exchange for referral, and since plaintiffs did not claim that they were overcharged for PMI, they lacked standing under *Article III of United States Constitution*. *Moore v Radian Group* (2002, ED Tex) 233 F Supp 2d 819, affd (2003, CA5 Tex) 69 Fed Appx 659 and (criticized in *Kahrer v Ameriquest Mortg. Co.* (2005, WD Pa) 418 F Supp 2d 748) and (criticized in *Pettrey v Enter. Title Agency, Inc.* (2006, ND Ohio) 241 FRD 268) and (criticized in *Capell v Pulte Mortg. L.L.C.* (2007, ED Pa) 2007 US Dist LEXIS 82570).

In action by mortgagees against providers of primary mortgage insurance alleging violations of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., mortgagees lacked standing to pursue their RESPA claims because, even if mortgagees alleged injury in fact pursuant to 12 USCS § 2607(a) for right to participate in kickback-free settlement process, mortgagees failed to show how any alleged injury could be redressed because mortgagees failed to allege that they were overcharged by providers and, thus, were not entitled to damages under 12 USCS § 2607(d)(2). *Mullinax v Radian Guar., Inc.* (2004, MD NC) 311 F Supp 2d 474 (criticized in *Kahrer v Ameriquest Mortg. Co.* (2005, WD Pa) 418 F Supp 2d 748) and (criticized in *Capell v Pulte Mortg. L.L.C.* (2007, ED Pa) 2007 US Dist LEXIS 82570).

Borrower had requisite standing and properly alleged claim under § 8(a) of Real Estate Settlement Procedures Act, 12 USCS § 2607(a), against corporation because (1) borrower alleged overcharge because question was not whether title company's fee was reasonable, but whether borrower should have instead paid filed rate of corporation, and (2) alleged § 8(a) violation presented possibility for other harm, including lack of impartiality in referral and reduction of competition between settlement service providers. *Robinson v Fountainhead Title Group Corp.* (2006, DC Md) 447 F Supp 2d 478, class certif gr, in part, motion to strike den, motion gr, dismd, in part (2008, DC Md) 252 FRD 275.

Realty and title companies were entitled to *Fed. R. Civ. P. 12(b)(1)* dismissal of action filed by consumers who alleged illegal kickbacks in violation of 12 USCS § 2607 of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; consumers did not meet injury-in-fact requirement for U.S. Const. art. III standing because they did not allege any overcharge for title insurance or settlement services. *Carter v Welles-Bowen Realty, Inc.* (2007, ND Ohio) 493 F Supp 2d 921 (criticized in *Edwards v First Am. Corp.* (2007, CD Cal) 517 F Supp 2d 1199) and (criticized in *Capell v Pulte Mortg. L.L.C.* (2007, ED Pa) 2007 US Dist LEXIS 82570) and (criticized in *Reed v Wash. Mut., Inc.* (2008, ED Pa) 2008 US Dist LEXIS 50523) and (criticized in *Alexander v Washington Mut., Inc.* (2008, ED Pa) 2008 US Dist LEXIS 61256).

7.--Class actions

Class certification had been improper where individualized factfinding would be required for each transaction on issues of what goods or services law firms provided to mortgage broker, and whether fee charged was reasonable or kickback; district courts which had certified classes erred by failing to acknowledge broker's use of exception in 12 USCS § 2607(c) as defense. *O'Sullivan v Countrywide Home Loans, Inc.* (2003, CA5 Tex) 319 F3d 732, 54 FR Serv 3d 909, reh den, reh, en banc, den (2003, CA5 Tex) 64 Fed Appx 419.

Because plaintiff home buyer's 12 USCS § 2607(b) claim against defendant real estate agent alleged no services were performed, no reasonableness determinations had to be made, thus, district court's denial of class certification under *Fed. R. Civ. P. 23(b)(3)*, on finding that individual issues predominated, was reversed. *Busby v JRHBW Realty, Inc.* (2008, CA11 Ala) 513 F3d 1314, 69 FR Serv 3d 1320, 21 FLW Fed C 308.

Where plaintiff home buyer appealed denial of class certification to class of plaintiffs seeking damages arising out

of defendant real estate agent's alleged violation of § 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), and agent argued that § 2607(c)(2) provided defense that applied individually to putative plaintiffs and thus class treatment was not suitable, even if § 2607(c)(2) provided some sort of defense to claims under § 2607(b), result was same because under either § 2607(b) or 2607(c)(2), issue was whether any services were provided for fee, and thus, § 2607(c)(2) did not require any individualized analysis that would preclude class action. *Busby v JRHBW Realty, Inc.* (2008, CA11 Ala) 513 F3d 1314, 69 FR Serv 3d 1320, 21 FLW Fed C 308.

Under *Fed. R. Civ. P. 23(f)*, class certification order establishing class in which lender had performed no services for escrow waiver fee violated law of case and mandate rule because prior appeal concluded that lender had performed services for escrow waiver fee; further § 8(b) of RESPA, 12 USCS § 2607(b), did not apply to settlement fees alleged to be excessive because provision was for targeting abusive practices and not for price control. *Friedman v Mkt. St. Mortg. Corp.* (2008, CA11 Fla) 520 F3d 1289, 21 FLW Fed C 495.

Individuals who claimed that yield spread premium to be paid to mortgage company violated § 8 of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., unsuccessfully sought class certification; under § 8 and Regulation X of Department of Housing and Urban Development, 24 C.F.R. § 3500.14(g)(2), questions of law and fact common to all members did not predominate over those relating only to individuals. *Costa v SIB Mortg. Corp.* (2002, SD NY) 210 FRD 84.

Overall test for whether payment of certain charge violated 12 USCS § 2607(b) turned on whether total compensation received would have been commensurate with services provided in transaction; this inquiry was inherently individualized for each putative class member, so predominance was not met, *Fed. R. Civ. P. 23(b)(3)*. *Busby v JRHBW Realty* (2006, ND Ala) 2006 US Dist LEXIS 98169, affd, in part, revd, in part, remanded (2008, CA11 Ala) 513 F3d 1314, 69 FR Serv 3d 1320, 21 FLW Fed C 308, motions ruled upon (2009, ND Ala) 2009 US Dist LEXIS 41720.

In action alleging violation of 12 USCS § 2607(b), necessity of individualized analysis pertaining to reasonableness of compensation received by defendant, coupled with existence of numerous individual defenses under estoppel doctrine, made individual suits or claims, not class suits, superior way to resolve this dispute, *Fed. R. Civ. P. 23(b)(3)*. *Busby v JRHBW Realty* (2006, ND Ala) 2006 US Dist LEXIS 98169, affd, in part, revd, in part, remanded (2008, CA11 Ala) 513 F3d 1314, 69 FR Serv 3d 1320, 21 FLW Fed C 308, motions ruled upon (2009, ND Ala) 2009 US Dist LEXIS 41720.

Based on new HUD policy statement which became controlling over prior ruling of class certification, mortgagors' action against lender regarding violations of § 8 of Real Estate Settlement Procedures Act (RESPA), specifically, 12 USCS §§ 2601, 2607, was decertified under *Fed. R. Civ. P. 23* because it was necessary to look at each transaction individually as to services provided by brokers and whether yield spread premiums to brokers were illegal unearned fees under RESPA. *Culpepper v Inland Mortg. Corp.* (2006, ND Ala) 243 FRD 453, affd (2007, CA11 Ala) 491 F3d 1260, 20 FLW Fed C 824.

Motion for class certification of home purchasers who had been allegedly unlawfully referred to title insurer under 12 USCS § 2607 because title agencies making referrals were partially owned by insurer's parent corporation was denied because certification would have been inappropriate under *Fed. R. Civ. P. 23(b)(1)(A)* since there was no danger another court would order defendants to charge fees injunction would prohibit. *Edwards v First Am. Corp.* (2007, CD Cal) 251 FRD 449.

Motion for class certification of home purchasers who had been allegedly unlawfully referred to title insurer under 12 USCS § 2607 because title agencies making referrals were partially owned by insurer's parent corporation was denied because certification would have been inappropriate under *Fed. R. Civ. P. 23(b)(2)* since claim was primarily one for money damages even though purchaser also sought injunctive relief. *Edwards v First Am. Corp.* (2007, CD Cal) 251 FRD 449.

Motion for class certification of home purchasers who had been allegedly unlawfully referred to title insurer under 12 USCS § 2607 because title agencies making referrals were partially owned by insurer's parent corporation was denied because certification would have been inappropriate under *Fed. R. Civ. P. 23(b)(3)* since common questions did not predominate; at issue would be whether parent corporation's payment for its ownership interest in 180 different agencies was worth less than it had paid. *Edwards v First Am. Corp.* (2007, CD Cal) 251 FRD 449.

Defendant's motion for reconsideration of partial grant of plaintiff's motion for certification of class in Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., action was denied; while RESPA regulations provided certain exemptions that might have been applicable to some loans, those issues were not significant enough to defeat predominance. *Robinson v Fountainhead Title Group Corp.* (2008, DC Md) 252 FRD 275.

Whether loans were "federally related" under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., did not destroy predominance; *Fed. R. Civ. P. 23* allowed district courts to devise imaginative solutions to problems created by presence in class action litigation of individual damages issues. *Robinson v Fountainhead Title Group Corp.* (2008, DC Md) 252 FRD 275.

Class of consumers who refinanced existing mortgages within seven years of their original mortgages and did not receive mandatory discount on new title policies was certified under *Fed. R. Civ. P. 23(b)(3)* because common issues of law and fact predominated and were superior for consumers' RESPA claims under 12 USCS § 2607 and implied contract claims against title company and four-year class period satisfied statute of limitations for breach of implied contract claims and encompassed one-year RESPA limitations period under 12 USCS § 2614. *Mims v Stewart Title Guar. Co.* (2008, ND Tex) 254 FRD 482.

Certification of class for settlement was granted because settlement agreed upon between parties, that addressed claims under Real Estate Settlement Procedures Act of 1974, 12 USCS § 2607, and *N.Y. Gen. Bus. Law § 349*, was fair and reasonable, settlement provided for refunds of 100% of post-closing fees plus interest to defined set of claimants, attorney's fees and costs were to be paid from separate fund, and plaintiff's claims met all requirements of *Fed. R. Civ. P. 23(a)* and *23(b)(3)*. *Cohen v J.P. Morgan Chase & Co.* (2009, ED NY) 262 FRD 153.

Unpublished Opinions

Unpublished: Trial court erred in denying class as to one agent in action which alleged national scheme by which title insurance companies paid millions of dollars to individual title companies and received written exclusive referral agreements in return; with respect to liability, there was single, overwhelming common question of fact: whether arrangement between agent and title insurance companies violated 12 USCS § 2607; individualized issues did not predominate, as every class action required identification of class members, as most required individual proof of loss, and evidence submitted by customer demonstrated agent, rather than purchasers, chose which title insurance underwriter to use. *Edwards v First Am. Corp.* (2010, CA9 Cal) 2010 US App LEXIS 12718.

8.--Defendants

Single individual can violate 12 USCS § 2607(b) by receiving in official capacity charge for rendering of settlement services, but personally keeping portion of charge intact for something other than performance of those services; where counterparty in official role imposes and receives charge that incorporates not only statutorily imposed segment, but also gratuity that is ostensibly required for proper performance of services, such extra payment is accepted for something other than services actually performed, since prompt service is already due bank employees under state law once statutory fee is paid. *United States v Gannon* (1982, CA7 Ill) 684 F2d 433, cert den (1981) 454 US 940, 70 L Ed 2d 248, 102 S Ct 475.

12 USCS § 2607(b), part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., does not place liability for splitting charges on only entity who pays out alleged kickback, but instead places liability on both giver and

receiver of unearned kickback, so defendant in *12 USCS § 2607(b)* cause of action need not be party who had control over split fees, as long as fee split is alleged nor does statute require that plaintiff allege that all of parties involved in fee splitting have knowledge of their participation in, or conspiracy to join in, illegal arrangement. *Weizeorick v Abnamro Mortg. Group, Inc.* (2003, CA7 Ill) 337 F3d 827, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 19438 and cert den (2004) 540 US 1181, 158 L Ed 2d 83, 124 S Ct 1418.

Original mortgagee and assignee of mortgage loan were entitled to summary judgment in mortgagors' action alleging that mortgagee's sale of their loan to assignee violated § 8 of Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607*, where real source of funding was mortgagee, which had financed loan through line of credit with third party bank and had closed loan in its name, and where mortgagee had only real interest in transaction because it was responsible for repaying bank; thus, sale was bona fide secondary market transaction pursuant to *24 C.F.R. § 3500.1*, et seq., and was thus not governed by RESPA. *Moreno v Summit Mortg. Corp.* (2004, CA5 Tex) 364 F3d 574, cert den (2004) 543 US 819, 125 S Ct 58, 160 L Ed 2d 27.

Summary judgment was improper where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees, issue of whether realtors, as limited partners in limited partnerships in which agent was general partner, received only return on their ownership interests under *12 USCS § 2607(c)(4)(C)* was clouded by practice of grouping realtors according to potential to refer business. *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Because *12 USCS § 2607* not only applied to creditors, but also applied to any person who gave or received kickbacks or split excessive or unearned fees with third party, and where plaintiff alleged that defendants engaged in scheme to divide substantial amount of plaintiff's proceeds amongst themselves for services they did not perform and inflated fees to excessive amounts, court found that complaint stated valid claim under *12 USCS § 2607*. *Carr* (2007, WD Tenn) 476 F Supp 2d 859.

In borrower's suit alleging predatory lending scheme to steal equity in her home, borrower failed to establish that title company violated Real Estate Settlement Procedures Act because even though loan funds were arguably used for unlawful kickbacks, borrower failed to present any evidence showing that title company was knowing participant in such kickback scheme or that it paid kickback as part of loan transactions. *Stith v Thorne* (2007, ED Va) 488 F Supp 2d 534.

Unpublished Opinions

Unpublished: Individuals who assisted homeowner in selling homeowner's property, and mortgage broker who acted through individuals, violated *12 USCS § 2607(a)* since broker obtained mortgage loan for purchasers and provided finder's fees to individuals in exchange for referral of transaction to broker. *Neuner v Innovative Mortg. Solutions LLC (In re Curriden)* (2007, BC DC NJ) 2007 Bankr LEXIS 3074.

Unpublished: Where individual contended that fee received from mortgage broker was not kickback because fee was payment for individual's clerical services in coordinating details of real estate transaction with title company, violation of *12 USCS § 2607(a)* was shown since individual was not official employee of mortgage company at time and was not authorized to be paid for clerical services by anyone. *Neuner v Innovative Mortg. Solutions LLC (In re Curriden)* (2007, BC DC NJ) 2007 Bankr LEXIS 3074.

9.--Private right of action

Home buyers, who alleged that mortgage lender and affiliated reinsurer engaged in mortgage insurance premium kickback scheme, had private right of action under *12 USCS § 2607(d)(2)* even though alleged violation did not result in overcharge for settlement services; buyers had U.S. Const. art. III standing even though they claimed non-monetary injury, as they alleged violation of their rights under RESPA, and filed rate doctrine did not bar buyers' claims because

they challenged alleged payment of kickbacks and not rates they paid for insurance. *Alston v Countrywide Fin. Corp.* (2009, CA3 Pa) 585 F3d 753.

Plain, unambiguous language of 12 USCS § 2607(d)(2) indicates that damages are based on settlement service amount with no requirement that there have been overcharge; Congress created private right of action without requiring overcharge allegation. *Alston v Countrywide Fin. Corp.* (2009, CA3 Pa) 585 F3d 753.

Homeowner's claims under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., failed because there was nothing in language or structure of 12 USCS § 2603 to support homeowner's argument that Congress intended to create private cause of action for violation of this provision; with regard to claim brought under 12 USCS § 2607 there was no allegation that fee or charge was split between lenders. *Morrison v Brookstone Mortg. Co.* (2005, SD Ohio) 415 F Supp 2d 801, summary judgment gr, motion den, motion to strike den, claim dismissed, judgment entered (2006, SD Ohio) 2006 US Dist LEXIS 73389.

Court granted defendants' motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)* that portion of plaintiff's complaint that alleged defendants had violated Real Estate Settlement Procedures Act, 12 USCS §§ 2604(c) and 2607, specifically that defendants failed to provide plaintiff with proper "Good Faith Estimate" of amount of range of settlement charges prior to closing; no private right of action existed for claims that were brought under 12 USCS § 2604(c), and plaintiff had presented no argument as to why RESPA one-year statute of limitations should have been tolled *Johnson v Equity Title & Escrow Co. of Memphis, LLC* (2007, WD Tenn) 476 F Supp 2d 873.

There is no private right to injunctive relief under Real Estate Settlement Procedures Act of 1974, 12 USCS §§ 2601 et seq. *Minter v Wells Fargo Bank, N.A.* (2009, DC Md) 593 F Supp 2d 788.

10. What constitutes violation

Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2601, protects consumers from unnecessarily high settlement charges and abusive mortgage practices, and § 8 (12 USCS § 2607(a)) of RESPA prohibits kickback and referral fee arrangements whereby any payment is made, or "thing of value" is furnished, for referral of real estate services but it does not proscribe payment to any person of bona fide salary or compensation or other payment for services actually performed under 12 USCS § 2607(c)(2). *Moreno v Summit Mortg. Corp.* (2004, CA5 Tex) 364 F3d 574, cert den (2004) 543 US 819, 125 S Ct 58, 160 L Ed 2d 27.

Department of Housing and Urban Development (HUD), which administers Real Estate Settlement Procedures Act (RESPA), has promulgated regulations for doing so, including 24 C.F.R. § 3500.1 et seq., commonly known as Regulation X, which provides, at 25 C.F.R. § 3500.5(b)(7), that bona fide transfer of loan obligation in secondary market is not covered by RESPA, and, in determining what constitutes bona fide transfer, HUD considers real source of funding and real interest of funding lender; in contrast, "table-funded" transaction is closing at which loan is funded by contemporaneous advance of loan funds and assignment of loan to person advancing funds, and such transaction is covered by RESPA under 24 C.F.R. § 3500.2(b), and is not secondary market transaction. *Moreno v Summit Mortg. Corp.* (2004, CA5 Tex) 364 F3d 574, cert den (2004) 543 US 819, 125 S Ct 58, 160 L Ed 2d 27.

That defendant mortgage lender previously stated that it had paid mortgage broker for right to service loan did not, standing alone, show that broker did not perform any compensable services, and because broker filled out applications, pre-qualified plaintiff borrowers, and participated in loan closings, lender was entitled to summary judgment on borrowers' claim under 12 USCS § 2607(a). *Culpepper v Irwin Mortg. Corp.* (2007, CA11 Ala) 491 F3d 1260, 20 FLW Fed C 824.

Mortgage broker and credit reporting agency did not violate markup provision of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., specifically 12 USCS § 2607(b), because fee paid by borrowers to broker for credit reports was in turn paid over in full by broker to agency; thus, there was no splitting of fee or improper markup, and fee was paid for services actually performed. *Krupa v Landsafe, Inc.* (2008, CA11 Ga) 514 F3d 1153, 21 FLW Fed

C 331.

Anti-kickback provision of Federal Real Estate Settlement Procedures Act, 12 USCS § 2607, does not apply to portion of mortgage origination fee imposed by mortgage company for commission to mortgage originator, commission to branch manager, and company's overhead, because company did not receive fee in return for referral of business to its bank owner, and making of mortgage loan is not "settlement service" under 12 USCS § 2602. *Eisenberg v Comfed Mortg. Co.* (1986, DC Mass) 629 F Supp 1157.

Loans themselves are not "goods" for purposes of 12 USCS § 2607(c). *Brancheau v Residential Mortg. & Mercantile Bank of St. Louis* (1999, DC Minn) 187 FRD 591 (criticized in *Jones v USMoney Source, Inc.* (2000, ND Ga) 2000 US Dist LEXIS 20400) and (criticized in *Perry v Mid South Mortg., Inc.* (2000, ND Ala) 2000 US Dist LEXIS 20275).

In action brought by plaintiff, whose ex-husband forged note and mortgage on plaintiff's home, against various defendants who were involved with securing note and mortgage, claim under 12 USCS § 2607(b), Real Estate Settlement Procedures Act, was dismissed because complaint did not allege that any of defendants shared portion, split, or percentage of any settlement charges. *Welch v Centex Home Equity Co., L.L.C.* (2004, DC Kan) 323 F Supp 2d 1087.

For purposes of § 8(b), 12 USCS § 2607(b), of Real Estate Settlement Procedures Act mortgage provision that escrow waiver could be revoked if loan was transferred to another lender did not render waiver illusory where documents appended to mortgagors' complaint against mortgagee showed that mortgage would be serviced for life of mortgage as non-escrowed loan. *Wylder v Bank of Am., N.A.* (2005, SD Fla) 360 F Supp 2d 1302, 18 FLW Fed D 515.

Former owner's claim for net proceeds from sale of real property that he owned (the net equity) failed under Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USCS §§ 2601 et seq., because (1) essence of complaint was that some defendant or combination of defendants, financial group, employee, and others, purloined owner's net equity; (2) what was missing was any allegation that stolen funds were received for rendering of real estate settlement service, as RESPA required; (3) complaint did not allege that defendants asserted right to retain net equity in part payment for settlement services they provided; and (4) defendants simply failed to turn net equity over, thereby converting it. *Williams v Berkshire Fin. Group, Inc.* (2007, ED NY) 491 F Supp 2d 320.

Unpublished Opinions

Unpublished: Nothing supported plaintiff buyers' argument that for defendant mortgagee of record's service actually to be performed under 12 USCS § 2607(b), service had to result in benefit to borrower. *Knighon v Merscorp, Inc.* (2008, CA5 Tex) 2008 US App LEXIS 26133.

11.--Breach of contract

Mortgage broker's failure to "lock-in" certain interest rate, despite having accepted fee for doing so, is not violative of 12 USCS § 2607(b), because action is ordinary contract dispute; intent of § 2607(b) is to prohibit kickback and referral fee arrangements. *Duggan v Independent Mortg. Corp.* (1987, ED Va) 670 F Supp 652.

12.--Discounted fees

Discount arrangement between mortgage broker and title company did not violate § 8(a) (12 USCS § 2607(a)) of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601-2617, because discounts and total compensation were reasonably related to value of services that were actually performed; discounts that company provided broker were not discounts for referring buyers, but rather were discounts based on company's lowered costs when dealing with broker, which were attributable to broker's familiarity with escrow transactions and its use of standardized forms and procedures. *Lane v Residential Funding Corp.* (2003, CA9 Cal) 323 F3d 739, 2003 CDOS 2275.

13.--Excessive fees; overcharging

Complaint, which alleged that title recording company violated RESPA because it overcharged plaintiff for recording of deed and mortgage, was properly dismissed, since plaintiff had not alleged that company's overcharge was in nature of portion, split or percentage of any charge given to third party; company, which kept windfall for itself, had not shared overcharge with anyone. *Durr v Intercounty Title Co.* (1994, CA7 Ind) 14 F3d 1183, 27 FR Serv 3d 939, reh, en banc, den (1994, CA7 Ind) 1994 US App LEXIS 2600 and cert den (1994) 513 US 811, 130 L Ed 2d 20, 115 S Ct 63.

Dismissal of consumer's claim under *FRCivP 12(b)(6)* was proper where consumer alleged that mortgage company overcharged for obtaining credit report but did not set forth any allegations that overcharge was being kicked back to or split with third party. *Boulware v Crossland Mortg. Corp.* (2002, CA4 Md) 291 F3d 261 (criticized in *Santiago v GMAC Mortg. Group, Inc.* (2005, CA3 Pa) 417 F3d 384) and (criticized in *Price v Countrywide Home Loans, Inc.* (2005, SD Ga) 2005 US Dist LEXIS 22408) and (criticized in *Cohen v JP Morgan Chase & Co.* (2007, CA2 NY) 498 F3d 111).

Section 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), is antikickback provision, which prohibits only transactions in which defendant shares portion, split, or percentage of any charge with third party; allegation that bank overcharged for services, standing alone, did not constitute violation of section. *Haug v Bank of Am., N.A.* (2003, CA8 Mo) 317 F3d 832 (criticized in *Santiago v GMAC Mortg. Group, Inc.* (2005, CA3 Pa) 417 F3d 384) and (criticized in *Price v Countrywide Home Loans, Inc.* (2005, SD Ga) 2005 US Dist LEXIS 22408) and (criticized in *Cohen v JP Morgan Chase & Co.* (2007, CA2 NY) 498 F3d 111).

12 USCS § 2607(b), part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., clearly and unambiguously does not extend to overcharges. *Kruse v Wells Fargo Home Mortg., Inc.* (2004, CA2) 383 F3d 49 (criticized in *Warburton v Foxtons, Inc.* (2005, DC NJ) 2005 US Dist LEXIS 39615) and (criticized in *Morrison v Brookstone Mortg. Co.* (2006, SD Ohio) 2006 US Dist LEXIS 73389) and (criticized in *Patino v Lawyers Title Ins. Corp.* (2007, ND Tex) 2007 US Dist LEXIS 85457) and (criticized in *Morales v Countrywide Home Loans, Inc.* (2008, CD Cal) 531 F Supp 2d 1225).

Where court determined that plain language of § 8(b) of RESPA, 12 USCS § 2607(b), did not provide for cause of action for overcharges, but did provide cause of action for markups, court reversed that portion of district court's decision to determine if mortgage corporation had violated RESPA. *Santiago v GMAC Mortg. Group, Inc.* (2005, CA3 Pa) 417 F3d 384 (criticized in *Morrison v Brookstone Mortg. Co.* (2006, SD Ohio) 2006 US Dist LEXIS 73389) and (criticized in *Patino v Lawyers Title Ins. Corp.* (2007, ND Tex) 2007 US Dist LEXIS 85457).

In case in which two borrowers alleged that underwriting fee for refinancing was excessive and appealed district court's *Fed. R. Civ. P. 12(b)(6)* dismissal of their claim under § 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), § 8(b) did not apply to settlement fees that were alleged to be excessive. Section 8(b)'s silence on subject of overcharges did not mean that Congress's actions were ambiguous on that subject. Congress simply did not legislate at all on overcharges. *Martinez v Wells Fargo Home Mortg., Inc.* (2010, CA9 Cal) 598 F3d 549.

Title company did not violate 12 USCS § 2607(b), where title company allegedly overcharged for recording deed and mortgage, because this section was intended to prohibit only kickbacks for referral of real estate settlement business. *Durr v Intercounty Title Co.* (1993, ND Ill) 826 F Supp 259, affd (1994, CA7 Ind) 14 F3d 1183, 27 FR Serv 3d 939, reh, en banc, den (1994, CA7 Ind) 1994 US App LEXIS 2600 and cert den (1994) 513 US 811, 115 S Ct 63, 130 L Ed 2d 20 and (criticized in *Kahrer v Ameriquest Mortg. Co.* (2005, WD Pa) 418 F Supp 2d 748) and (criticized in *Pettrey v Enter. Title Agency, Inc.* (2006, ND Ohio) 241 FRD 268).

According to Court of Appeals for Seventh Circuit, violation of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), must involve division of unearned fees or charges by at least two parties, as it does not include overcharging by single party. *Jenkins v Mercantile Mortg. Co.* (2002, ND Ill) 231 F Supp 2d 737 (criticized in *Payton v New Century*

Mortg. Corp. (2003, ND Ill) 2003 US Dist LEXIS 18366) and (criticized in *McKenna v First Horizon Home Loan Corp.* (2006, DC Mass) 429 F Supp 2d 291) and (criticized in *Barrett v JP Morgan Chase Bank, N.A.* (2006, CA6 Ky) 445 F3d 874, 2006 FED App 137P) and (criticized in *Pacific Shore Funding v Lozo* (2006, 2nd Dist) 138 Cal App 4th 1342, 42 Cal Rptr 3d 283, 2006 CDOS 3502, 2006 Daily Journal DAR 5098).

Mortgagors' claim regarding excessiveness of escrow waiver fee charged by mortgagee was not cognizable under § 8(b), 12 USCS § 2607(b), of Real Estate Settlement Procedures Act where mortgagee had retained company to monitor payment of real estate taxes and had monitored payment of hazard insurance in exchange for charge and as result, there was no claim that mortgagee had provided no service for charge. *Wylder v Bank of Am., N.A.* (2005, SD Fla) 360 F Supp 2d 1302, 18 FLW Fed D 515.

Although title insurer charged borrowers \$ 221 for title insurance policy, which was more than \$ 161 allowed under Ala. Code § 27-25-6(a), insurer did not violate Real Estate Settlement Procedures Act, 12 USCS § 2607(b), because \$ 60 overcharge was not markup and was paid as commission to insurer's agent, rather than being retained by insurer as markup, which would have violated § 2607(b). *Morrisette v NovaStar Home Mortg., Inc.* (2007, SD Ala) 484 F Supp 2d 1227, affd (2008, CA11 Ala) 284 Fed Appx 729.

If "overcharge," which has direct connection to settlement service, is not within Real Estate Settlement Procedures Act of 1974, 12 USCS §§ 2601 et seq., it seems clear that neither is outright thievery. *Williams v Berkshire Fin. Group, Inc.* (2007, ED NY) 491 F Supp 2d 320.

Borrower failed to properly plead claim against mortgage refinancing lender under 12 USCS § 2607, and also failed to provide sufficient evidence of RESPA violation; borrower could not seek relief under RESPA for alleged overcharges, and claim for unearned markups was not supported by evidence that lender kept any portion of fees it charged borrower for third-party services. *Jefferies v Ameriquest Mortg. Co.* (2008, ED Pa) 543 F Supp 2d 368.

Fee of \$ 150 charged by title agency for "release recording fees" did not violate 12 USCS § 2607(b) where fee was not markup of fees charged by lender but was instead charge for agency's services, which included collecting and distributing funds and making sure that lender recorded release of prior mortgages; even if agency's fee arguably should have been reduced to account for lender's payment of \$ 80 county recording fee, which was passed through to mortgagors under N.J. Stat. Ann. § 46:18-11.2, overcharges did not violate § 2607(b). *Tubbs v N. Am. Title Agency, Inc.* (2009, DC NJ) 622 F Supp 2d 207.

In case in which homeowner sued lender, alleging that it had violated Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., by giving, and broker receiving, fee, kickback or thing of value pursuant to understanding between broker and lender that broker would refer business to lender, and lender moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), while factual support underpinning homeowner's allegations was thin, she alleged enough facts to survive lender's motion to dismiss RESPA claim; in particular, homeowner argued that fees charged by lender were outside norm for borrower with creditworthiness that homeowner had. *Palmer v GMAC Commer. Mortg.* (2009, DC Dist Col) 628 F Supp 2d 186.

Because defendant insurer and its agents actually performed title insurance services, charging plaintiff consumers more than state law allowed and splitting charge with agents who performed services was not 12 USCS § 2607(b) violation because even if excessive, charge was for services actually performed, and § 2607(c) provided that § 2607 did not prohibit payment of fee by title company to its duly appointed agent for services actually performed in issuance of policy of title insurance. *Hancock v Chi. Title Ins. Co.* (2009, ND Tex) 635 F Supp 2d 539.

Broker prepared debtor's loan application, ordered appraisal, maintained contact with debtor and lender, and attended closing, but it was unclear whether he performed all of tasks listed in his agreement or performed sufficient tasks for fees to be reasonable under 12 USCS § 2607, part of Real Estate Settlement and Procedures Act, 12 USCS §§ 2601 et seq., and thus, debtor's motion for summary judgment was denied. *Lewis v Delta Funding Corp.* (In re Lewis)

(2003, BC ED Pa) 290 BR 541 (criticized in *Jeanty v Wash. Mut. Bank F.A.* (2004, ED Wis) 305 F Supp 2d 962).

14.--Fee-splitting

Charge of violation must allege that lender gave or received portion, split, or percentage of charge with third party since provision is intended to prohibit all kickback and referral fee arrangements whereby payment is made or thing of value furnished for referral of real estate settlement business; costs imposed on refinancing which are not shared with third parties do not constitute violation even though no new services are actually performed. *Mercado v Calumet Federal Sav. & Loan Asso.* (1985, CA7 Ill) 763 F2d 269.

Trial court erroneously granted, under *Fed. R. Civ. P. 12(b)(6)*, motion to dismiss real estate sellers' complaint that mortgagee illegally received split fee without performing service, contrary to 12 USCS § 2607(b), when they alleged they were charged fees by both mortgagee and closing company for recording release of lien on their title, but only closing company actually recorded lien, and it could be inferred that closing company paid fee for recording release of lien to mortgagee from pool of funds involved in transaction and that closing company also paid sellers their return on sale less closing company's recording fee. *Weizeorick v Abnamro Mortg. Group, Inc.* (2003, CA7 Ill) 337 F3d 827, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 19438 and cert den (2004) 540 US 1181, 158 L Ed 2d 83, 124 S Ct 1418.

12 USCS § 2607(b), entitled "Prohibition against kickbacks and unearned fees," is anti-kickback measure that prohibits real estate settlement overcharges when "portion" or "percentage" of charge is kicked back to or "split" with third party who performs no service, and statutory language describes situation in which A charges B (borrower) fee of some sort, collects it, and then either splits it with C or gives C portion or percentage (other than 50 percent, situation that statutory term "split" most naturally describes) of it. *Weizeorick v Abnamro Mortg. Group, Inc.* (2003, CA7 Ill) 337 F3d 827, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 19438 and cert den (2004) 540 US 1181, 158 L Ed 2d 83, 124 S Ct 1418.

Mortgage broker and credit reporting agency did not violate anti-kickback provision of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., specifically 12 USCS § 2607(a), because agency was not referred more business after price change for credit reports and total value of business did not increase as result of price change. *Krupa v Landsafe, Inc.* (2008, CA11 Ga) 514 F3d 1153, 21 FLW Fed C 331.

Section 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), bars splitting charge with party that has not actually performed services; Section 2607(b) does not prohibit charging what plaintiff claims is too much for services that have been performed or splitting fee with party that has performed services. *Arthur v Ticor Title Ins. Co.* (2009, CA4 Md) 569 F3d 154.

Title insurance company that allegedly charged excessive fees and split excessive fees with its local agents did not violate § 8(b) of Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607(b), because title insurance company and its agents did perform closing and settlement services in connection with homeowners' purchases of title insurance; company's fees could not be divided into valid and invalid parts based on state law because RESPA was not price-control provision. *Arthur v Ticor Title Ins. Co.* (2009, CA4 Md) 569 F3d 154.

Borrowers state viable claim for violation of 12 USCS § 2607(a), where complaint alleges lender paid mortgage broker fee or "premium" if broker referred to lender clients who would pay inflated rates for loans, because § 2607(a) prohibits payment of fees for referral of "business incident to or part of real estate settlement service involving federally related mortgage loan." *Moses v Citicorp Mortg.* (1997, ED NY) 982 F Supp 897, settled (2004, ED NY) 324 F Supp 2d 372.

Mortgagors' interpretation of regulation is incorrect and claimed violation of 12 USCS § 2607(b) is denied, even though they claim that mortgagee charged them for services which were not actually performed or were not necessary, because it is clear that 24 CFR § 3500.14(c) prohibits payments for which no services are performed only if those

payments are split with another party. *Willis v Quality Mortg. USA (1998, MD Ala) 5 F Supp 2d 1306*.

"Portion, split, or percentage" language in § 8(b), part of Real Estate Settlement Procedures Act of 1974, *12 USCS § 2607(b)*, foreclosed former owner's claim to recover brokerage commission because there was no allegation in complaint that anyone other than employee received it and kept it; thus, there was no "portion, split, or percentage" as to that fee. *Williams v Berkshire Fin. Group, Inc. (2007, ED NY) 491 F Supp 2d 320*.

12 USCS § 2607(b) is "anti-kickback" law intended to prohibit referral fee arrangements, that § 2607(b) does not prohibit mark-ups unless portion of charge is split or kicked back to third-party vendor, and clear and unambiguous language of § 2607(b) only prohibits charges when "portion" or "percentage" of charge is kicked back to or "split" with third-party. *Morales v Countrywide Home Loans, Inc. (2008, CD Cal) 531 F Supp 2d 1225*.

15.--Particular fees

RESPA is not violated by mortgage lenders' failure to disclose assessment of demand fees (mortgage lenders charge demand fee for preparing statement summarizing outstanding loan balance in connection with borrower's prepayment of balance of loan) and reconveyance fees (mortgage lenders charge reconveyance fee when they reconvey deed back to borrower after loan is repaid), as RESPA does not apply to such fees. *Bloom v Martin (1996, CA9 Cal) 77 F3d 318, 96 CDOS 1152, 96 Daily Journal DAR 1971, 142 ALR Fed 781*.

In residential mortgage loan transaction, lender's payment of yield spread and service release premiums to broker did not violate *12 USCS § 2607(a)*, part of Real Estate Settlement Procedures Act of 1974 (RESPA); fees were proper under applicable two-prong test, as broker provided borrower with compensable goods, facilities, and services, and total compensation to broker was reasonably related to its services. *Bjstrom v Trust One Mortg. Corp. (2003, CA9 Wash) 322 F3d 1201, 2003 CDOS 2476, 2003 Daily Journal DAR 3118*.

Creditor did not violate Home Ownership and Equity Protection Act (HOEPA), *15 USCS §§ 1602(aa)(1)(B), 1639(a)*, by not including appraisal fee, title insurance fee, phone-bill charge, or principal disbursement in total points and fees of debtors' loan because (1) appraisal and title insurance fees, if bona fide and reasonable, were excluded from HOEPA's definition of total points and fees under *15 USCS § 1605(e)* and *12 CFR § 226.4(c)(7)*; (2) appraisal and title insurance fees were bona fide and reasonable because they did not violate Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2607(b)*, as they were paid to unaffiliated third party for services actually performed and creditor derived no benefit from payments; and (3) *15 USCS § 1602(aa)(4)* did not include telephone charge and principal disbursement in total points and fees. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 451 F3d 913, vacated, substituted op on other grounds, on reh (2006, CA8 Minn) 463 F3d 793*.

District court correctly found that appraisal and title insurance fees did not violate Real Estate Settlement Procedures Act, *12 USCS § 2607(b)*, because they were paid to unaffiliated third party for services actually performed, and, in any event, creditor derived no benefit from payments; therefore, fees were bona fide and reasonable and excluded from definition of total points and fees under Home Ownership and Equity Protection Act, *15 USCS § 1605(e)*. *Mitchell v Benefit Loan & Thrift Co. (2006, CA8 Minn) 463 F3d 793*.

Because § 8(b) of Real Estate Settlement Procedures Act of 1974 (RESPA), *12 USCS § 2607(b)*, applied to undivided, as well as divided, unearned fees, homeowner who alleged that lenders collected undivided unearned post-closing fee in connection with their refinancing of her home adequately stated *RESPA claim*. *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111*.

Action against mortgagee alleging violation Real Estate Settlement Practices Act (RESPA) (*12 USCS §§ 2601 et seq.*) and Truth in Lending Act (TILA) (*15 USCS §§ 1601 et seq.*) is dismissed, because (1) there was no splitting of charges as contemplated by *12 USCS § 2607(b)* and RESPA does not encompass charging of excessive fees or fees for services never actually performed, and (2) release fees are not charges imposed as incident to or condition of extension of credit, nor do they violate TILA. *Adamson v Alliance Mortg. Co. (1987, ED Va) 677 F Supp 871, affd (1988, CA4*

Va) 1988 US App LEXIS 12702, withdrawn by publisher, reported at (1988, CA4 Va) 861 F2d 63, withdrawn by publisher, substituted op, reh den (1988, CA4) 1988 US App LEXIS 16583 and (ovrld in part on other grounds by *Busby v Crown Supply* (1990, CA4 Va) 896 F2d 833, 114 CCH LC P 12032) and (criticized in *Bloom v Martin* (1996, CA9 Cal) 77 F3d 318, 96 CDOS 1152, 96 Daily Journal DAR 1971, 142 ALR Fed 781) and (ovrld on other grounds as stated in *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578).

Mortgagors' claim that they were charged fees for settlement services that were not provided was dismissed because alleged document preparation fees, facsimile fees, and recording fees related to actions occurring well after property transfers and therefore fell outside scope of *Real Estate Settlement Procedures Act*. *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578.

Amount of any charge paid for settlement service includes full price paid for settlement service as opposed to amount of potential overcharge. *Pettrey v Enter. Title Agency, Inc.* (2006, ND Ohio) 241 FRD 268, reconsideration den, motion to strike gr (2007, ND Ohio) 242 FRD 384, 68 FR Serv 3d 371.

Overcharges, which arise out of settlement services provided by lender itself but charged to consumers seeking home mortgages for substantially more than provider's cost, are not covered by Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607(b); statutory text of RESPA, as well as previous congressional rejection of "reasonableness" cap on settlement charges, demonstrate that Congress did not intend § 2607(b) to serve as price-control mechanism; crudely put, § 2607(b) addresses practice of being paid at all for doing nothing, not practice of being paid too much for doing something. *Morrisette v NovaStar Home Mortg., Inc.* (2007, SD Ala) 484 F Supp 2d 1227, affd (2008, CA11 Ala) 284 Fed Appx 729.

Plaintiff borrower's claim against defendant bank for improper post-closing fee under 12 USCS § 2607(b) survived summary judgment; post-closing review provided by bank was not valid settlement service, and borrower paid settlement service fee for which no compensable settlement services were performed. *Cohen v J.P. Morgan Chase & Co.* (2009, ED NY) 608 F Supp 2d 330.

If settlement services are actually performed, then Real Estate Settlement Procedures Act permits charging fee, even if those services are performed twice and billed twice. *Cohen v J.P. Morgan Chase & Co.* (2009, ED NY) 608 F Supp 2d 330.

Summary judgment was granted in favor of purchaser with regard to her claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., because services listed by real estate company were not settlement-related and/or provide little or no benefit to purchaser; as such, they could not defeat 12 USCS § 2607(b) no services claim. *Busby v JRHBW Realty, Inc.* (2009, ND Ala) 642 F Supp 2d 1283.

Lenders and affiliate were not entitled to judgment on pleadings under *Fed. R. Civ. P. 12(c)* on RESPA claim because borrowers alleged unfair business practice of directing borrowers to obtain primary mortgage insurance from provider who then reinsured with affiliate, with lenders receiving referral fee, which did constitute settlement service under 12 USCS §§ 2602(3) and 2607, and element of overcharging was not required for standing. *Munoz v PHH Corp.* (2009, ED Cal) 659 F Supp 2d 1094.

16.--Unearned fees

Statutory language of § 8(b) and (c) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b) and (c), does not authorize court to divide charges into valid and invalid parts and to decide that invalid part is not for services performed. *Arthur v Ticor Title Ins. Co.* (2009, CA4 Md) 569 F3d 154.

Plain language of RESPA and relevant regulations is broad enough to cover situation where borrower pays two amounts to two parties for exact same service, one of whom performs service, and one of whom receives unearned fee while providing no service whatsoever. *Christakos v Intercounty Title Co.* (2000, ND Ill) 196 FRD 496.

Borrower's claim that defendants, title group corporation, title company, and others, violated § 8(b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(b), failed because borrower did not allege that corporation gave or received any portion of fees to or from title company--only that title company received unearned fee from borrower and then "channeled" it to other defendants. *Robinson v Fountainhead Title Group Corp.* (2006, DC Md) 447 F Supp 2d 478, class certif gr, in part, motion to strike den, motion gr, dismd, in part (2008, DC Md) 252 FRD 275.

Borrowers sufficiently stated claim for violation of § 8(b) of RESPA, 12 USCS § 2607(b), because if title agents received fees from title insurer in violation of reissue discounts mandated by Texas Department of Insurance, it was plausible that fees were not reasonably related to any services performed and fee splitting for unperformed services was prohibited by RESPA. *Hamilton v First Am. Title Co.* (2009, ND Tex) 612 F Supp 2d 743.

17.--Yield spread premiums (YSPs)

Yield spread premium payments by mortgage lender may be lawful in certain circumstances. *Culpepper v Inland Mortg. Corp.* (1998, CA11 Ala) 144 F3d 717, 11 FLW Fed C 1540 (criticized in *Lee v N.F. Invs., Inc.* (2000, ED Mo) 2000 US Dist LEXIS 20712).

Lenders' payment of yield spread premium (YSP) to mortgage broker who helped borrowers arrange their home loan was proper, and accordingly, appellate court affirmed district court's grant of summary judgment in favor of lenders, where mortgage broker performed actual services (as opposed to receiving referral fee) and total compensation was reasonable (borrowers never challenged reasonableness of fee but claimed that YSP was improper because it was not tied to any specific services); however, Department of Housing and Urban Development had previously rejected this argument). *Hirsch v Bankamerica Corp.* (2003, CA11 Ga) 328 F3d 1306, 16 FLW Fed C 539.

Mortgage lender was entitled to judgment on pleadings in borrowers' claim, alleging that lender violated Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607, by paying yield spread premium (YSP) that, when added to origination fee, exceeded statutory one-percent cap on Veteran Administration fees, where borrowers did not claim that YSP was unreasonable under two-part test established by HUD but instead relied on assertion that any YSP paid in excess of one-percent cap was per se unreasonable, which assertion had no basis in law and was not supported by factual allegations. *Geraci v Homestreet Bank* (2003, CA9 Wash) 347 F3d 749, 2003 CDOS 9170, 2003 Daily Journal DAR 11535.

In determining whether yield spread premium (YSP) is reasonable or unreasonable under § 8(a), (b) of Real Estate Settlement Procedures Act, 12 USCS § 2607(a), (b), court is to consider: (1) whether goods or facilities were actually furnished or services were actually performed for compensation paid and if so, (2) whether payments are reasonably related to value of goods or facilities that were actually furnished or services that were actually performed; reasonableness prong of test is determinative. *Geraci v Homestreet Bank* (2003, CA9 Wash) 347 F3d 749, 2003 CDOS 9170, 2003 Daily Journal DAR 11535.

Lender's payment of yield spread differential to mortgage broker was not unreasonable under 12 USCS § 2607 and lender was not liable under kickback and fee-splitting provisions, even if mortgagors were not aware that lender was paying broker such fee, where differential was structured to ensure full compensation for broker's services when borrower could not fully compensate broker in cash at closing, thus allowing broker to set its own compensation, subject to borrower's refusal to take loan at higher rate of interest, because payment resulted from arm's-length bargaining and legitimate market process. *Barbosa v Target Mortg. Corp.* (1997, SD Fla) 968 F Supp 1548.

Mortgage broker and lender, in effect, split fees paid by borrowers within meaning of 12 USCS § 2607(b), where "yield-spread premium" that mortgage lender paid to broker for procuring and selling to it mortgage at interest rate above par was funded by increased interest that borrowers paid on their above-par mortgage. *Dubose v First Sec. Sav. Bank* (1997, MD Ala) 974 F Supp 1426.

Mortgage broker provided compensable goods, facilities, and services in originating borrower's loan, as required

for yield spread premium that lender paid to broker to be legal payment under *12 USCS § 2607(a)*, where broker prepared loan application, prequalified borrower for loan, counseled borrower, verified information, arranged property appraisals, preparation of legal documents, and loan closing, and obtained credit reports. *Schmitz v Aegis Mortg. Corp.* (1999, DC Minn) 48 F Supp 2d 877 (criticized in *Glover v Std. Fed. Bank* (2000, DC Minn) 2000 US Dist LEXIS 20670) and (criticized in *Jones v USMoney Source, Inc.* (2000, ND Ga) 2000 US Dist LEXIS 20400) and (criticized in *Perry v Mid South Mortg., Inc.* (2000, ND Ala) 2000 US Dist LEXIS 20275).

Yield spread premiums paid by mortgage lenders to mortgage brokers are not per se illegal under *RESPA*. *Levine v North Am. Mortg.* (1999, DC Minn) 188 FRD 320 (criticized in *Glover v Std. Fed. Bank* (2000, DC Minn) 2000 US Dist LEXIS 20670) and (criticized in *Jones v USMoney Source, Inc.* (2000, ND Ga) 2000 US Dist LEXIS 20400) and (criticized in *Perry v Mid South Mortg., Inc.* (2000, ND Ala) 2000 US Dist LEXIS 20275).

In determining if yield spread and service release premiums are prohibited referral fees under *12 USCS § 2607(a)*, rather than looking to what services mortgage brokers provided in return for such premiums, Department of Housing and Urban Development and courts look to whether particular charge for mortgage significantly deviates from market rates in area for similar services. *Bjstrom v Trust One Mortg.* (2001, WD Wash) 178 F Supp 2d 1183, affd in part and remanded in part (2003, CA9 Wash) 322 F3d 1201, 2003 CDOS 2476, 2003 Daily Journal DAR 3118.

Individuals' claims that yield spread premiums paid by mortgage broker were kickbacks under *12 USCS § 2607(a)* failed where it was undisputed that mortgage broker offered compensable services and there was no evidence that compensation received deviated from market norms. *Dominguez v Alliance Mortg. Co.* (2002, ND Ill) 226 F Supp 2d 907.

In consolidated action (1) alleging that yield spread premiums (YSPs) were illegal kickbacks under § 8 of Real Estate Settlement Procedures Act, *12 USCS §§ 2601-2617*; (2) mortgagors admitted that their mortgage brokers provided services that were necessary to close loans, thus meeting first step of Department of Housing and Urban Development's (HUD) two-prong test to determine whether payment from lender to broker was permissible under *12 USCS § 2607(a)*; and (3) to show that their respective mortgage broker's compensation was unreasonable, mortgagors relied on undisputed evidence that YSP payments did not reduce their out-of-pocket or up-front costs, district court granted summary judgment in favor of mortgage company; taken in context, language of HUD 2001 Statement of Policy did not require that YSPs benefit borrowers or else they were illegal, and mortgagors' evidence that their up front costs were not reduced was not sufficient, in and of itself, to establish that their mortgage brokers' total compensation was excessive in light of circumstances of each of their respective loans. *Culpepper v Inland Mortg. Corp.* (2006, ND Ala) 243 FRD 459, affd (2007, CA11 Ala) 491 F3d 1260, 20 FLW Fed C 824.

Where borrowers alleged that defendants misled them into obtaining economically burdensome mortgage, borrowers' claim that mortgage broker accepted yield spread premium as kickback for arranging loan survived dismissal because borrowers sufficiently alleged that payments defendants received were not reasonably related to services actually performed; however, fee-based claims failed because (1) regarding processing fee, *12 USCS § 2607(b)* did not prohibit overcharges, and (2) regarding credit reporting fee, borrowers failed to allege that portion of \$ 75 that defendants retained was not for services actually rendered. *Maganallez v Hilltop Lending Corp.* (2007, ND Cal) 505 F Supp 2d 594.

Consumers' claims that their lender violated Truth in Lending Act, *15 USCS § 1601*, et seq., were not brought within limitations periods of *15 USCS § 1640(e)* and *15 USCS § 1635(f)*, where relief was not requested from original creditor; claim alleging secret fees stated claim for relief based on yield spread premiums paid original lender, under *12 USCS § 2607(a)*. *Brewer v Indymac Bank* (2009, ED Cal) 609 F Supp 2d 1104.

But for assistance in paying tax arrears, mortgage broker's tasks were normal settlement services under *12 USCS § 2602(3)*, arguably compensated by loan origination fee alone, and where yield spread premium (YSP), paid outside of closing, was 96% more than average and there had been no threat of foreclosure, and loan to debtor was insufficient to

pay second mortgage, triable issue of fact existed as to whether YSP was earned and allowable under 12 USCS § 2607(a), (c), part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq. *Apgar v Homeside Lending, Inc.* (In re Apgar) (2003, BC ED Pa) 291 BR 665.

Unpublished Opinions

Unpublished: Because it was undisputed that broker actually completed tasks commonly performed in originating plaintiff borrower's loan, defendant mortgagee received value from those services and payment of yield spread premium to broker was not kickback or unearned fee in violation of 12 USCS § 2607(c); anti-kickback provisions of 12 USCS § 2607(c) were not appropriate vehicle for considering globally whether broker provided fair, honest, and competent service to borrower and broker's alleged misrepresentation that loan was favorable to borrower did not mean broker did not perform actual services in brokering loan. *Sutton v Countrywide Home Loans, Inc.* (2009, CA11 Fla) 2009 US App LEXIS 26435.

Unpublished: Mortgage company was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of claim for violation of 12 USCS § 2607, part of Real Estate and Settlement Procedures Act, and of 24 C.F.R. § 3500.14; mortgagors successfully alleged that mortgage company paid improper yield spread premium to mortgage broker. *Plata v Long Beach Mortg. Co.* (2005, ND Cal) 2005 US Dist LEXIS 38807.

18. Pleadings

Well-pleaded complaint based upon violation of 12 USCS § 2607(b), part of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., must allege that defendant shared unearned fee with third party to real estate transaction. *Weizeorick v Abnamro Mortg. Group, Inc.* (2003, CA7 Ill) 337 F3d 827, reh, en banc, den (2003, CA7 Ill) 2003 US App LEXIS 19438 and cert den (2004) 540 US 1181, 158 L Ed 2d 83, 124 S Ct 1418.

Where plaintiff homeowner alleged that, under 12 USCS § 2607(b), she refinanced existing mortgage on her home and that defendants, title company and its principal, in connection with predatory lending scheme that targeted African-Americans, acted as settlement agents for refinancing, and alleged that related entity received document preparation fee, but did not indicate that defendants split or paid fee to other entity, claim was insufficient; however, pursuant to homeowner's request under *Fed. R. Civ. P. 15(a)*, she was allowed to amend claim to allege fee splitting. *Beard v Worldwide Mortg. Corp.* (2005, WD Tenn) 354 F Supp 2d 789.

Mortgagor sufficiently alleged claims under 12 USCS § 2607(a), (b), against defendants, arising out of their participation in alleged predatory mortgage refinancing scheme, because she alleged that defendants all shared in illegal referral fees and/or fee splitting in violation of Real Estate Settlement Procedures Act (RESPA) where (1) mortgagor was seeking to hold federal credit union liable not based on its status as parent company of several affiliated entities, but as participant in "sham entity" scheme involving entities, pursuant to which it had received illegal referral and fee-splitting fees; and (2) despite sued individual's claims to contrary, mortgagor alleged three separate times in her amended complaint that individual had received or shared fees in violation of RESPA. *Yates v All Am. Abstract Co.* (2007, ED Pa) 487 F Supp 2d 579.

In case in which foreclosure company argued that home owners' claims were based on potential violations of Real Estate Settlement Procedures Act (RESPA) and federal question jurisdiction existed under 28 USCS § 1331, inter alia, RESPA's preemption provision in 12 USCS § 2616 did not rise to level of complete preemption; additionally, 12 USCS § 2607(d)(6) did not require home owners to sue for violations of RESPA rather than for negligence and other state law claims. *Wood v Option One Mortg. Corp.* (2008, ND Ala) 580 F Supp 2d 1248.

RESPA claim by borrower against mortgage broker and agent was not barred by statute of limitations because allegations fell within 12 USCS § 2607 pertaining to disclosure requirements and such claim was thus timely. *Hardy v INDYMAC Fed. Bank* (2009, ED Cal) 263 FRD 586.

Mortgagor's allegations that bank paid yield spread premium of \$ 7,500 and that payment was illegal kickback or illegal split of settlement service fees in violation of 12 USCS §§ 2607(a) and (b) adequately stated claim against bank for violations of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq. *Reyes v Premier Home Funding, Inc.* (2009, ND Cal) 640 F Supp 2d 1147.

Homeowners' complaint against settlement agents sufficiently pled violations of 12 USCS § 2607(a) and (b) because it was alleged that (1) agents received valuable referral business and resulting commissions and income as result of agents' participation in scheme to funnel equity in certain properties to other defendants, and (2) agents allegedly split fees and charges received as result of real estate settlement transactions among themselves and their employee in addition to other defendants. *Proctor v Metro. Money Store Corp* (2009, DC Md) 645 F Supp 2d 464.

Borrowers' claim under Real Estate Settlement Procedures Act, 12 USCS § 2605, failed on motion to dismiss because there was no private right of action under that section; however, claim brought under 12 USCS § 2607 remained because borrowers alleged that defendants received kickbacks in course of refinancing and that provision specifically addressed private remedies. *Urbina v Homeview Lending, Inc.* (2009, DC Nev) 681 F Supp 2d 1254.

Mortgagor's 12 USCS § 2607(b) claim against mortgagee assignee was dismissed where only allegation was that assignee had failed to respond to qualified written request, and complaint lacked nonconclusory factual content plausibly suggesting that assignee, or any other defendant, had violated § 2607(b). *Jensen v Quality Loan Serv. Corp* (2010, ED Cal) 702 F Supp 2d 1183, motion gr, dismd (2010, ED Cal) 2010 US Dist LEXIS 72393.

Unpublished Opinions

Unpublished: Because no violation of 12 USCS § 2607(a) was alleged in plaintiff buyers' final complaint, allegation was that defendant mortgagee of record received both kickback and business referral, not that it received referral of business in exchange for kickback, and complaint thus failed to state claim under § 2607(a). *Knighton v Merscorp, Inc.* (2008, CA5 Tex) 2008 US App LEXIS 26133.

Unpublished: There was no private right of action for violation of 12 USCS § 2604(c) and borrower did not alleged enough facts to suggest, raise reasonable expectation of, or render plausible claims brought under either 12 USCS §§ 2607 or 2605(e). *Frazile v EMC Mortg. Corp.* (2010, CA11 Fla) 2010 US App LEXIS 11931.

Unpublished: Because fact of premium does not in itself violate 12 USCS § 2607, complaint alleging payment of illegal yield spread premium in connection with mortgage loan, which did not specify facts showing whether yield spread premium did or did not bear reasonable relationship to value of any goods or services that were actually provided, failed to state claim. *Bassett v Ruggles* (2009, ED Cal) 2009 US Dist LEXIS 83349.

Unpublished: Homeowner's 12 USCS § 2607 claim failed where he had not alleged who accepted kickbacks, what those kickbacks were, or circumstances surrounding transaction. *Silvas v GMAC Mortg., LLC* (2009, DC Ariz) 2009 US Dist LEXIS 118854.

19. Burden of proof

There is no support in legislative history for contention that government's burden in prosecution under 12 USCS § 2607 includes showing that appellant knows that each payment is being passed on directly to bank's customers. *United States v Gannon* (1982, CA7 Ill) 684 F2d 433, cert den (1981) 454 US 940, 70 L Ed 2d 248, 102 S Ct 475.

Accepting district court's theory of liability (that defendant title company's split with title agents may not have been for services actually performed, and hence in violation of 12 USCS § 2607(b), if title agent's compensation was not reasonable in relation to services they performed), class certification decision was abuse of discretion because district court's liability model for violations of 12 USCS § 2607(b) required inquiry into facts of each individual class member's title insurance transaction; because inquiry into reasonableness of payments for goods and services had to be performed

on transaction-by-transaction basis, class issues did not predominate and class certification was improper. *Mims v Stewart Title Guar. Co.* (2009, CA5 Tex) 590 F3d 298, 75 FR Serv 3d 358.

Plaintiff need not determine true purpose of fee; instead, under 12 USCS § 2607(b), plaintiff need only show that no valid settlement services were provided in exchange for fee. *Cohen v J.P. Morgan Chase & Co.* (2009, ED NY) 608 F Supp 2d 330.

20. Evidence and witnesses

In proposed class action lawsuit alleging that title insurance company had paid kickbacks to real estate attorneys who steered their clients to title insurance company in violation of Real Estate Settlement Procedures Act (RESPA) (12 USCS §§ 2601 et seq.) attorneys who were nonparty witnesses could not be compelled to testify at deposition as to any information which would possibly furnish evidence against them personally in criminal prosecution under RESPA, but witnesses would have to co-operate with discovery to extent of answering questions which would not incriminate them, including general questions regarding their law practice and matters of public record. *Moll v U.S. Life Title Ins. Co.* (1987, SD NY) 113 FRD 625.

Where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees, buyers' testimony as to whether realtors' conduct complied with 12 USCS § 2607(c)(4)(B) as to not requiring use of particular settlement provider precluded summary judgment. *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Unpublished Opinions

Unpublished: Borrowers' claim against mortgage company under Real Estate Settlement Procedures Act, 12 USCS §§ 2601-2617, failed because borrowers failed to produce any evidence that \$ 7,164 fee mortgage company paid to mortgage broker was kickback. *Smith v Argent Mortg. Co., LLC* (2009, CA10 Colo) 2009 US App LEXIS 10702.

21.--Discovery; protective orders

Where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees and buyers sought summary judgment on issue of disclosure under 12 USCS § 2607(c)(4)(A), title company, its subsidiary agent, and agent's subsidiary did not have to disclose realtors and realtors' limited partnerships' relationships with title company and its agent as those relationships were not affiliated business arrangements under 12 USCS § 2602(7). *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Where home buyers filed claims against title company, its subsidiary agent, and agent's subsidiary (defendants) under Real Estate Settlement Procedures Act, alleging kickbacks and referral fees, defendants were not required to disclose that realtors and realtors' limited partnerships referred settlement business to title company or its agent, as those transactions were subject to exemptions of 12 USCS § 2607(c)(1)-(2) as payment of fee for services rendered, services were actually performed, and there was no evidence payments were not reasonably related to services' value. *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.

Where home buyers sued title agencies and realtor for violations of 12 USCS § 2607, and Consumer Sales Protection Act, negligent misrepresentation, and civil conspiracy, alleging that sham companies were used to cover up improper payment of referral fees to realtor, defendants' motion for protective order and to designate documents as confidential was denied as they did not comply with confidentiality order wherein they agreed that they would designate discovery materials as confidential in good faith; without prior inspection, defendants turned over 152 boxes of documents containing approximately 400,000 pages of information, and they marked every page confidential. Having failed to file motion, as was required by order, within specified time, information was deemed not confidential; moreover, tax returns and real estate commissions were relevant pursuant to *Fed. R. Civ. P. 26(b)(1)*, and thus were not

to be covered under requested protective order, as they were just type of materials that were likely to show alleged conspiracy. *Pettrey v Enter. Title Agency, Inc.* (2006, ND Ohio) 470 F Supp 2d 790.

22. Defenses

Provision of § 8(b) of Real Estate Settlement Procedures Act of 1974 (*12 USCS § 2607(b)*) prohibiting acceptance of fee for rendering of real estate settlement service in connection with federally related mortgage loan "other than for services actually performed," could not be relied upon as defense by president of federally insured bank who was charged with taking for himself commitment fee paid by borrower in connection with loan to finance building construction, notwithstanding president's contention that he had taken fee as compensation for services and expenses he had incurred in arranging loan, since 12 CFR § 563.40(a) clearly bars persons affiliated with federally insured institutions from receiving any fee, earned or unearned, in connection with procurement of loan. *United States v Grissom* (1987, CA10 NM) 814 F2d 577.

23. Damages

Although there is split of authority on issue, Eastern District of Pennsylvania district court holds that pursuant to *12 USCS § 2607(d)(2)*, plaintiff may seek three times amount that plaintiff has paid for any settlement services and that plaintiff is not limited to recovering treble damages only on amount of mark-up that s/he paid to defendants in connection with those services. *Yates v All Am. Abstract Co.* (2007, ED Pa) 487 F Supp 2d 579.

Mortgagor sufficiently asserted claim for treble damages under *12 USCS § 2607(d)(2)* with regard to full amount that she had paid to defendants for their settlement services since § 2607(d)(2) penalty provision was not limited to amount of mark-up that mortgagor might have paid in connection with those services. *Yates v All Am. Abstract Co.* (2007, ED Pa) 487 F Supp 2d 579.

Earlier version of *12 USCS § 2607(d)(2)*, part of Real Estate Settlement Procedures Act, *12 USCS §§ 2601* et seq., was composed of two subsections: one providing measure of damages for violating *12 USCS § 2607(a)*, and other providing damages for violating *12 USCS § 2607(b)*; 1983 amendment consolidated these two damage provisions to create one universal measure of damages for violations of both subsections. Removal of phrase "thing of value" was necessary when consolidating these two subsections because *12 USCS § 2607(b)* does not contain phrase "thing of value"; therefore, amendment does not reflect expansion of recoverable damages. *Carter v Welles-Bowen Realty, Inc.* (2007, ND Ohio) 493 F Supp 2d 921 (criticized in *Edwards v First Am. Corp.* (2007, CD Cal) 517 F Supp 2d 1199) and (criticized in *Capell v Pulte Mortg. L.L.C.* (2007, ED Pa) 2007 US Dist LEXIS 82570) and (criticized in *Reed v Wash. Mut., Inc.* (2008, ED Pa) 2008 US Dist LEXIS 50523) and (criticized in *Alexander v Washington Mut., Inc.* (2008, ED Pa) 2008 US Dist LEXIS 61256).

Punitive damages are not authorized by Real Estate Settlement Procedures Act (RESPA), *12 USCS §§ 2601* et seq.; only *12 USCS §§ 2605, 2607* and *2608* contain private rights of action, and none of these authorize punitive damages. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

24. Attorneys' fees

Real Estate Settlement Procedures Act's (RESPA), *12 USCS §§ 2601-2617*, attorneys fee provision, *12 USCS § 2607(d)(5)*, fell closer to rule of Christiansburg than that of Fogerty, making district court's adoption of Christiansburg's dual standard appropriate, and district court properly exercised its discretion in denying title company's request for attorneys fees as purchaser's claims were not frivolous, unreasonable, or without foundation. *Lane v Residential Funding Corp.* (2003, CA9 Cal) 323 F3d 739, 2003 CDOS 2275.

25. Appeal and review

District court's order was vacated because although district court was free to require individuals to post appellate

cost bond under *Fed. R. App. P. 7*, it was improper to include anticipated attorneys' fees within such bond under *12 USCS § 2607(a)*, part of Real Estate Settlement Procedures Act of 1974 (RESPA), *12 USCS §§ 2601 et seq. Baynham v PMI Mortg. Ins. Co. (2002, CA11 Ga) 313 F3d 1337, 54 FR Serv 3d 748, 16 FLW Fed C 104.*

Although district court was free to require appellants to post appellate cost bond, it was improper to include anticipated attorneys' fees within such bond under Real Estate Settlement Procedures Act of 1974, *12 USCS § 2607(d)(5). Downey v Mortgage Guar. Ins. Corp. (2002, CA11 Ga) 313 F3d 1341, 54 FR Serv 3d 498, 16 FLW Fed C 106.*

Appellate court's prior ruling in same case was not controlling under law of case doctrine because intervening U.S. Department of Housing and Urban Development's Real Estate Settlement Procedures Act 2001 Statement of Policy (2001 SOP) was controlling authority that had since made contrary decision of law applicable to plaintiff borrowers' claim against defendant mortgage lender under *12 USCS § 2607(a)*; 2001 SOP had effect of overruling prior ruling, thus, following prior ruling would work manifest injustice. *Culpepper v Irwin Mortg. Corp. (2007, CA11 Ala) 491 F3d 1260, 20 FLW Fed C 824.*

26.--Agency interpretation

Applying two-prong test developed by Department of Housing and Urban Development, mortgage broker's total compensation, including direct as well as indirect fees, was consistent with local practice and reasonably related to value broker contributed to mortgagor's transaction and, therefore, did not violate Real Estate Settlement Procedures Act, *12 USCS §§ 2601 et seq. Schuetz v Banc One Mortg. Corp. (2002, CA9 Ariz) 292 F3d 1004, 2002 CDOS 5058, 2002 Daily Journal DAR 6427, cert den (2003) 537 US 1171, 154 L Ed 2d 913, 123 S Ct 994* and (criticized in *Apgar v Homeside Lending, Inc. (In re Apgar) (2003, BC ED Pa) 291 BR 665*).

Dismissal of homebuyers' Real Estate Settlement Procedures Act action was affirmed because closing agent did not accept any split of any charge, when it pocketed difference between \$ 50 recording fee it charged homeowners and \$ 36 fee it paid county recorder; even Chevron deference would not bear Department of Housing and Urban Development's contrary interpretation. *Krzalic v Republic Title Co. (2002, CA7 Ill) 314 F3d 875, cert den (2003) 539 US 958, 123 S Ct 2641, 156 L Ed 2d 656* and (criticized in *Santiago v GMAC Mortg. Group, Inc. (2005, CA3 Pa) 417 F3d 384*) and (criticized in *Price v Countrywide Home Loans, Inc. (2005, SD Ga) 2005 US Dist LEXIS 22408*) and (criticized in *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111*).

Section 8(b) of Real Estate Settlement Procedures Act of 1974 (RESPA), *12 USCS § 2607(b)*, is ambiguous as to whether its protections can apply to undivided, as well as divided, unearned fees; because Department of Housing and Urban Development, agency charged with administering RESPA, reasonably resolves this ambiguity by construing statute to apply to undivided fees, Second Circuit accords that construction deference. *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111.*

Interpretations of RESPA by Department of Housing and Urban Development are entitled to substantial deference. *Levine v North Am. Mortg. (1999, DC Minn) 188 FRD 320* (criticized in *Glover v Std. Fed. Bank (2000, DC Minn) 2000 US Dist LEXIS 20670*) and (criticized in *Jones v USMoney Source, Inc. (2000, ND Ga) 2000 US Dist LEXIS 20400*) and (criticized in *Perry v Mid South Mortg., Inc. (2000, ND Ala) 2000 US Dist LEXIS 20275*).

In context of determining whether yield spread premium violates *12 USCS § 2607(a)* or falls within exemption set forth in *12 USCS § 2607(c)*, District Court agreed with Court of Appeals for Eighth Circuit that Real Estate Settlement Procedures Act Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, *64 Fed. Reg. 10080* (Mar. 1, 1999), was entitled to deference as agency's interpretation of its own ambiguous regulation and was controlling unless it was plainly erroneous or inconsistent with regulation or underlying statute. *Dominguez v Alliance Mortg. Co. (2002, ND Ill) 226 F Supp 2d 907.*



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2608

§ 2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 9, 88 Stat. 1728.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 2614, 3500.16, 3500.19*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:64, 67, 69, 71.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 231.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

1A Debtor-Creditor Law (Matthew Bender), ch 13, Foreclosure Defense § 13.18.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02, 156.04, 156.05, 156.08.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abbound. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Interpretive Notes and Decisions:

Attorney, who represented class of plaintiffs who had purchased homes from builders who had allegedly violated *12 USCS § 2608(a)* by requiring buyers to purchase title insurance from title insurance companies selected by defendant builders, was entitled to fees and costs. *Weisberg v Toll Bros., Inc. (1985, ED Pa) 617 F Supp 539.*

Real estate seller and its agent did not violate *12 USCS § 2608*, part of Real Estate Settlement Procedures Act (RESPA), when (1) listing contract did not require purchaser to select particular title company; (2) settlement or closing fee, which was distinct charge from charges for title insurance, was paid to law firm of seller's closing attorney, not to law firm's title company; (3) fact that lender's requirements limited purchaser's choice of title insurance company was irrelevant to question of whether seller required purchaser to use any particular title insurance company; and (4) economic incentive to purchase title insurance from particular title company was not same thing as direct or indirect requirement to purchase title insurance from that company under *24 C.F.R § 3500.2. Hopkins v Horizon Mgmt. Servs. (2007, DC SC) 515 F Supp 2d 649.*

No notice requirement is contained in *12 USCS § 2608*, part of Real Estate Settlement Procedures Act (RESPA). *Hopkins v Horizon Mgmt. Servs. (2007, DC SC) 515 F Supp 2d 649.*

In real estate purchaser's action pursuant to *12 USCS § 2608*, part of Real Estate Settlement Procedures Act (RESPA), fact that title processor changed its policy following filing of lawsuit to require that seller pay for lender title insurance policy was inadmissible under *Fed. R. Evid. 407* and as impeachment evidence, could not create genuine issue of material fact to defeat real estate seller and its agent's motion for summary judgment. *Hopkins v Horizon Mgmt.*

Servs. (2007, DC SC) 515 F Supp 2d 649.

Although borrowers' RESPA claim governing disclosure requirements under 12 USCS § 2605 was not barred by three-year limitations period of 12 USCS § 2614, borrowers had to explain why their claims under 12 USCS §§ 2607 and 2608 were not barred by one-year limitations period of § 2614. *Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048.*

Punitive damages are not authorized by Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq.; only 12 USCS §§ 2605, 2607 and 2608 contain private rights of action, and none of these authorize punitive damages. *Sarsfield v Citimortgage, Inc. (2009, MD Pa) 667 F Supp 2d 461.*

Unpublished Opinions

Unpublished: Section 9 of Real Estate Settlement Procedures Act, 12 USCS § 2608, did not apply where purchaser conceded that defendants, bank and its agent, paid for owner's title policy; purchaser's admission defeated any claim that purchaser was required to purchase title insurance from any particular title company. *Hopkins v Horizon Mgmt. Servs. (2008, CA4 SC) 2008 US App LEXIS 24542.*

Unpublished: Section 9 of Real Estate Settlement Procedures Act, 12 USCS § 2608, was not violated where purchaser fell short of showing that defendants, bank and its agent, required her to purchase owner's title insurance from particular title company as condition of sale; additionally, there was no evidence that purchaser was required as condition of sale to purchase lender's policy from defendants' title agent or company providing owner's policy, whatever conditions purchaser's lenders may have imposed upon her selection of insurer could not have been imputed to defendants, fact that purchaser paid less for lender's policy purchased from company already providing owner's insurance may have been economic benefit, but it was not requirement and thus did not come within language of § 9, and defendants were not affirmatively required to inform purchaser of her right to choose her own title insurance company. *Hopkins v Horizon Mgmt. Servs. (2008, CA4 SC) 2008 US App LEXIS 24542.*



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
 CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2609

§ 2609. Limitation on requirement of advance deposits in escrow accounts [Caution: See prospective amendment note below.]

(a) In general. A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower--

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 6(i) [12 USCS § 2605(i)]) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow

account.

(c) Escrow account statements.

(1) Initial statement.

(A) In general. Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission. The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing. Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 4. The Secretary shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 4 [12 USCS § 2603] that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement.

(A) In general. Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission. The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [enacted Nov. 28, 1990], and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties.

(1) In general. In the case of each failure to submit a statement to a borrower as required under subsection (c), the Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of \$ 50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b)[(c)] may not exceed \$ 100,000.

(2) Intentional violations. If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure--

(A) the penalty imposed under paragraph (1) shall be \$ 100; and

(B) in the case of any penalty determined under subparagraph (A), the \$ 100,000 limitation under paragraph (1) shall not apply.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 10, 88 Stat. 1728; Jan. 2, 1976, P.L. 94-205, § 8, 89 Stat. 1158; Nov. 28, 1990, P.L. 101-625, Title IX, Subtitle C, § 942(a), 104 Stat. 4411; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(g)(2), 110 Stat. 3009-401.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(8), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed subsection designator (c) has been inserted in subsec. (d) as the reference probably intended by Congress.

Prospective amendment:

Amendment of subsecs. (c) and (d), effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(8), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that subsecs. (c) and (d) of this section are amended by striking "Secretary" and inserting "Bureau".

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976 (effective on enactment, as provided by § 12 of such Act, which appears as *12 USCS § 2602* note) substituted the text of this section for text which read:

"No lender, in connection with a federally related mortgage loan, shall require the borrower or prospective borrower--

"(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes and insurance premiums with respect to the property, prior to or upon the date of settlement, an aggregate sum (for such purpose) in excess of--

"(A) in any jurisdiction where such taxes and insurance premiums are postpaid, the total amount of such taxes and insurance premiums which will actually be due and payable on the date of settlement and the pro rata portion thereof which has accrued, or

"(B) in any jurisdiction where such taxes and insurance premiums are prepaid, a pro rata portion of the estimated taxes and insurance premiums corresponding to the number of months from the last date of payment to the date of settlement,

plus one-twelfth of the estimated total amount of such taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the date of settlement; or

"(2) to deposit in any such escrow account in any month beginning after the date of settlement a sum (for the purpose of assuring payment of taxes and insurance premiums with respect to the property) in excess of one-twelfth of the total amount of the estimated taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the first day of such month, except that in the event the lender determines there will be a deficiency on the due date he shall not be prohibited from requiring additional monthly deposits in such escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of such deficiency to the date upon which such taxes and insurance premiums become due and payable.".

1990. Act Nov. 28, 1990 designated the existing provisions as subsec. (a) and added the subsection heading; and added subsecs. (b)-(d).

1996. Act Sept. 30, 1996, in subsec. (c)(1)(C), substituted "The" for "Not later than the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the".

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 2605, 2610, 3500.2, 3500.12, 3500.17; 42 USCS § 4012a.*

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:64, 67.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection §§ 232, 233.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

5 Debtor-Creditor Law (Matthew Bender), ch 47, Escrowees § 47.02.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.03-156.05, 156.08.

8 Banking Law (Matthew Bender), ch 160, National Flood Insurance Program § 160.04.

9 Banking Law (Matthew Bender), ch 172, Application Evaluation § 172.04.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.05, 174.06.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment §§ 175.04, 175.04A.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

1. Private right of action
2. Jurisdiction
3. Miscellaneous

1. Private right of action

Real Estate Settlement Procedures Act (*12 USCS §§ 2601 et seq.*) creates private cause of action for violations of §§ 2609, 2610, notwithstanding absence of express provision for such cause of action, since legislative history of Act indicates that Congress intended to create private remedy for violations of Act. *Vega v First Federal Sav. & Loan Asso.*

(1980, CA6 Mich) 622 F2d 918, reh den, corrected on other grounds(1980, CA6) 1980 US App LEXIS 15714.

Real Estate Settlement Procedures Act of 1974 (12 USCS §§ 2601 et seq.) creates no implied private right of action for violation of § 2609 since neither language of Act nor legislative history indicate congressional intention to create private cause of action under § 2609. *Allison v Liberty Sav.* (1982, CA7 Ill) 695 F2d 1086.

12 USCS § 2609 does not imply private cause of action. *Louisiana v Litton Mortgage Co.* (1995, CA5 La) 50 F3d 1298, *RICO Bus Disp Guide (CCH) P 8800, 32 FR Serv 3d 519.*

In Real Estate Settlement Procedures Act (RESPA) case, district court entry of judgment against two homeowners was affirmed because their cause of action arose under § 10 of RESPA, 12 USCS § 2609, which did not provide for private right of action, not § 6 of RESPA, 12 USCS § 2605, as argued by homeowners. *Hardy v Regions Mortg., Inc.* (2006, CA11 Ala) 449 F3d 1357, 19 FLW Fed C 575.

Mortgagors have no private right of action under 12 USCS § 2609, part of Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.), where complaint alleged mortgage company violated Act by requiring excessive escrow deposits, because statute and legislative history are silent as to private remedies and fact that sections immediately preceding § 2609 expressly provide private remedies is evidence Congress intended to deny such remedies in § 2609, and thus there is no federal question to use as basis for removal jurisdiction. *Bergkamp v New York Guardian Mortgage Corp.* (1987, DC Mont) 667 F Supp 719.

Borrower's claims that bank violated 12 USCS § 2609(a)(1) and (c) must be dismissed, where she asserts that bank improperly required her to prepay one-year premium for both mortgage and hazard insurance, and failed to provide her with complete and accurate statements of her escrow account on annual basis, because examination of Real Estate Settlement Procedures Act (RESPA) (12 USCS §§ 2601 et seq.) reveals that Congress never intended private right of action to proceed under § 2609. *Campbell v Machias Sav. Bank* (1994, DC Me) 865 F Supp 26.

No private right of action exists under escrow limitation provisions in 12 USCS § 2609(a); therefore, mortgagors could not challenge collection of certain fees under that provision. *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578.

Claims brought by homeowner against mortgage company under Real Estate Settlement Procedure Act (RESPA), 12 USCS §§ 2601 et seq., were barred because RESPA did not provide private right of action under 12 USCS § 2609 and homeowner failed to show any actual damage as required by 12 USCS § 2605. *Byrd v Homecomings Fin. Network* (2005, ND Ill) 407 F Supp 2d 937 (criticized in *Barany-Snyder v Weiner* (2007, ND Ohio) 2007 US Dist LEXIS 5137).

Lender was entitled to judgment on pleadings on claim by borrowers who alleged violation of 12 USCS § 2609(b) because § 2609 did not provide private right of action; borrowers, however, sufficiently stated claims for negligence and breach of fiduciary duty with respect to misapplication of monies. *Birkholm v Wash. Mut. Bank* (2006, WD Wash) 447 F Supp 2d 1158.

Congress did not intend to provide private right of action for violation of 12 USCS § 2609, part of Real Estate Settlement Procedures Act. *Birkholm v Wash. Mut. Bank* (2006, WD Wash) 447 F Supp 2d 1158.

In action in which borrowers alleged that lender failed to properly conduct escrow account analysis to determine amount that they were required to deposit into their escrow account in violation of 24 CFR § 3500.17(c)(2) and that lender violated 24 CFR § 3500.17(g)(1)(i) by failing to provide initial escrow account statement providing reasonable estimate of taxes, insurance premiums, and other charges that lender should have reasonably anticipated, borrowers failed to state claim under Real Estate Settlement Procedures Act because § 3500.17(c)(2) and (g)(1)(i) related to 12 USCS § 2609, which did not confer private right of action, and borrowers did not explain how alleged violations of regulations related to their private right of action under 12 USCS § 2605. *Sarsfield v Citimortgage, Inc.* (2009, MD Pa) 667 F Supp 2d 461.

Where Chapter 13 debtor's mortgage lender failed for period of five years to send debtor notifications required by Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2609(b), of amounts advanced to pay taxes and insurance, debtor was not excused under RESPA from repaying sums advanced because 12 USCS § 2615 made it clear that provisions of RESPA do not affect validity or enforceability of federally related mortgage loan. *In re Johnson* (2008, BC ED Mich) 384 BR 763.

2. Jurisdiction

Irrespective of whether cause of action can be implied under 12 USCS § 2609, district court has federal question jurisdiction (28 USCS § 1331) over action which alleges violation of 12 USCS § 2609. *Lake v First Nationwide Bank* (1994, ED Pa) 156 FRD 615.

Unpublished Opinions

Unpublished: Complaint asserting allegations of violations of Real Estate Settlement Procedures Act (RESPA), under 12 USCS §§ 2603, 2604, 2605, and 2609, was properly dismissed for failure to state claim because facts alleged in complaint did not implicate provisions cited, or were too conclusory to meet even liberal *Fed. R. Civ. P. 12(b)(6)* standard. *Johnson v Wash. Mut. Bank, F.A.* (2007, CA2) 216 Fed Appx 64.

3. Miscellaneous

Creditor mortgage lender's right to pre-petition escrow payments were "claim" for purposes of automatic stay in Chapter 13 debtors' bankruptcy, and that did not limit lender's Real Estate Settlement Procedures Act rights to recalculate amounts of payments under 12 USCS § 2609(a) to collect arrears or lender's rights under Bankruptcy Code; automatic stay operated to halt collection of pre-petition claims, even those claims held by creditor protected by anti-modification provision of 11 USCS § 1322(b)(2). *Campbell v Countrywide Home Loans, Inc.* (2008, CA5 Tex) 545 F3d 348.

Where loan servicer failed to meet its obligation under 12 USCS § 2609(b) to provide debtors annual notice of escrow deficiencies, it waived its right to impose increases to cover shortfalls for prior years when notice was not given, against debtors; debtors could not modify their mortgage payments under 11 USCS § 1322(b)(2). *In re Dominique* (2007, BC SD Fla) 368 BR 913, 20 FLW Fed B 423.

Where Chapter 13 debtor's mortgage lender failed for period of five years to send debtor notifications required by Real Estate Settlement Procedures Act, 12 USCS § 2609(b), of amounts advanced to pay taxes and insurance, including during time that prior Chapter 13 case was pending, lender waived its right to recover arrearage of taxes and insurance in its proof of claim. *In re Johnson* (2008, BC ED Mich) 384 BR 763.

Provision in mortgage requiring debtor to pay lender for taxes and insurance created escrow account within meaning of 24 C.F.R. § 3500.17(b) and, therefore, notification provisions regarding any shortage or deficiency in escrow account contained in 12 USCS § 2609(b) applied. *In re Johnson* (2008, BC ED Mich) 384 BR 763.

Mortgagee, in increasing Chapter 13 debtors' post-petition escrow payments to recover pre-petition escrow shortage, did not violate automatic stay provisions set forth in 11 USCS § 362(a) because its actions were in compliance with its loan documentation and Real Estate Settlement Procedures Act, 12 USCS § 2609. *In re Rodriguez* (2008, BC DC NJ) 391 BR 723.



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TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 2610

§ 2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements

No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under section 6(i) [*12 USCS § 2605(i)*]), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 4 and 10(c) of this Act [*12 USCS §§ 2603 and 2609(c)*] or by the Truth in Lending Act.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 12, 88 Stat. 1279; Nov. 28, 1990, P.L. 101-625, Title IX, Subtitle C, § 942(b), 104 Stat. 4412.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Truth in Lending Act", referred to in this section, is Act May 29, 1968, P.L. 90-321, Title I, 82 Stat. 146, which appears generally as *15 USCS §§ 1601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1990. Act Nov. 28, 1990 inserted ", or by a servicer (as the term is defined under section 6(i))," and substituted "lender or servicer" for "lender" and "10(c)" for "6".

NOTES:

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:64, 67.

Am Jur:

17 Am Jur 2d, *Consumer and Borrower Protection* § 233.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.04, 156.05.

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.

10 Banking Law (Matthew Bender), ch 174, Consummation §§ 174.04, 174.06.

10 Banking Law (Matthew Bender), ch 175, Loan Repayment § 175.04.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abbound. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Interpretive Notes and Decisions:

Real Estate Settlement Procedures Act (*12 USCS* §§ 2601 et seq.) creates private cause of action for violations of §§ 2609, 2610, notwithstanding absence of express provision for such cause of action, since legislative history of Act indicates that Congress intended to create private remedy for violations of Act. *Vega v First Federal Sav. & Loan Assn.* (1980, CA6 Mich) 622 F2d 918, reh den, Corrected on other grounds (1980, CA6) 1980 US App LEXIS 15714.

No private right of action exists under *12 USCS* § 2610; therefore, mortgagors could not use that provision to challenge fees charged for preparation of certain payoff statements. *McAnaney v Astoria Fin. Corp.* (2005, ED NY) 357 F Supp 2d 578.



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12 USCS § 2611

§ 2611. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Dec. 22, 1974, P.L. 93-533, § 13, 88 Stat. 1730) was repealed by Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(h), 110 Stat. 3009-401. It provided for establishment of a model system or systems for recordation of land title information.



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12 USCS § 2612

§ 2612. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Dec. 22, 1974, P.L. 93-533, § 14, 88 Stat. 1730) was repealed by Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(h), 110 Stat. 3009-401. It provided for a report on the necessity for further Congressional action.



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12 USCS § 2613

§ 2613. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Dec. 22, 1974, P.L. 93-533, § 15, 88 Stat. 1730) was repealed by Act Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(h), 110 Stat. 3009-401. It provided for a demonstration to determine the feasibility of including statements of settlement costs in special information booklets, and for reports to Congress.



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12 USCS § 2614

§ 2614. Jurisdiction of courts; limitations [Caution: See prospective amendment note below.]

Any action pursuant to the provisions of section 6, 8, or 9 [*12 USCS § 2605, 2607, or 2608*] may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 6 [*12 USCS § 2605*] and 1 year in the case of a violation of section 8 or 9 [*12 USCS § 2607 or 2608*] from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 16, 88 Stat. 1731; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(d), 97 Stat. 1232; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(e), 110 Stat. 3009-400.)
(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(9), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prospective amendment:

Amendment of section, effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(9), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by inserting "the Bureau," before "the Secretary".

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1983. Act Nov. 30, 1983 (effective 1/1/84, as provided by § 461(f) of such Act, which appears as *12 USCS § 1602* note) substituted the text of this section for text which read: "Any action to recover damages pursuant to the provisions of sections 6, 8, or 9 may brought in the United States district court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation."

1996. Act Sept. 30, 1996 substituted "section 6, 8, or 9" for "section 8 or 9" and substituted "within 3 years in the case of a violation of section 6 and 1 year in the case of a violation of section 8 or 9" for "within one year".

NOTES:**Related Statutes & Rules:**

This section is referred to in *12 USCS § 1706f*.

Research Guide:**Federal Procedure:**

7 Fed Proc L Ed, Consumer Credit Protection §§ 15:66-69.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection §§ 228, 234.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Annotations:

Estoppel of Insurer to Assert Statute-of-Limitations Defense--Homeowners' Insurers. *4 ALR6th 509*.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.05, 156.08, 156.09.

9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law* 1259, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev* 343, February 2004.

Interpretive Notes and Decisions:

1. Generally
2. Limitation of actions

1. Generally

Farmers have no cause of action under Real Estate Settlement Procedures Act (*12 USCS §§ 2601 et seq.*), due to loans and security agreements between farmers and insurance company in 1974, 1978, and 1982; §§ 2605, 2606 were repealed in 1976 and rest of act pertains to mortgage loans secured by first liens on residential real estate; § 2614 gives jurisdiction for damages actions for prohibited business referral fees, splitting charges, and certain title insurance requirements related to real estate settlement services involving federally regulated mortgage loans, none of which are alleged in case, while one-year limitations period of § 2614 has expired for all 3 loans. *Jonak v John Hancock Mut. Life Ins. Co. (1985, DC Neb)* 629 *F Supp* 90.

12 USCS § 2614 appeared to be valid basis for federal question jurisdiction where tenants alleged widespread fraud perpetrated by not only mortgage brokers that were convicted, but also by banks and other mortgage and real estate entities that had hand in suspect transaction. *Calvagno v Bisbal (2006, ED NY)* 430 *F Supp 2d* 95.

In case in which foreclosure company argued that home owners' claims were based on potential violations of Real Estate Settlement Procedures Act (RESPA) and federal question jurisdiction existed under *28 USCS § 1331*, inter alia, RESPA's preemption provision in *12 USCS § 2616* did not rise to level of complete preemption; additionally, *12 USCS § 2607(d)(6)* did not require home owners to sue for violations of RESPA rather than for negligence and other state law claims. *Wood v Option One Mortg. Corp. (2008, ND Ala)* 580 *F Supp 2d* 1248.

Adversary proceeding Chapter 13 debtor filed against mortgage company, claiming that mortgage company violated Real Estate Settlement Procedures Act, *12 USCS §§ 2601-2617*, was not time-barred under one-year statute of limitations imposed by *12 USCS § 2614* because mortgage company had filed secured claim against debtor's bankruptcy estate and debtor's claim was in nature of recoupment against mortgage company's claim state law on recoupment also allowed debtor to seek payment of attorney fees and costs she incurred in suing mortgage company, but only to extent any recovery was limited to reducing company's allowed claim. *Wentz v Saxon Mortg. (In re Wentz) (2008, BC SD Ohio)* 393 *BR* 545.

2. Limitation of actions

In suit under RESPA's anti-kickback and fee-splitting provisions in connection with purchase of title insurance, statute of limitations found at *12 USCS § 2614* began to run on date of closing, i.e., when purchasers paid for their title insurance, because that was when title insurance agents earned allegedly prohibited "thing of value." *Snow v First Am. Title Ins. Co. (2003, CA5 Miss)* 332 *F3d* 356.

Plaintiff's claims under *12 USCS § 2607*, part of Real Estate Settlement and Procedures Act of 1974 (RESPA), were time barred and plaintiffs were not entitled to equitable tolling because defendants did not affirmatively concealed conduct that allegedly violated RESPA and plaintiffs did not exercise due diligence to discover cause of action. *Egerer v Woodland Realty, Inc. (2009, CA6 Mich)* 556 *F3d* 415, 2009 *FED App* 53P.

One-year time limit imposed by *12 USCS § 2614* for bringing action for damages under provisions of Real Estate

Settlement Procedures Act (12 USCS §§ 2601 et seq.) is jurisdictional and not merely affirmative defense, and because time limitation is jurisdictional, doctrine of equitable tolling does not apply, even if there has been fraudulent concealment, so that suit under Act must be dismissed where alleged violation giving rise to suit occurred more than one year prior to commencement of suit. *Hardin v City Title & Escrow Co.* (1986, App DC) 254 US App DC 370, 797 F2d 1037 (criticized in *Ramadan v Chase Manhattan Corp.* (1998, CA3 NJ) 156 F3d 499) and (criticized in *Ellis v GMAC* (1998, CA11 Ala) 160 F3d 703) and (criticized in *Pedraza v United Guar. Corp.* (2000, SD Ga) 114 F Supp 2d 1347) and (criticized in *Mullinax v Radian Guar., Inc.* (2002, MD NC) 199 F Supp 2d 311) and (criticized in *Strecker v LaSalle Bank, N.A.* (2004, WD Wis) 2004 US Dist LEXIS 22396) and (criticized in *Kay v Wells Fargo & Co. N.A.* (2007, ND Cal) 2007 US Dist LEXIS 55519) and (criticized in *Blaylock v First Am. Title Ins. Co.* (2007, WD Wash) 504 F Supp 2d 1091) and (criticized in *Egerer v Woodland Realty, Inc.* (2007, WD Mich) 2007 US Dist LEXIS 83795).

12 USCS § 2614 claim against title insurer under Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) is time-barred, where real estate purchasers allege that their attorneys and title insurer engaged in fraudulent practice whereby insurer rebated to attorneys portion of premiums that purchasers paid for title insurance in return for attorney's referral of business, because (1) claim was not brought within one-year statute of limitations period, (2) limitations period is jurisdictional and therefore not subject to equitable tolling where neither plain language of § 2614 nor its legislative history establishes any basis for equitable tolling, (3) § 2614 is clearly distinguishable from nonjurisdictional statute of limitations, (4) jurisdictional provisions in federal statutes are to be narrowly construed, and (5) even assuming equitable tolling was applicable, purchasers have failed to show any continuous course of tortious conduct by title insurer. *Moll v US Life Title Ins. Co.* (1987, SD NY) 654 F Supp 1012.

Title insurance purchasers' action against title insurance company under Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) is time-barred where purchasers filed suit more than one year after alleged illegal kickbacks of insurance money to attorneys for referral services, because, though statute of limitations is subject to equitable tolling, company did not fraudulently conceal its violation and purchasers did not use due diligence to detect it, though they could easily have inquired where premium money went. *Moll v U.S. Life Title Ins. Co.* (1988, SD NY) 700 F Supp 1284, reh den (1988, SD NY) 1988 US Dist LEXIS 14673.

Home purchasers, claiming mortgage insurer took part in kickback scheme in violation of 12 USCS § 2607(a), must particularize circumstances supporting their assertion of fraudulent concealment of claim, in order to clarify which claims are timely, where complaint specifies no conduct by insurer other than scheme itself, because RESPA's (12 USCS §§ 2601 et seq.) one-year statute of limitations is subject to equitable tolling, but not beyond 3-year statute of repose provided in § 2614. *Pedraza v United Guar. Corp.* (2000, SD Ga) 114 F Supp 2d 1347, subsequent app (2002, CA11 Ga) 313 F3d 1323, 54 FR Serv 3d 610, 16 FLW Fed C 100 (criticized in *In re Ins. Brokerage Antitrust Litig.* (2007, DC NJ) 2007 US Dist LEXIS 47659).

Mortgage insurers' motion to dismiss borrowers' Real Estate Settlement Procedures Act claim was denied where borrowers were given 30 days to properly allege circumstances of fraudulent concealment that would justify equitable tolling of Real Estate Settlement Procedures Act's statute of limitations period. *Mullinax v Radian Guar., Inc.* (2002, MD NC) 199 F Supp 2d 311.

Where borrower's Alzheimer's disease and dementia prevented her from knowing about and acting on her legal rights, her estate's claims under various federal and state statutes, including Real Estate Settlement Procedures Act, 12 USCS §§ 2601-2617, were timely because they did not accrue until after borrower died and estate administrator learned of borrower's home-equity loan. *Estate of Henderson v Meritage Mortg. Corp.* (2003, ND Ill) 293 F Supp 2d 830.

Where borrowers brought claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., relating to two refinancings of their home mortgage, claim was barred by statute of limitations; even if RESPA were subject to equitable tolling, borrowers' claim did not meet equitable tolling standard because all terms and fees were disclosed in loan documents that were signed by borrowers. *Mills v Equicredit Corp.* (2003, ED Mich) 294 F Supp 2d 903, affd (2006, CA6 Mich) 172 Fed Appx 652, 2006 FED App 150N (criticized in *Vermurlen v Ameriquest Mortg. Co.*

(2007, WD Mich) 2007 US Dist LEXIS 75070).

In action by mortgagees against providers of primary mortgage insurance alleging violations of Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., although matter was dismissed for lack of subject matter jurisdiction, mortgagees failed to state claim under RESPA where they failed to file their action within limitations period under 12 USCS § 2614 and limitations period was not equitably tolled because mortgagees failed to plead with particularity circumstances of providers' alleged fraudulent concealment of their alleged kickback scheme. *Mullinax v Radian Guar., Inc.* (2004, MD NC) 311 F Supp 2d 474 (criticized in *Kahrer v Ameriquest Mortg. Co.* (2005, WD Pa) 418 F Supp 2d 748) and (criticized in *Capell v Pulte Mortg. L.L.C.* (2007, ED Pa) 2007 US Dist LEXIS 82570).

One-year statute of limitations, under 12 USCS § 2614, had run on borrower's Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., claims against defendants, title company and others, because defendants were not named defendants until more than year after alleged RESPA violation occurred and did not receive any notice of such action until they were served over three years after alleged violation date. *Robinson v Fountainhead Title Group Corp.* (2006, DC Md) 447 F Supp 2d 478, class certif gr, in part, motion to strike den, motion gr, dismd, in part (2008, DC Md) 252 FRD 275.

Statute of limitations under 12 USCS § 2614, part of Real Estate Settlement Practices Act, barred claims of some proposed class members in action alleging illegal kickbacks by lender and its subsidiary reinsurer because lead plaintiffs did not establish equitable estoppel or equitable tolling; however, lead plaintiffs established entitlement to *Fed. R. Civ. P.* 23 certification of more limited class. *Kay v Wells Fargo & Co.* (2007, ND Cal) 247 FRD 572.

Court granted defendants' motion to dismiss pursuant to *Fed. R. Civ. P.* 12(b)(6) that portion of plaintiff's complaint that alleged defendants had violated Real Estate Settlement Procedures Act, 12 USCS §§ 2604(c) and 2607, specifically that defendants failed to provide plaintiff with proper "Good Faith Estimate" of amount of range of settlement charges prior to closing; no private right of action existed for claims that were brought under 12 USCS § 2604(c), and plaintiff had presented no argument as to why RESPA one-year statute of limitations should have been tolled *Johnson v Equity Title & Escrow Co. of Memphis, LLC* (2007, WD Tenn) 476 F Supp 2d 873.

In case in which pro se homeowner alleged that three mortgage lenders did not provide timely notice of transfer of servicing of his mortgage loan as required by 12 USCS § 2605(b), lenders' motion for summary judgment was granted since homeowner's claim was barred by three-year limitations period in 12 USCS § 2614; violation of 15-day rule occurred in 1995 and homeowner did not sue until 2005. *Williams v Countrywide Home Loans, Inc.* (2007, SD Tex) 504 F Supp 2d 176, affd (2008, CA5 Tex) 269 Fed Appx 523 and (criticized in *Wentz v Saxon Mortg. (In re Wentz)* (2008, BC SD Ohio) 393 BR 545).

Title insurance companies were not entitled to dismissal of suit filed by consumers under Real Estate Settlement Procedures Act, 12 USCS § 2607, based on payment of inducements to middlemen in violation of *Wash. Rev. Code* §§ 48.30.140, 48.30.150 and *Wash. Admin. Code* § 284-30-800; suit was not barred by one-year statute of limitations under 12 USCS § 2614 because one-year period imposed by § 2614 was not jurisdictional in nature but instead was subject to equitable tolling. *Blaylock v First Am. Title Ins. Co.* (2007, WD Wash) 504 F Supp 2d 1091.

Where mortgagors sued mortgagee, asserting claims under Real Estate Settlement Practices Act (RESPA), 12 USCS §§ 2601 et seq., Fair Debt Collection Practices Act, 15 USCS §§ 1692e, 1692(f), and Utah Mortgage Lending and Servicing Act, *Utah Code Ann.* §§ 70D-1-1 through 70D-1-21, summary judgment was granted to mortgagee as July 2002 \$ 3,098.76 payment was in accord and satisfaction of pre-July 2002 dispute, and there was no dispute that mortgagors failed to properly make many payments thereafter; though they claimed that their \$ 500 monthly payments were more than sufficient to cover fixed monthly payment of \$ 419.92, mortgagors had fundamental misunderstanding of their obligations under mortgage, particularly as to escrow funds. Moreover, their claims, at least with respect to RESPA, were barred pursuant to 12 USCS § 2614 by three-year statute of limitations. *Cook v Chase Manhattan Mortg. Corp.* (2007, DC Utah) 509 F Supp 2d 986, affd (2007, CA10) 256 Fed Appx 223.

Because injury under Real Estate Settlement Practices Act, 12 USCS §§ 2601 et seq., was not limited to overcharge, and because 12 USCS § 2614, one-year statute of limitations for RESPA, did not bar plaintiff's action, court denied defendants' motion to dismiss pursuant to *Fed. R. Civ. P. 12. Edwards v First Am. Corp. (2007, CD Cal) 517 F Supp 2d 1199*.

Class of consumers who refinanced existing mortgages within seven years of their original mortgages and did not receive mandatory discount on new title policies was certified under *Fed. R. Civ. P. 23(b)(3)* because common issues of law and fact predominated and were superior for consumers' RESPA claims under 12 USCS § 2607 and implied contract claims against title company and four-year class period satisfied statute of limitations for breach of implied contract claims and encompassed one-year RESPA limitations period under 12 USCS § 2614. *Mims v Stewart Title Guar. Co. (2008, ND Tex) 254 FRD 482*.

Claims for monetary damages under Truth in Lending Act, 15 USCS §§ 1601 et seq., and Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., are each subject to one-year statute of limitations period. *Blue v Fremont Inv. & Loan (2008, DC Dist Col) 562 F Supp 2d 33*.

Borrower's claim that lender violated 12 USCS § 2607(b) by engaging in kickbacks and failing to disclose property appraisal charge on mortgage documents was time-barred under 12 USCS § 2614 because it was not filed within one year of date of closing of mortgage transaction. *Morilus v Countrywide Home Loans, Inc. (2008, ED Pa) 651 F Supp 2d 292*.

Borrowers admitted that they consummated loans in 2005, however, they did not file their complaint until October 8, 2008; as such, Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA), 15 USCS §§ 1601 et seq., claims were time barred because they were filed more than one year after borrowers entered into relevant agreements. *Ayala v World Sav. Bank, FSB (2009, CD Cal) 616 F Supp 2d 1007*.

In case in which (1) loan transaction occurred on or about April 25, 2005; (2) case was filed on May 28, 2009; and (3) homeowner, in attempt to prevent foreclosure, sought preliminary injunction and temporary restraining order, alleging that lender and real estate had violated Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., homeowner failed to show likelihood of success on his 12 USCS §§ 2605 and 2607 claims since they appeared to have become time-barred in April 2008 and April 2006 respectively. *Winstead v EMC Mortg. Corp. (2009, DC Dist Col) 621 F Supp 2d 1*.

Although borrowers' RESPA claim governing disclosure requirements under 12 USCS § 2605 was not barred by three-year limitations period of 12 USCS § 2614, borrowers had to explain why their claims under 12 USCS §§ 2607 and 2608 were not barred by one-year limitations period of § 2614. *Kelley v Mortgage Elec. Registration Sys. (2009, ND Cal) 642 F Supp 2d 1048*.

Homeowners' claim that settlement agents violated Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., was not time-barred, even though claim was filed more than one year after settlement during which violations allegedly occurred because equitable tolling applied, as it was alleged that agents concealed true nature of agents' scheme to avoid foreclosure. *Proctor v Metro. Money Store Corp (2009, DC Md) 645 F Supp 2d 464*.

Husband's and wife's claims under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., against two banks were time-barred pursuant to 12 USCS § 2614(a) where limitations period started on date husband wife signed their loan documents, they filed their complaint nearly three years later, and thus, claims were filed outside limitations period. *Vega v JP Morgan Chase Bank, N.A. (2009, ED Cal) 654 F Supp 2d 1104, 74 FR Serv 3d 837*.

Plaintiff's claims under Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., were barred by three year limitations period set forth in 12 USCS § 2614, and limitations period was not subject to equitable tolling. *Pouth Phrasavang v Deutsche Bank (2009, DC Dist Col) 656 F Supp 2d 196* (criticized in *Minter v Wells Fargo Bank, N.A. (2009, DC Md) 2009 US Dist LEXIS 120930*).

Borrowers' claims against lender for violations of Truth in Lending Act and 12 USCS § 2607(b) were time-barred under 15 USCS § 1640(e) and 12 USCS § 2614 because borrowers' action against lender was commenced more than two years after they executed loan at issue and borrowers did not allege any facts that would support equitable tolling. *Garczynski v Countrywide Home Loans, Inc.* (2009, ED Pa) 656 F Supp 2d 505.

Borrower's claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS § 2607, was barred by one year limitation period of 12 USCS § 2614; however, although RESPA claim under 12 USCS § 2605 was timely, borrower failed to allege damages. *Garcia v Wachovia Mortg. Corp.* (2009, CD Cal) 676 F Supp 2d 895 (criticized in *Valdez v America's Wholesale Lender* (2009, ND Cal) 2009 US Dist LEXIS 118241).

Plaintiffs' cause of action for alleged violation of 12 USCS § 2605 was barred by three year statute of limitations set forth in 12 USCS § 2614 because plaintiffs received notice of assignment by November 2001 and did not file their lawsuit until April 2006. *Poskin v TD Banknorth, N.A.* (2009, WD Pa) 687 F Supp 2d 530.

Mortgage corporation was entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of borrower's action, which was related to residential mortgage loan transaction and which arose after notice of default and election to sell had been recorded; complaint lacked sufficient allegations of transfer of borrower's loan for purposes of 12 USCS § 2605(b) and that such transfer fell within three-year limitations period under 12 USCS § 2614. *Saldade v Wilshire Credit Corp.* (2010, ED Cal) 2010 US Dist LEXIS 21034, complaint dismd, in part, judgment entered (2010, ED Cal) 2010 US Dist LEXIS 28220, complaint dismd, in part, judgment entered (2010, ED Cal) 686 F Supp 2d 1051.

Mortgagor's claim under Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., asserted in amended complaint under 12 USCS § 2607 differed in both time and type from claims set forth under 12 USCS § 2605 in original complaint because it focused on alleged agreements between mortgagee and mortgage broker and fees that were imposed at closing; mortgagee could not have reasonably anticipated that RESPA claim based on dealings with mortgage brokers would become part of litigation based on facts mortgagor alleged in amended complaint; accordingly, mortgagor's RESPA claim did not relate back to filing of her original complaint and was time-barred under one-year statute of limitations set forth in 12 USCS § 2614. *Palmer v Homecomings Fin., LLC* (2010, DC Dist Col) 677 F Supp 2d 233.

In case arising from foreclosure proceedings in which mortgage company and others argued that owner's claims under Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) were time-barred and court construed owner's arguments as argument for equitable tolling of applicable statutes of limitations, neither statutes of limitations were subject to equitable tolling; statutes of limitations contained in both TILA and RESPA were jurisdictional and, therefore, not subject to equitable tolling. *Winstead v EMC Mortg. Corp.* (2010, DC Dist Col) 697 F Supp 2d 1.

Mortgagor's 12 USCS § 2607 claim against mortgagee assignee was time-barred under 12 USCS § 2614 where mortgagor filed claim more than three years after he had obtained loan, and equitable tolling did not apply because mortgagor failed to allege how he was misled or otherwise prevented from discovering facts bearing on his claim. *Jensen v Quality Loan Serv. Corp* (2010, ED Cal) 702 F Supp 2d 1183, motion gr, dismd (2010, ED Cal) 2010 US Dist LEXIS 72393.

Mortgagors' claims, which was apparently brought under 12 USCS § 2605 against law firm and others, was time-barred where claims were filed more than three years after alleged violations occurred. *Weingartner v Chase Home Fin., LLC* (2010, DC Nev) 702 F Supp 2d 1276.

Borrower's claim against finance company for alleged violation of Real Estate Settlement Procedures Act, 12 USCS §§ 2601 et seq., was barred by one-year statute of limitations under 12 USCS § 2614 because borrower signed mortgage loan documents more than two and one-half years before borrower first filed action against finance company; furthermore, factual allegations in borrower's complaint did not show that, despite exercise of due diligence, borrower

could not have discovered facts forming basis of his claim within statutory limitation period. *Schmidt v Household Fin. Corp., II* (2008, Va) 661 SE2d 834.

Unpublished Opinions

Unpublished: Even if borrower's complaint could have been construed to raise allegations against loan servicer under Real Estate Settlement Procedures Act, complaint was barred by three-year statute of limitations of 12 USCS § 2614 because alleged violations occurred in 2000 and 2001 and complaint was not filed until 2006; further, borrower proffered no evidence to show that doctrine of equitable tolling should have been applied. *McCarley v KPMG Int'l* (2008, CA11 Ala) 2008 US App LEXIS 19733.

Unpublished: Borrowers' 12 USCS § 2607 illegal fee claim, relating to loans that closed more than one year before complaint was filed, was not subject to dismissal for untimeliness because one-year limitation of 12 USCS § 2614 is subject to equitable tolling and concealment was adequately pleaded; moreover, same analysis applied to timeliness under 15 USCS § 1640(e) of borrowers' Truth in Lending claim under 15 USCS § 1601. *Bassett v Ruggles* (2009, ED Cal) 2009 US Dist LEXIS 83349.

Unpublished: Where bankruptcy trustee asserted that equitable tolling applied to claim that mortgage broker failed to disclose yield spread premium paid to broker in originating bankruptcy debtor's mortgage loans, claim was time-barred since premium was disclosed as part of interest component and thus debtor was on notice of claim based on premium from at least date of closing. *Ellis v Legacy Group Lending Inc. (In re Goude)* (2009, BC WD Wash) 2009 Bankr LEXIS 3707.



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12 USCS § 2615

§ 2615. Contracts and liens; validity

Nothing in this Act shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 17, 88 Stat. 1731.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 3500.18, 3500.21.*

Research Guide:

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 228.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act § 156.07.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abboud. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

Where Chapter 13 debtor's mortgage lender failed for period of five years to send debtor notifications required by Real Estate Settlement Procedures Act (RESPA), *12 USCS § 2609(b)*, of amounts advanced to pay taxes and insurance, debtor was not excused under RESPA from repaying sums advanced because *12 USCS § 2615* made it clear that provisions of RESPA do not affect validity or enforceability of federally related mortgage loan. *In re Johnson (2008, BC ED Mich) 384 BR 763.*



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12 USCS § 2616

§ 2616. State laws unaffected; inconsistent Federal and State provisions [Caution: See prospective amendment note below.]

This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate Federal agencies.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 18, 88 Stat. 1731; Jan. 2, 1976, P.L. 94-205, § 9, 89 Stat. 1159.)
 (As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(10), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Prospective amendment:

Amendment of section, effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(10), 124 Stat. 2104 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended by striking "Secretary" each place that term appears and inserting "Bureau".

Effective date of section:

This section became effective 180 days after enactment, pursuant to § 20 of Act Dec. 22, 1974, P.L. 93-533, which appears as *12 USCS § 2601* note.

Amendments:

1976. Act Jan. 2, 1976 (effective on enactment as provided by § 12 of such Act, which appears as *12 USCS § 2602* note), deleted "(a)" preceding "This Act"; and deleted subsec. (b), which read: "No provision of this Act or of the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.".

NOTES:**Research Guide:****Federal Procedure:**

7 Fed Proc L Ed, Consumer Credit Protection § 15:64.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection §§ 228, 253.

Commercial Law:

1 Debtor-Creditor Law (Matthew Bender), ch 6, The Cost of Credit § 6.09.

Texts:

7 Banking Law (Matthew Bender), ch 153, Fair Credit Reporting Act § 153.07.

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.04, 156.09.

8 Banking Law (Matthew Bender), ch 157, Home Mortgage Disclosure Act § 157.07.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abbound. Glover v. Standard Federal Bank: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

Payment of interest on escrow accounts that is permitted by state law is not authorized by 12 USCS § 2616 as state "settlement practice" because § 2616 relates only to pre-emptive effect of Real Estate Settlement Procedures Act and does not extend to federal regulations prohibiting payment of interest which were promulgated by Federal Home Loan Bank Board pursuant to Home Owners' Loan Act, 12 USCS § 1464(a). *First Federal Sav. & Loan Asso. v Greenwald* (1979, CA1 Mass) 591 F2d 417.

Under 12 USCS § 2617(a), United States Department of Housing and Urban Development was agency charged with administering and interpreting Real Estate Settlement Procedures Act of 1974; thus, its view that 12 USCS § 2607(d)(2) did not impose "overcharge requirement" on potential plaintiffs was helpful to court in holding that plaintiff home buyers could pursue § 2607(a) case even without alleging overcharges. *Carter v Welles-Bowen Realty, Inc.* (2009, CA6 Ohio) 553 F3d 979, 2009 FED App 24P.

In determining whether state requirement that interest payments be made on certain real estate tax deposits is applicable to Federal savings and loan association under Real Estate Settlement Procedures Act (12 USCS § 2616), state law must relate to settlement practice; since interest payment on tax escrow accounts can continue long after closing of mortgage transaction, and even throughout entire life of mortgage, it is not settlement service within meaning of 12 USCS § 2602. *Greenwald v First Federal Sav. & Loan Asso.* (1978, DC Mass) 446 F Supp 620.

In case in which foreclosure company argued that home owners' claims were based on potential violations of Real Estate Settlement Procedures Act (RESPA) and federal question jurisdiction existed under 28 USCS § 1331, inter alia, RESPA's preemption provision in 12 USCS § 2616 did not rise to level of complete preemption; additionally, 12 USCS § 2607(d)(6) did not require home owners to sue for violations of RESPA rather than for negligence and other state law claims. *Wood v Option One Mortg. Corp.* (2008, ND Ala) 580 F Supp 2d 1248.



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12 USCS § 2617

§ 2617. Authority of Secretary [Caution: See prospective amendment note below.]

(a) Issuance of regulations; exemptions. The Secretary is authorized to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.

(b) Liability for acts done in good faith in conformity with rule, regulation, or interpretation. No provision of this Act or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) Investigation; hearings; failure to obey order; contempt.

(1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Delay of effectiveness of recent final regulation relating to payments to employees.

(1) In general. The amendment to part 3500 of title 24 of the Code of Federal Regulations contained in the final regulation prescribed by the Secretary and published in the Federal Register on June 7, 1996, which will, as of the effective date of such amendment--

(A) eliminate the exemption for payments by an employer to employees of such employer for referral activities which is currently codified as section 3500.14(g)(1)(vii) of such title 24; and

(B) replace such exemption with a more limited exemption in new clauses (vii), (viii), and (ix) of section 3500.14 of such title 24, shall not take effect before July 31, 1997.

(2) Continuation of prior rule. The regulation codified as *section 3500.14(g)(1)(vii) of title 24 of the Code of Federal Regulations*, relating to employer-employee payments, as in effect on May 1, 1996, shall remain in effect until the date the amendment referred to in paragraph (1) takes effect in accordance with such paragraph.

(3) Public notice of effective date. The Secretary shall provide public notice of the date on which the amendment referred to in paragraph (1) will take effect in accordance with such paragraph not less than 90 days and not more than 180 days before such effective date.

HISTORY:

(Dec. 22, 1974, P.L. 93-533, § 19, as added Jan. 2, 1976, P.L. 94-205, § 10, 89 Stat. 1159; Nov. 30, 1983, P.L. 98-181, Title I, Ch I, Title IV, Part C, § 461(e), 97 Stat. 1232; Sept. 30, 1996, P.L. 104-208, Div A, Title II, Subtitle A, § 2103(f), 110 Stat. 3009-401.)

(As amended July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(11), 124 Stat. 2104.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in subsecs. (a), (b), and (c)(1), is Act Dec. 22, 1974, P.L. 93-533, 88 Stat. 1724, which appears generally as *12 USCS §§ 2601 et seq.* For full classification of such Act, consult USCS Tables volumes.

Prospective amendment:

Amendment of section, effective on designated transfer date. Act July 21, 2010, P.L. 111-203, Title X, Subtitle H, § 1098(11), 124 Stat. 1024 (effective on the designated transfer date (as such date is defined in § 1062 of such Act, which appears as *12 USCS § 5582*), as provided by § 1100H of such Act, which appears as *5 USCS § 552a* note), provides that this section is amended:

"(A) in the section heading by striking 'Secretary' and inserting 'Bureau';

"(B) in subsection (a), by striking 'Secretary' each place that term appears and inserting 'Bureau'; and

"(C) in subsections (b) and (c), by striking 'the Secretary' each place that term appears and inserting 'the Bureau'".

Effective date of section:

This section became effective on January 2, 1976, pursuant to § 12 of Act Jan. 2, 1976, P.L. 94-205, which appears as *12 USCS § 2602* note.

Amendments:

1983. Act Nov. 30, 1983 (effective 1/1/84, as provided by § 461(f) of such Act, which appears as *12 USCS § 2602* note), added subsec. (c).

1996. Act Sept. 30, 1996 added subsec. (d).

NOTES:

Related Statutes & Rules:

This section is referred to in *12 USCS §§ 1706f, 2606, 3500.4, 3500.6*.

Research Guide:

Federal Procedure:

7 Fed Proc L Ed, Consumer Credit Protection § 15:65.

Am Jur:

17 Am Jur 2d, Consumer and Borrower Protection § 228.

Texts:

7 Banking Law (Matthew Bender), ch 156, Real Estate Settlement Procedures Act §§ 156.02-156.06, 156.08, 156.09.
9 Banking Law (Matthew Bender), ch 171, Application Process § 171.05.

Law Review Articles:

Kolak; Zalenski; Cubita. RESPA: The Changing Landscape. *58 Bus Law 1259*, May 2003.

Abboud. *Glover v. Standard Federal Bank*: the Eighth Circuit gives proper deference to regulatory interpretation and upholds the principles of Rule 23 in denying class certification of a RESPA claim. *37 Creighton L Rev 343*, February 2004.

Interpretive Notes and Decisions:

Rules and regulations promulgated under express congressional authority of *12 USCS § 2617(a)* are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to statute. *Glover v Std. Fed. Bank (2002, CA8 Minn) 283 F3d 953*, cert den, motion den (2002) 537 US 943, 154 L Ed 2d 251, 123 S Ct 344 and (criticized in *Apgar v Homeside Lending, Inc. (In re Apgar) (2003, BC ED Pa) 291 BR 665*).

Dismissal of homebuyers' Real Estate Settlement Procedures Act action was affirmed because closing agent did not accept any split of any charge, when pocketed difference between \$ 50 recording fee it charged homeowners and \$ 36 fee it paid county recorder; even Chevron deference would not bear Department of Housing and Urban Development's contrary interpretation. *Krzalic v Republic Title Co. (2002, CA7 Ill) 314 F3d 875*, cert den (2003) 539 US 958, 123 S Ct 2641, 156 L Ed 2d 656 and (criticized in *Santiago v GMAC Mortg. Group, Inc. (2005, CA3 Pa) 417 F3d 384*) and (criticized in *Price v Countrywide Home Loans, Inc. (2005, SD Ga) 2005 US Dist LEXIS 22408*) and (criticized in *Cohen v JP Morgan Chase & Co. (2007, CA2 NY) 498 F3d 111*).

Section 8(b) of Real Estate Settlement Procedures Act of 1974 (RESPA), *12 USCS § 2607(b)*, is ambiguous as to whether its protections can apply to undivided, as well as divided, unearned fees; because Department of Housing and

Urban Development, agency charged with administering RESPA, reasonably resolves this ambiguity by construing statute to apply to undivided fees, Second Circuit accords that construction deference. *Cohen v JP Morgan Chase & Co.* (2007, CA2 NY) 498 F3d 111.

Department of Housing and Urban Development is administrative agency charged with enforcing Real Estate Settlement Procedures Act (RESPA), 12 USCS §§ 2601 et seq., and is authorized by 12 USCS § 2617(a) to prescribe rules and regulations, and to make interpretations of RESPA; policies set forth in Real Estate Settlement Procedures Act Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, 64 Fed. Reg. 10080, 10081 (Mar. 1, 1999), and Real Estate Settlement Procedures Act Statement of Policy 2001-1, Clarification of Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b), 66 Fed. Reg. 53052, 53054 (Oct. 18, 2001), at minimum, constitute persuasive authority. *Apgar v Homeside Lending, Inc. (In re Apgar)* (2003, BC ED Pa) 291 BR 665.



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REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS prec § 3500.1

Preceding § 3500.1

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Authority:

12 U.S.C. 2601 et seq.; 42 U.S.C. 3535(d).

Source:

[57 F.R. 49607, Nov. 2, 1992, unless otherwise noted]



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12 USCS § 3500.1

§ 3500.1. Designation.

(a) *Designation.* This part may be referred to as Regulation X.

(b) *Applicability.* The following sections, as revised by the final rule published on November 17, 2008, are applicable as follows:

(1) Sections 3500.8(b), 3500.17, 3500.21, 3500.22 and 3500.23, and Appendices E and MS-1 are applicable commencing January 16, 2009.

(2) Section 203.27, the definitions other than Required use in § 3500.2, § 3500.7, §§ 3500.8(a) and(c), § 3500.9, and Appendices A and C, are applicable commencing January 1, 2010.

HISTORY:

[As amended 61 *F.R.* 13233, March 26, 1996, effective April 25, 1996; 73 *F.R.* 68239, Nov. 17, 2008, effective Jan. 16, 2009; 74 *F.R.* 2370, Jan. 15, 2009, effective Jan. 16, 2009]

[As amended 74 *F.R.* 10174, March 10, 2009; 74 *F.R.* 22822, May 15, 2009, effective June 15, 2009]



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12 USCS § 3500.2

§ 3500.2. Definitions.

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

Balloon payment has the same meaning as "balloon payment" under Regulation Z (12 CFR part 226).

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.

Changed circumstances means:

- (1) (i) Acts of God, war, disaster, or other emergency;
- (ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;
- (iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or
- (iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer means, 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 means, 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 is 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 means as follows:

(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 or GFE means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in § 3500.7 and prepared in accordance with the Instructions in Appendix C to this part.

HUD-1 or HUD-1A settlement statement (also *HUD-1 or HUD-1A*) means 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 means, generally, 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 § 3500.5(b)(7), secondary market transactions.

Loan originator means a lender or mortgage broker.

Manufactured home is defined in § 3280.2 of this title.

Mortgage broker means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction. A loan correspondent approved under 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

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

Origination service means any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, and the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Prepayment penalty has the same meaning as "prepayment penalty" under Regulation Z (12 CFR part 226).

Public Guidance Documents means 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 means 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 means the regulations issued by the Board of Governors of the Federal Reserve System (12 CFR 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 means 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 means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq.

Servicer means 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 means 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 means 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 means 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 means 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 means 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 means 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 § 3500.5(b)(7)).

Third party means a settlement service provider other than a loan originator.

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

Title service means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

Tolerance means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

HISTORY:

[As amended Dec. 1, 1992, 57 *F.R.* 56857; Feb. 10, 1994, 59 *F.R.* 6511, effective Aug. 9, 1994; March 30, 1994, 59 *F.R.* 14749, effective Aug. 9, 1994; Dec. 19, 1994, 59 *F.R.* 65448, effective June 19, 1995; March 20, 1995, 60 *F.R.* 14636, effective June 19, 1995; 61 *F.R.* 13233, March 26, 1996, effective April 25, 1996; 61 *F.R.* 58475, Nov. 15, 1996, effective Jan. 14, 1997; 62 *F.R.* 20088, April 24, 1997, effective May 27, 1997; 73 *F.R.* 68239, Nov. 17, 2008, effective Jan. 16, 2009]

[As amended 74 *F.R.* 22822, May 15, 2009, effective July 16, 2009]

Interpretive Notes and Decisions:

"Contracting-out" of portion of home buyers' settlement services to national insurance underwriter and its subsidiary qualified as referral under 24 CFR §§ 3500.2 and 3500.14(f)(2). *Gardner v First Am. Title Ins. Co.* (2003, DC Minn) 296 F Supp 2d 1011.



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12 USCS § 3500.3

§ 3500.3. Questions or suggestions from public and copies of public guidance documents.

Any questions or suggestions from the public regarding RESPA, or requests for copies of HUD Public Guidance Documents, should be directed to the Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-8000, rather than to HUD field offices. Legal questions may be directed to the Assistant General Counsel, GSE/RESPA Division, at this address.

HISTORY:

[As amended *61 F.R. 13235*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.4

§ 3500.4. Reliance upon rule, regulation or interpretation by HUD.

(a) *Rule, regulation or interpretation.*

(1) For purposes of sections 19 (a) and (b) of RESPA (*12 U.S.C. 2617 (a)* and (b)) only the following constitute a rule, regulation or interpretation of the Secretary:

(i) All provisions, including appendices, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the Federal Register by the Secretary and states that it is an "interpretation," "interpretive rule," "commentary," or a "statement of policy" for purposes of section 19(a) of RESPA. Such documents will be prepared by HUD staff and counsel. Such documents may be revoked or amended by a subsequent document published in the Federal Register by the Secretary.

(2) A "rule, regulation, or interpretation thereof by the Secretary" for purposes of section 19(b) of RESPA (*12 U.S.C. 2617(b)*) shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (a)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff or counsel. Written requests for such interpretations should be directed to the address indicated in § 3500.3. Such interpretations provide no protection under section 19(b) of RESPA (*12 U.S.C. 2617(b)*). Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this Part or by official interpretations or commentaries issued under paragraph (a)(1)(ii) of this section.

(c) All informal counsel's opinions and staff interpretations issued before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

HISTORY:

[As amended *61 F. R. 13235*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.5

§ 3500.5. Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) *Exemptions.*

(1) A loan on property of 25 acres or more.

(2) *Business purpose loans.* 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.

(3) *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. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a bona fide builder (a person who regularly constructs 1- to 4- family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *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.

(5) *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 this part, whether or not the lender charges a fee for the assumption.

(6) *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.

(7) *Secondary market transactions.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, 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.)

HISTORY:

[As amended Feb. 10, 1994, 59 *F.R.* 6512, effective Aug. 9, 1994 (except that exemptions set forth in subsec. (b) are effective March 14, 1994); March 30, 1994, 59 *F.R.* 14749; 61 *F.R.* 13235, March 26, 1996, effective April 25, 1996; 61 *F.R.* 58475, Nov. 15, 1996, effective Jan. 14, 1997]

Interpretive Notes and Decisions:

Sale of mortgage loan to investor by originator of loan was bona fide secondary market transaction under Regulation X, where (1) originator borrowed money to fund mortgage loan through its established line of credit with bank, not investor, (2) originator closed loan in its name, (3) originator was only party responsible for repaying bank and was therefore real source of funds for mortgage loan, (4) agreement between originator and investor for latter's purchase of mortgage loan--even if it occurred before closing--had no bearing on originator's status as real source of funds and having real interest in transaction, consistent with Regulation X, and (5) investor was not obligated to bank to pay money borrowed by originator, but was instead obligated to pay originator purchase price of loan, as agreed upon between investor and originator. *Moreno v Summit Mortg. Corp.* (2004, CA5 Tex) 364 F3d 574, cert den (2004) 543 US 819, 125 S Ct 58, 160 L Ed 2d 27.



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12 USCS § 3500.6

§ 3500.6. Special information booklet at time of loan application.

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 3500.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in § 226.2(a)(20) of Regulation Z (12 CFR), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit", or any successor brochure issued by the Board of Governors of the Federal Reserve System, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (*12 U.S.C. 2617(a)*), the Secretary may issue a revised or separate special information booklet that deals with these transactions, or the Secretary may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the Federal Register. This paragraph shall apply to the following transactions:

- (i) Refinancing transactions;
- (ii) Closed-end loans, as defined in *12 CFR 226.2(a)(10)* of Regulation Z, when the lender takes a subordinate lien;
- (iii) Reverse mortgages; and
- (iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential

property.

(b) *Revision.* The Secretary may from time to time revise the special information booklet by publishing a notice in the Federal Register.

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes.*

(1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Secretary shall be made other than those specified in this paragraph (d) or any others approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in § 3500.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into languages other than English.

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6513*, effective Aug. 9, 1994; July 22, 1994, *59 F.R. 37423*, effective Aug. 9, 1994; *61 F.R. 13236*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.7

§ 3500.7. Good faith estimate.

(a) Lender to provide.

(1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, e-mail, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

- (i) The lender denies the application; or
- (ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in *5 U.S.C. 6103(a)*.

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) Mortgage broker to provide.

(1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees,

by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

- (i) The mortgage broker or lender denies the application; or
- (ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional fees until after the applicant has received the GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) *Availability of GFE terms.* Except as provided in this paragraph, the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest.

(d) *Content and form of GFE.* The GFE form is set out in Appendix C to this part. The loan originator must prepare the GFE in accordance with the requirements of this section and the Instructions in Appendix C to this part. The instructions in Appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) *Tolerances for amounts included on GFE.*

(1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:

- (i) The origination charge;
- (ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;
- (iii) While the borrower's interest rate is locked, the adjusted origination charge; and
- (iv) Transfer taxes.

(2) Except as provided in paragraph (f) below, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

- (i) Lender-required settlement services, where the lender selects the third party settlement service provider;
- (ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and
- (iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) *Binding GFE.* The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement consistent with this paragraph (f). If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a new GFE was provided. Loan originators must retain documentation of any reasons for providing a new GFE for no less than 3 years after settlement.

(1) Changed circumstances affecting settlement costs. If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase

charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

(2) Changed circumstances affecting loan. If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances.

(3) Borrower-requested changes. If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request.

(4) Expiration of original GFE. If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) above, the loan originator is no longer bound by the GFE.

(5) Interest rate dependent charges and terms. If the interest rate has not been locked by the borrower, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate-dependent charges and terms. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

(6) New home purchases. In transactions involving new home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

(g) *GFE is not a loan commitment.* Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

(h) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by *12 CFR 226.5b* of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(i) *Violations of section 5 of RESPA (12 U.S.C. 2604).* A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

(Approved by the Office of Management and Budget under control number 2502-0265)

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6513*, effective Aug. 9, 1994; March 30, 1994, *59 F.R. 14749*, effective Aug. 9, 1994; July 22, 1994, *59 F.R. 37423*, eff Aug. 9, 1994; *61 F.R. 13236*, March 26, 1996, effective April 25, 1996; *61 F.R. 58476*, Nov. 15, 1996, effective Jan. 14, 1997; *73 F.R. 68240*, Nov. 17, 2008, effective Jan. 16, 2009]

Interpretive Notes and Decisions:

Language of 24 CFR § 3500.7(c)(2) suggests that good faith estimate was not intended to apply to costs paid by property owners after settlement at which they bought property; uncertain future costs like reconveyance and demand fees, which are charged by mortgage lender when loan is paid off and deed is reconveyed to borrower, are not within scope of good faith estimate. *Bloom v Martin* (1996, CA9 Cal) 77 F3d 318, 96 CDOS 1152, 96 Daily Journal DAR 1971, 142 ALR Fed 781.

There is no private civil action for violation of 12 USCS § 2604(c), or any regulations relating to it. *Collins v FMHA-USDA* (1997, CA11 Fla) 105 F3d 1366, 10 FLW Fed C 708, cert den (1997) 521 US 1127, 138 L Ed 2d 1028, 117 S Ct 2528, reh den (1997) 521 US 1145, 138 L Ed 2d 1055, 118 S Ct 25.

As matter of law, disclosures in signed good faith estimate were not adequate under RESPA (12 USCS §§ 2601 et seq.), where there was no disclosure of 1.5% mortgage broker fee. *Brazier v Sec. Pac. Mortg., Inc.* (2003, WD Wash) 245 F Supp 2d 1136.

In light of limited format set forth in good-faith estimate form and detailed format set forth in HUD-1 settlement statement for identifying recording fees, lender is not required to itemize all recording fees in good-faith estimate; rather, lender is permitted to aggregate all recording fees on single line provided for recording fees in good-faith estimate form. *Weatherman v Gary-Wheaton Bank of Fox Valley, N.A.* (1999) 186 Ill 2d 472, 239 Ill Dec 12, 713 NE2d 543.



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12 USCS § 3500.8

§ 3500.8. Use of HUD-1 or HUD-1A settlement statements.

(a) *Use by settlement agent.* The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the HUD-1 statement. Alternatively, the form HUD-1A may be used for these transactions. The HUD-1 or HUD-1A may be modified as permitted under this part. Either the HUD-1 or the HUD-1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* The settlement agent shall complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in Appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.

(1) In general. The settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) Use of average charge.

(i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c) *Violations of section 4 of RESPA (12 U.S.C. 2604)*. A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD-1 or HUD-1A shall not be deemed a violation of section 4 of RESPA if a revised HUD-1 or HUD-1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6513*, effective Aug. 9, 1994; March 30, 1994, *59 F.R. 14749*, effective Aug. 9, 1994; Oct. 26, 1994, *59 F.R. 53901*, effective May 24, 1995; Feb. 15, 1995, *60 F.R. 8812, 8816*, effective May 24, 1995; May 9, 1995, *60 F.R. 24735*, effective May 24, 1995; *61 F.R. 13237*, March 26, 1996, effective April 25, 1996; *61 F.R. 58476*, Nov. 15, 1996, effective Jan. 14, 1997; *73 F.R. 68241*, Nov. 17, 2008, effective Jan. 16, 2009]



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12 USCS § 3500.9

§ 3500.9. Reproduction of settlement statements.

(a) *Permissible changes-HUD-1*. The following changes and insertions are permitted when the HUD-1 settlement statement is reproduced:

(1) The person reproducing the HUD-1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in Sections F and H, respectively.

(3) Reproduction of the HUD-1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100-1400. However, blank lines or items listed in lines 100-1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

(4) Charges not listed on the HUD-1, but that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. Where existing blank spaces on the HUD-1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD-1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of Sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The designation of the expiration date of the OMB number may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the Federal Register, rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 3500.17, relating to an initial escrow account statement.

(b) *Permissible changes--HUD-1A.* The changes and insertions on the HUD-1 permitted under paragraph (a) of this section are also permitted when the HUD-1A settlement statement is reproduced, except the changes described in paragraphs (a) (3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD-1 or HUD-1A forms is permissible only upon receipt of written approval of the Secretary. A request to the Secretary for approval shall be submitted in writing to the address indicated in § 3500.3 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

(Approved by the Office of Management and Budget under control numbers 2502-0265 and 2502-0491)

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6514*, effective Aug. 9, 1994; March 30, 1994, *59 F.R. 14749*, effective Aug. 9, 1994; *61 F.R. 13238*, March 26, 1996, effective April 25, 1996; *73 F.R. 68242*, Nov. 17, 2008, effective Jan. 16, 2009]



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12 USCS § 3500.10

§ 3500.10. One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD-1 or HUD-1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD-1.

(b) *Delivery.* The settlement agent shall provide a completed HUD-1 or HUD-1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD-1 or HUD-1A differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD-1 or HUD-1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD-1 or HUD-1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD-1 or HUD-1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the

five-year period. The Secretary shall have the right to inspect or require copies of records covered by this paragraph (e).

(Approved by the Office of Management and Budget under control number 2502-0265)

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6515*, effective Aug. 9, 1994; *61 F.R. 13238*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.11

§ 3500.11. Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

HISTORY:

[As amended *61 F.R. 13239*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.12

§ 3500.12. No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under *12 U.S.C. 2605(i)(2)*) for or on account of the preparation and distribution of the HUD-1 or HUD-1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (*12 U.S.C. 2609*), or statements required by the Truth in Lending Act, *15 U.S.C. 1601* et seq.

HISTORY:

[As amended Feb. 10, 1994, *59 F.R. 6515*, effective Aug. 9, 1994; *61 F.R. 13239*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.13

§ 3500.13. Relation to State laws.

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Secretary is authorized to determine if inconsistencies with State law exist; in doing so, the Secretary shall consult with appropriate Federal agencies.

(1) The Secretary may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Secretary determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Secretary to determine whether an inconsistency exists by submitting to the address indicated in § 3500.3, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Secretary that an inconsistency with State law exists will be made by publication of a notice in the Federal Register. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(d) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 3500.21(h).

HISTORY:

[As amended Dec. 1, 1992, *57 F.R.* 56857; *61 F.R.* 13239, March 26, 1996, effective April 25, 1996; *61 F.R.* 58476,

Nov. 15, 1996, effective Jan. 14, 1997]

Interpretive Notes and Decisions:

In view of express preemption provisions of Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) and Regulation X declaring that no provision of state law is to be deemed inconsistent for purposes of preemption if state law gives greater protection to consumer, it appears clear that Congress intended that consumers should receive maximum protection not only in form of federal legislation but also in form of state laws; Congress did not intend any preemption of state laws to occur if those laws resulted in more protections for consumer as long as state law did not interfere with operation of federal law and it was possible to comply with both state and federal laws. *Washington Mutual Bank v Superior Court* (1999, 2nd Dist) 75 Cal App 4th 773, 89 Cal Rptr 2d 560, 99 CDOS 8297, 99 Daily Journal DAR 10555.

Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.) and Regulation X do not expressly preempt private rights of action under state laws for violations of their provisions; private state causes of action are not inconsistent with federal disclosure requirements, but rather are complementary to federal requirements and in fact will promote full compliance with disclosure law enacted by Congress; allowing borrowers to sue for unlawful disclosures or omissions will not interfere in any way with operation of federal law, and there is no conflict between Act and private state law causes of action. *Washington Mutual Bank v Superior Court* (1999, 2nd Dist) 75 Cal App 4th 773, 89 Cal Rptr 2d 560, 99 CDOS 8297, 99 Daily Journal DAR 10555.



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12 USCS § 3500.14

§ 3500.14. Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA (*12 U.S.C. 2607*) and is subject to enforcement as such under § 3500.19.

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 3500.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this Part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value.* This term is broadly defined in section 3(2) of RESPA (*12 U.S.C. 2602(2)*). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term "payment" is used throughout §§ 3500.14 and 3500.15 as synonymous with the giving or receiving any "thing of value" and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.*

(1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see § 3500.2, "required use") a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.*

(1) *Section 8 of RESPA permits:*

(i) *A payment to an attorney at law for services actually rendered;*

(ii) *A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;*

(iii) *A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;*

(iv) *A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;*

(v) *A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);*

(vi) *Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or*

(vii) *An employer's payment to its own employees for any referral activities.*

(2) The Department may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of

execution.

(i) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

HISTORY:

[As amended Dec. 1, 1992, *57 F.R.* 56857; Feb. 10, 1994, *59 F.R.* 6515, effective Aug. 9, 1994; *61 F.R.* 13239, March 26, 1996, effective April 25, 1996; *61 F.R.* 58476, Nov. 15, 1996, effective Jan. 14, 1997]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Delay in effectiveness of amendments. The effectiveness of amendments to *24 CFR § 3500.14*, which were published on June 7, 1996 at *61 F.R.* 29252 (corrected and revised Aug. 12, 1996 at *61 F.R.* 41944), was delayed until further notice pursuant to a notice published on Oct. 4, 1996 at *61 F.R.* 51782.

Interpretive Notes and Decisions:

1. Referral fees 2. Fee splitting 3. Maintenance of class action 4. Miscellaneous

1. Referral fees

Based on HUD-1 Settlement Statement, amended complaint, and briefs, there remained genuine issue of material fact as to whether yield spread premium paid to mortgage broker was for services actually performed as opposed to payment for referral of business in violation of Real Estate Settlement Procedures Act (*12 USCS §§ 2601 et seq.*), notwithstanding lender's assertion that because Regulation X recognizes practice of paying yield spread premiums to mortgage brokers and regulates their disclosure, payment of yield spread premium in connection with loan did not violate Act. *Martinez v Weyerhaeuser Mortg. Co.* (1996, *SD Fla*) 959 *F Supp* 1511 (criticized in *Pattee v Ga. Ports Auth.* (2007, *SD Ga*) 477 *F Supp* 2d 1272).

Where bank let mortgage broker know that if broker procured above-par loan for bank, bank would pay broker fee, that was action which could be interpreted as attempt to influence broker to make loans on behalf of bank and, consequently, there existed material fact question as to whether par-plus pricing bank paid broker was prohibited referral fee. *Dubose v First Sec. Sav. Bank* (1997, *MD Ala*) 974 *F Supp* 1426.

"Contracting-out" of portion of home buyers' settlement services to national insurance underwriter and its subsidiary qualified as referral under *24 CFR §§ 3500.2 and 3500.14(f)(2)*. *Gardner v First Am. Title Ins. Co.* (2003, *DC Minn*) 296 *F Supp* 2d 1011.

2. Fee splitting

Addition of second sentence of *24 CFR § 3500.14(c)* in 1992 did not scrap third party fee-splitting element of claim under § 8(b) of Real Estate Settlement Procedures Act (*12 USCS § 2607(b)*). *Echevarria v Chi. Title & Trust Co.* (2001, *CA7 Ill*) 256 *F3d* 623 (criticized in *Haug v Bank of Am., N.A.* (2002, *ED Mo*) 2002 *US Dist LEXIS* 23901).

When read as whole, it is clear that subpart (c) of *24 CFR § 3500.14* prohibits payments for which no services are performed only if those payments are split with another party; notwithstanding plaintiffs' contention that second sentence prohibits payment of fees for which no services are performed even if fee is not split with anyone, it appears that by adding second sentence, HUD was attempting to clarify kinds of fees that were included in prohibition against

split fees and referral, not to expand prohibition to include fees which were not split. *Willis v Quality Mortg. USA* (1998, MD Ala) 5 F Supp 2d 1306.

3. Maintenance of class action

Notwithstanding borrowers' assertion that common and predominant question, which was shared by all members of each of proposed subclasses, was whether practice of including yield spread premiums, as consideration for referrals of federally related loans, violated Real Estate Settlement Procedures Act (12 USCS §§ 2601 et seq.), pertinent provisions of Code of Federal Regulations, e.g., 24 CFR § 3500.14(g)(2) effectively eliminated potential for "generalized evidence," which would prove, or disprove, that yield spread premium payments violated 12 USCS § 2607. *Brancheau v Residential Mortg. Group* (1997, DC Minn) 177 FRD 655.

4. Miscellaneous

Given failure of 12 USCS § 2607(a) and (b) to provide workable liability standard, it cannot be said that reasonable relationship test of 24 CFR § 3500.14(g)(2) is manifestly contrary to plain meaning of statute; § 3500.14(g)(2) is entitled to deference as broad agency rule, insofar as it provides mechanism for detecting kickbacks where 12 USCS § 2607(c) exception is invoked. *O'Sullivan v Countrywide Home Loans, Inc.* (2003, CA5 Tex) 319 F3d 732, 54 FR Serv 3d 909, reh den, reh, en banc, den (2003, CA5 Tex) 64 Fed Appx 419.

HUD's position, reflected in 24 CFR § 3500.14(g)(2), that single service provider may be liable under § 8(b) of Real Estate Settlement Procedures Act (12 USCS § 2607(b)) when it charges fee that exceeds reasonable value of goods, facilities, or services provided, is not supported by text of § 8(b); however, HUD's position, reflected in 24 CFR § 3500.14(c), that § 8(b) prohibits mark-ups is entitled to deference. *Kruse v Wells Fargo Home Mortg., Inc.* (2004, CA2) 383 F3d 49 (criticized in *Warburton v Foxtons, Inc.* (2005, DC NJ) 2005 US Dist LEXIS 39615) and (criticized in *Morrison v Brookstone Mortg. Co.* (2006, SD Ohio) 2006 US Dist LEXIS 73389) and (criticized in *Patino v Lawyers Title Ins. Corp.* (2007, ND Tex) 2007 US Dist LEXIS 85457) and (criticized in *Morales v Countrywide Home Loans, Inc.* (2008, CD Cal) 531 F Supp 2d 1225).



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TITLE 12. BANKS AND BANKING
 CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
 REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 3500.15

§ 3500.15. Affiliated business arrangements.

(a) *General.* An affiliated business arrangement is defined in section 3(7) of RESPA (*12 U.S.C. 2602(7)*).

(b) *Violation and exemption.* An affiliated business arrangement is not a violation of section 8 of RESPA (*12 U.S.C. 2607*) and of § 3500.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (*12 U.S.C. 2607(c)(4)(A)*).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under § 3500.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client. Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a bona fide error. An error of legal judgment with respect to a person's obligations under RESPA is not a bona fide error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (*12 U.S.C. 2607(d)(3)*).

(2) No person making a referral has required (as defined in § 3500.2, "required use") any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the

lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in § 3500.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited-so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labelling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a bona fide return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchisor or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

(1) *Associate* is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

(2) *Affiliate relationship* means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

(3) *Beneficial ownership* means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

(4) *Control*, as used in the definitions of "associate" and "affiliate relationship," means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

(5) *Direct ownership* means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

(6) *Franchise* is defined in 16 CFR 436.2(a).

(7) *Franchisor* is defined in 16 CFR 436.2(c).

(8) *Franchisee* is defined in 16 CFR 436.2(d).

(9) *Person who is in a position to refer settlement service business* means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion

of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

HISTORY:

[As amended Dec. 1, 1992, *57 F.R.* 56857; Feb. 10, 1994, *59 F.R.* 6515, effective Aug. 9, 1994; *61 F.R.* 13240, March 26, 1996, effective April 25, 1996; *61 F.R.* 58476, Nov. 15, 1996, effective Jan. 14, 1997]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Delay in effectiveness of amendment. The effectiveness of an amendment to *24 CFR § 3500.15(b)(1)*, which was published on June 7, 1996 at *61 F.R.* 29252 (corrected and revised Aug. 12, 1996 at *61 F.R.* 41944), was delayed until further notice pursuant to a notice published on Oct. 4, 1996 at *61 F.R.* 51782.



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12 USCS § 3500.16

§ 3500.16. Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (*12 U.S.C. 2608*). Section 3500.2 defines "required use" of a provider of a settlement service. Section 3500.19(c) explains the liability of a seller for a violation of this section.

HISTORY:

[As amended *61 F.R. 13241*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.17

§ 3500.17. Escrow accounts.

(a) *General.* This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A HUD Public Guidance Document entitled "Biweekly Payments-Example" provides examples of biweekly accounting and a HUD Public Guidance Document entitled "Annual Escrow Account Disclosure Statement-Example" provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A HUD Public Guidance Document entitled "Consumer Disclosure for Voluntary Escrow Account Payments" provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 3500.17(g).

(b) *Definitions.* As used in this section:

Aggregate (or) composite analysis, hereafter called *aggregate analysis,* means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual Escrow Account Statement means a statement containing all of the information set forth in § 3500.17(i). As noted in § 3500.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter *cushion*) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 3500.17(c).

Deficiency is the amount of a negative balance in an escrow account. As noted in § 3500.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a trust account, "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

- (1) Determine the appropriate target balances;
- (2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
- (3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 3500.17(i)(4).

Escrow account item or *separate item* means any separate expenditure category, such as "taxes" or "insurance", for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 3500.17(g) and be in substantially the format set forth in § 3500.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account. means the date on which the servicer actually pays an escrow item from the escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 3500.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 3500.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts.*

(1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The "amount sufficient to pay" is computed so that the lowest month end target balance projected for the escrow account computation year is zero (--0--) (see Step 2 in Appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth ($1/6$) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth ($1/12$) of the total annual escrow payments which 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 ($1/6$) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 3500.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the

escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

(4) *Aggregate accounting required.* All servicers must use the aggregate accounting method in conducting escrow account analyses.

(5) *Cushion.* The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.

(6) *Restrictions on pre-accrual.* A servicer must not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in mortgage documents.* The servicer must examine the mortgage loan documents to determine the applicable cushion for each escrow account. If the mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If the mortgage loan document is silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the HUD Public Guidance Document entitled "Annual Escrow Account Disclosure Statement-Example", available in accordance with § 3500.3).

(d) *Methods of escrow account analysis.*

(1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in § 3500.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than

the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) *Aggregate analysis.*

(i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by State law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) *Transfer of servicing.*

(1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 3500.17(f).

(f) *Shortages, surpluses, and deficiencies requirements.*

(1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in § 3500.17(c) (2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.*

(i) If an 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 dollars (\$ 50). If the surplus is less than 50 dollars (\$ 50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain

the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) *Shortages.*

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

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

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

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

(4) *Deficiency.* If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

- (A) May allow the deficiency to exist and do nothing to change it;
- (B) May require the borrower to repay the deficiency within 30 days; or
- (C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) *Notice of Shortage or Deficiency in Escrow Account.* The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial escrow account statement.*

(1) *Submission at settlement, or within 45 calendar days of settlement.* As noted in § 3500.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall 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.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to § 3500.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1

or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement.* For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.*

(1) The format and a completed example for an initial escrow account statement are set out in HUD Public Guidance Documents entitled "Initial Escrow Account Disclosure Statement-Format" and "Initial Escrow Account Disclosure Statement-Example", available in accordance with § 3500.3.

(2) *Incorporation of Initial Escrow Account Statement Into HUD-1 or HUD-1A Settlement Statement.* Pursuant to § 3500.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.

(3) *Identification of Payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., "City Taxes", "School Taxes", "Hazard Insurance", or "Flood Insurance," etc.).

(i) *Annual escrow account statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of Annual Escrow Account Statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. HUD Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement-Format" and "Annual Escrow Account Disclosure Statement-Example" set forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy.* This paragraph (i)(2) contains an exemption from the provisions of § 3500.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 3500.17(i). This exemption also applies in situations where the

servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) *Delivery with other material.* The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for federal income tax purposes.

(4) *Short year statements.* A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement.* The short year statement shall end the "escrow account computation year" for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer.* Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff.* If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

(j) *Formats for annual escrow account statement.* The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in HUD Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement-Format" and "Annual Escrow Account Disclosure Statement-Example".

(k) *Timely payments.*

(1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. HUD encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(l) *System of recordkeeping.*

(1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and

from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Secretary with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information. The servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Secretary.

(i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.

(ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any United States district court. Failure to obey such an order of the court may be punished as contempt of court.

(4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in *12 U.S.C. 2605(e)* and § 3500.21(f).

(5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Department with such information, the Secretary shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Penalties.*

(1) A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (*12 U.S.C. 2609(d)*) and this section. For each such violation, the Secretary shall assess a civil penalty of 75 dollars (\$ 75), except that the total of the assessed penalties shall not exceed \$ 130,000 for any one servicer for violations that occur during any consecutive 12-month period.

(2) Violations described in paragraph (m)(1) of this section do not require any proof of intent. However, if a lender or servicer is shown to have intentionally disregarded the requirements that it submit the escrow account statement to the borrower, then the Secretary shall assess a civil penalty of \$ 110 for each violation, with no limit on the total amount of the penalty.

(n) *Civil penalties procedures.* The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of section 10(c) of RESPA (*12 U.S.C. 2609(c)*):

(1) *Purpose and scope.* This paragraph (n) explains the procedures by which the Secretary may impose penalties under *12 U.S.C. 2609(d)*. These procedures include administrative hearings, judicial review, and collection of penalties. This paragraph (n) governs penalties imposed under *12 U.S.C. 2609(d)* and, when noted, adopts those portions of 24 CFR part 30 that apply to all other civil penalty proceedings initiated by the Secretary.

(2) *Authority.* The Secretary has the authority to impose civil penalties under section 10(d) of RESPA (*12 U.S.C. 2609(d)*).

(3) *Notice of intent to impose civil money penalties.* Whenever the Secretary intends to impose a civil money penalty for violations of section 10(c) of RESPA (*12 U.S.C. 2609(c)*), the responsible program official, or his or her designee, shall serve a written Notice of Intent to Impose Civil Money Penalties (Notice of Intent) upon any servicer on which the Secretary intends to impose the penalty. A copy of the Notice of Intent must be filed with the Chief Docket Clerk, Office of Administrative Law Judges, at the address provided in the Notice of Intent. The Notice of Intent will provide:

(i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under *12 U.S.C. 2609(c)* with which the servicer is charged and whether such violations are believed to be intentional or unintentional in nature, or a combination thereof;

(ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in *12 U.S.C. 2609(d)(1)*, apply;

(iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;

(iv) The procedures to appeal the penalty;

(v) The consequences of failure to appeal the penalty; and

(vi) The name, address, and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures.*

(i) *Answer.* To appeal the imposition of a penalty, a servicer shall, within 30 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. The Answer shall include a statement that the servicer admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each allegation made in the Notice of Intent. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted. Failure to submit an Answer within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent.

(ii) *Submission of evidence.* A servicer that receives the Notice of Intent has a right to present evidence. Evidence must be submitted within 45 calendar days from the date of service of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). The servicer's failure to submit evidence within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent. The servicer may present evidence of the following:

(A) The servicer did submit the required escrow account statement(s) to the borrower(s); or

(B) Even if the servicer did not submit the required statement(s), that the failure was not the result of an intentional disregard of the requirements of RESPA (for purposes of determining the penalty).

(iii) *Review of the record.* The Administrative Law Judge will review the evidence submitted by the servicer, if any, and that submitted by the Department. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the Administrative Law Judge decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30 shall apply, to the extent that they are not inconsistent with this section.

(iv) *Burden of proof.* The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of records lacks information that the servicer submitted the escrow account statement(s) to the borrower(s) shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of records, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

(v) *Standard of proof.* The standard of proof shall be the preponderance of the evidence.

(5) *Determination of the Administrative Law Judge.*

(i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue a decision that shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination of whether the servicer has failed to submit any required statements and, if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.

(ii) The Administrative Law Judge shall issue the decision to all parties within 30 days of the submission of the evidence or the post-hearing briefs, whichever is the last to occur.

(iii) The decision of the Administrative Law Judge shall constitute the final decision of the Department and shall be final and binding on the parties.

(6) *Judicial review.*

(i) A person against whom the Department has imposed a civil money penalty under this part may obtain a review of the Department's final decision by filing a written petition for a review of the record with the appropriate United States district court.

(ii) The petition must be filed within 30 days after the decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

(7) *Collection of penalties.*

(i) If any person fails to comply with the Department's final decision imposing a civil money penalty, the Secretary,

if the time for judicial review of the decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person that has failed to comply with the Department's final decision.

(ii) In any such collection action, the validity and appropriateness of the Department's final decision imposing the civil penalty shall not be subject to review in the district court.

(iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the collection action.

(iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with *31 U.S.C. 3717*.

(8) *Offset*. In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(9) At any time before the decision of the Administrative Law Judge, the Secretary and the servicer may enter into an administrative settlement. The settlement may include provisions for interest, attorney's fees, and costs related to the proceeding. Such settlement will terminate the appearance before the Administrative Law Judge.

(o) *Discretionary payments*. Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in § 3500.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

(Approved by the Office of Management and Budget under control number 2502-0501)

HISTORY:

[Added Oct. 26, 1994, *59 F.R. 53902*, effective May 24, 1995; Feb. 15, 1995, *60 F.R. 8812, 8816*, effective May 24, 1995; May 9, 1995, *60 F.R., 24735*, effective May 24, 1995; *61 F.R. 13241*, March 26, 1996, effective April 25, 1996; *61 F.R. 46510*, Sept. 3, 1996, effective Oct. 8, 1996; *61 F.R. 50219*, Sept. 24, 1996, effective Oct. 24, 1996; *61 F.R. 58476*, Nov. 15, 1996, effective Jan. 14, 1997; *63 F.R. 3236*, Jan. 21, 1998, effective Feb. 20, 1998; *68 F.R. 12789*, March 17, 2003, effective April 16, 2003; *72 F.R. 5589*, Feb. 6, 2007, effective March 8, 2007; *73 F.R. 68242*, Nov. 17, 2008, effective Jan. 16, 2009]

Interpretive Notes and Decisions:

Although *24 CFR § 3500.17(c)(8)* and (d)(1)(C) clearly incorporate state laws that provide greater consumer protections with respect to existence of escrow accounts and amount of money that borrowers must deposit therein, payment of interest is beyond their scope because like RESPA statutes (*12 USCS §§ 2601 et seq.*), they concern only payments by consumers. *Flagg v Yonkers S&L Ass'n (2004, SD NY) 307 F Supp 2d 565*, *affd (2005, CA2 NY) 396 F3d 178*, *cert den (2005) 546 US 817, 126 S Ct 343, 163 L Ed 2d 55*.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 3500.18

§ 3500.18. Validity of contracts and liens.

Section 17 of RESPA (*12 U.S.C. 2615*) governs the validity of contracts and liens under RESPA.

HISTORY:

[As amended *61 F.R. 13247*, March 26, 1996, effective April 25, 1996]



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12 USCS § 3500.19

§ 3500.19. Enforcement.

(a) *Enforcement policy.* It is the policy of the Secretary regarding RESPA enforcement matters to cooperate with Federal, State, or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by the Secretary under 24 CFR part 2424 concerning debarment, suspension, ineligibility of contractors and grantees, or under part 25 of this title concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement that may be legally available.

(b) *Violations of section 8 of RESPA (12 U.S.C. 2607), § 3500.14, or § 3500.15.* Any person who violates §§ 3500.14 or 3500.15 shall be deemed to violate Section 8 of RESPA and shall be sanctioned accordingly.

(c) *Violations of section 9 of RESPA (12 U.S.C. 2608) or § 3500.16.* Any person who violates Section 3500.16 of this part shall be deemed to violate Section 9 of RESPA and shall be sanctioned accordingly.

(d) *Investigations.* The procedures for investigations and investigational proceedings are set forth in 24 CFR part 3800.

HISTORY:

[Amended Dec. 19, 1994, 59 *F.R.* 65448, effective June 19, 1995; 61 *F.R.* 10442, March 13, 1996, effective April 12, 1996; 61 *F.R.* 13247, March 26, 1996, effective April 25, 1996; Dec. 27, 2007, 72 *F.R.* 73497, effective January 28, 2008]



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12 USCS § 3500.20

§ 3500.20. [Reserved]



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TITLE 12. BANKS AND BANKING
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12 USCS § 3500.21

§ 3500.21. Mortgage servicing transfers.

(a) *Definitions.* As used in this section:

Master servicer means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

Mortgage servicing loan means a federally related mortgage loan, as that term is defined in § 3500.2, subject to the exemptions in § 3500.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

Qualified written request means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

Subservicer means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

Transferee servicer means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

Transferor servicer means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement; Requirements.*

(1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien

dealer loan shall provide to each person who applies for such a loan a Servicing Disclosure Statement. A format for the Servicing Disclosure Statement appears as Appendix MS-1 to this part. The specific language of the Servicing Disclosure Statement is not required to be used. The information set forth in "Instructions to Preparer" on the Servicing Disclosure Statement need not be included with the information given to applicants, and material in square brackets is optional or alternative language. The model format may be annotated with additional information that clarifies or enhances the model language. The lender, table funding mortgage broker, or dealer should use the language that best describes the particular circumstances.

(2) The Servicing Disclosure Statement must indicate whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that the entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, the disclosure must state that the servicing of the loan may be assigned, sold or transferred while the loan is outstanding.

(c) *Servicing Disclosure Statement; Delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver the Servicing Disclosure Statement within 3 business days from receipt of the application by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, e-mail, or other electronic means. In the event the borrower is denied credit within the 3 business-day period, no servicing disclosure statement is required to be delivered. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

(d) *Notices of Transfer; loan servicing.*

(1) *Requirement for notice.*

(i) Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. 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:

- (A) Transfers between affiliates;
- (B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and
- (C) Transfers between master servicers, where the subservicer remains the same.

(ii) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) *Time of notice.*

(i) Except as provided in paragraph (d)(2)(ii) of this section:

(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;

(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and

(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;
 (B) Commencement of proceedings for bankruptcy of the servicer; or
 (C) Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

(iii) Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of paragraph (d)(2) of this section.

(3) *Notices of Transfer; contents.* The Notices of Transfer required under paragraph (d) of this section shall include the following information:

- (i) The effective date of the transfer of servicing;
- (ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;
- (iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;
- (iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;
- (v) Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;

(vi) A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS-2 of this part illustrates a statement satisfactory to the Secretary.

(4) *Notices of Transfer; sample notice.* Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in Appendix MS-2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

(e) *Duty of loan servicer to respond to borrower inquiries.*

(1) *Notice of receipt of inquiry.* Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written response. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) *Qualified written request; defined.*

(i) For purposes of paragraph (e) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full,

whichever date is applicable.

(3) *Action with respect to the inquiry.* Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

(4) *Protection of credit rating.*

(i) During the 60-business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, *15 U.S.C. 1681a*).

(ii) In accordance with section 17 of RESPA (*12 U.S.C. 2615*), the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) *Damages and costs.*

(1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed \$ 1,000.

(ii) *Class Actions.* In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than \$ 1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of \$ 500,000 or 1 percent of the net worth of the servicer.

(iii) *Costs.* In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys' fees incurred in connection with the action.

(2) *Nonliability.* A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) *Timely payments by servicer.* If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in § 3500.17(k).

(h) *Preemption of State laws.* A lender who makes a mortgage servicing loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for

12 USCS § 3500.21

a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section, if the procedure is allowable under State law.

(Approved by the Office of Management and Budget under control number 2502-0458)

HISTORY:

[As added Dec. 19, 1994, *59 F.R. 65448*, effective June 19, 1995; January 10, 1995, *60 F. R. 2642*, effective June 19, 1995; March 20, 1995, *60 F.R. 14636*, effective June 19, 1995; *61 F.R. 13248*, March 26, 1996, effective April 25, 1996; *73 F.R. 68242*, Nov. 17, 2008, effective Jan. 16, 2009]

Interpretive Notes and Decisions:

Notice of transfer requirements of *24 CFR § 3500.21(d)(1)(i)* required second mortgage company to place notice in United States mail, first-class postage paid, addressed to last known address of borrower; mailing to address of mortgaged property was insufficient where borrower had notified first mortgage company of address change. *Wanger v EMC Mortgage Corp. (2002, 5th Dist) 103 Cal App 4th 1125, 127 Cal Rptr 2d 685, 2002 CDOS 11451, 2002 Daily Journal DAR 13287.*

Regarding disclosure requirements of *24 CFR § 3500(c)(1)* that apply to face-to-face interview, telephone application is not one made face-to-face; there is no merit in any claim that transaction conducted between two parties in different buildings in different cities is somehow face-to-face because it happens in real time. *Rochester Home Equity, Inc. v Upton (2003, Sup) 1 Misc 3d 412, 767 NYS2d 201.*



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TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES

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12 USCS § 3500.22

§ 3500.22. Severability

If any particular provision of this part or the application of any particular provision to any person or circumstance is held invalid, the remainder of this part and the application of such provisions to other persons or circumstances shall not be affected by such holding.

HISTORY:

[Added 73 *F.R.* 68242, Nov. 17, 2008, effective Jan. 16, 2009]



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12 USCS § 3500.23

§ 3500.23. ESIGN applicability

The Electronic Signatures in Global and National Commerce Act ("ESIGN"), *15 U.S.C. 7001-7031*, shall apply to this part.

HISTORY:

[Added *73 F.R. 68243*, Nov. 17, 2008, effective Jan. 16, 2009]



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TITLE 12. BANKS AND BANKING
 CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
 REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES
 APPENDIX A TO PART 3500--INSTRUCTIONS FOR COMPLETING HUD-1 AND HUD-1A SETTLEMENT
 STATEMENTS; SAMPLE HUD-1 AND HUD-1A STATEMENTS

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Appendix.

The following are instructions for completing the HUD-1 settlement statement, required under section 4 of RESPA and 24 CFR part 3500 (Regulation X) of the Department of Housing and Urban Development regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD-1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD-1. There is no objection to the use of the HUD-1 in transactions in which its use is not legally required. Refer to the definitions section of HUD's regulations (24 CFR 3500.2) for specific definitions of many of the terms that are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to HUD's regulations (Regulation X) regarding rules applicable to reproduction of the HUD-1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with

the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD-1 (and for per diem interest, in the 900-series of the HUD-1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the HUD-1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1, with an offsetting credit reported on page 1 of the HUD-1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as "P.O.C." with the party making the payment identified in parentheses, such as "P.O.C. (borrower)" or "P.O.C. (seller)".

In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the "no cost" provisions must be itemized and listed in the borrower's column on the HUD-1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD-1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD-1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD-1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of "place of settlement."

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404-405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 24 CFR part 3500 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204-209 are used for other items paid by or on behalf of the Borrower. Lines 204-209 should be used to indicate

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any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204-209. Lines 204-209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for items that the Borrower is to purchase separately.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked "P.O.C. (Borrower)", and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104-112 above, apply also to Lines 401-412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

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Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506-509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204-209 including Seller financing arrangements should also be entered on Lines 506-509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 610. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701-702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record "Our origination charge," which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record "Your credit or charge (points) for the specific interest rate chosen," which states the charge or credit adjustment as applied to "Our origination charge," if applicable. This number must not be listed in either column or shown on page one of the HUD-1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record "Your adjusted origination charges," which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of "no cost" loans, where "no cost" refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where "no cost" includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804-808 may be used to record each of the "Required services that we select." Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing ("P.O.C."), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901-904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (e.g., FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000-1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an "escrow", "impound", or "trust" account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc. The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in *24 CFR § 3500.17(d)*. The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD-1 or HUD-1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100-1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of "Title services and lender's title insurance." This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200-1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total "Government recording charges," and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for State transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

Page 3

Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges

The comparison chart must be prepared using the exact information and amounts from the GFE and the actual settlement charges shown on the HUD-1/1A Settlement Statement. The comparison chart is comprised of three sections: "Charges That Cannot Increase", "Charges That Cannot Increase More Than 10%", and "Charges That Can Change".

"Charges That Cannot Increase". The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD-1/1A must be entered in the corresponding line in the HUD-1/1A column. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD-1/1A, the credit should be entered as a negative number.

"Charges That Cannot Increase More Than 10%". A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD-1/1A for each line must be

entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD-1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

"Charges That Can Change". The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD-1/1A for each charge in this section must be entered in the corresponding line in the HUD-1/1A column, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

Loan Terms

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

Instructions for Completing HUD-1A

Note: The HUD-1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions as set forth above. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

Background

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction that has a seller.

Refer to the "definitions" section (§ 3500.2) of 24 CFR part 3500 (Regulation X) for specific definitions of terms used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 24 CFR 3500.9 regarding rules for reproduction of the HUD-1A. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A. The settlement agent shall complete the HUD-1A in accordance with the instructions for the HUD-1 to the extent possible, including the instructions for disclosing items

paid outside closing and for no cost loans.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided in Section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in Section L and the names of the recipients of the loan proceeds in Section M should be set forth on the blank lines.

Line-Item Instructions

Page 1

The identification information at the top of the HUD-1A should be completed as follows:

The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 24 CFR 3500.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD-1A is similar to Section L of the HUD-1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for Section L in the HUD-1, should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include Section L amounts from additional pages, if any are attached to this HUD-1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in Section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in Section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in Section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in Section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

Page 2

This section of the HUD-1A is similar to page 3 of the HUD-1. The instructions for page 3 of the HUD-1, should be followed insofar as possible. The HUD-1/1A Column should include any amounts shown on page 1 of the HUD-1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

HISTORY:

[As amended Dec. 1, 1992, *57 F.R.* 56857; Feb. 10, 1994, *59 F.R.* 6515, effective Aug. 9, 1994; Oct. 26, 1994, *59 F.R.* 53908, effective May 24, 1995; Feb. 15, 1995, *60 F.R.* 8812, 8817, effective May 24, 1995; May 9, 1995, *60 F.R.*, 24735, effective May 24, 1995; *61 F.R.* 13250, March 26, 1996, effective April 25, 1996; *63 F.R.* 3236, Jan. 21, 1998, effective Feb. 20, 1998; *73 F.R.* 68243, Nov. 17, 2008, effective Jan. 16, 2009]Click to view image

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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
 CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
 REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES
 APPENDIX B TO PART 3500--ILLUSTRATIONS OF REQUIREMENTS OF RESPA

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Appendix.

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or State law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts:* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments: The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business and both A and B are in violation of Section 8 of RESPA.

2. *Facts:* B, a lender, encourages persons who receive federally-related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of Section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, Section 8 would be violated by both persons.

3. *Facts:* , a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or

A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A is a violation of Section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. *Facts:* A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent "services" from the client's title insurance premium to B.

Comments: A and B are violating Section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a "title agent" is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes, at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under Section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated Section 8 of RESPA.

5. *Facts:* A, a "mortgage originator," receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of Section 8 of RESPA. For purposes of Section 8, in determining whether a *bona fide* transfer of the loan obligation has taken place, HUD examines the real source of funding, and the real interest of the named settlement lender.

6. *Facts:* A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates Section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. *Facts:* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance

company. A owns more than 1% of B. B performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payments of a commission by C to B is not a violation of Section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate Section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners such arrangements would violate Section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from Section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see Appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

9. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from Section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B's charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, e.g., an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

10. *Facts:* A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere "shell" and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of Section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to Section 8.

11. *Facts:* A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if

purchased separately. Neither A, B, nor C, requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (i.e., loan officers, secretaries, etc.) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/of the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate Section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not "required use" of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from Section 8 under Section 3500.14(g)(2). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate Section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate Section 8.

12. *Facts.* A is a mortgage broker who provides origination services to submit a loan to a Lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services or similar charges.

Comment. The mortgage broker's fee must be itemized in the Good Faith Estimate and on the HUD-1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD-1 Settlement Statement, and reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD-1 Settlement Statement.

13. *Facts.* A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and, frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

Comments. The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a "creditor" under the definition of "federally related mortgage loan" in § 3500.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD-1 or HUD-1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under § 3500.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

HISTORY:

[As amended Dec. 1, 1992, 57 *F.R.* 56857; Feb. 10, 1994, 59 *F.R.* 6506, eff Aug. 9, 1994; March 26, 1996, 61 *F.R.* 13251, effective April 25, 1996; 61 *F.R.* 58476, Nov. 15, 1996, effective Jan. 14, 1997]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Delay in effectiveness of amendment. The effectiveness of an amendment to Appendix B, which was published on June 7, 1996 at *61 F.R.* 29252 (corrected and revised Aug. 12, 1996 at *61 F.R.* 41944), was delayed until further notice pursuant to a notice published on Oct. 4, 1996 at *61 F.R.* 51782.



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*** CURRENT THROUGH PL 111-284, APPROVED 10/18/10 ***

TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES
APPENDIX C TO PART 3500--INSTRUCTIONS FOR COMPLETING GOOD FAITH ESTIMATE (GFE) FORM

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Appendix.

The following are instructions for completing the GFE required under section 5 of RESPA and 24 CFR 3500.7 of the Department of Housing and Urban Development regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

General Instructions

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the "form" refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

Specific Instructions

Page 1

Top of the Form--The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

"*Purpose.*"--This section describes the general purpose of the GFE as well as additional information available to the applicant.

"*Shopping for your loan.*"--This section requires no loan originator action.

"*Important dates.*"--This section briefly states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days within which the applicant must go to settlement once the interest rate is locked. In Line 4, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked, if applicable.

"*Summary of your loan.*"--In this section, for all loans the loan originator must fill in, where indicated:

- (i) The initial loan amount;
- (ii) The loan term; and
- (iii) The initial interest rate.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For federal, state, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise.

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due.

"Escrow account information."--The loan originator must indicate whether the loan includes an escrow account for property taxes and other financial obligations. The amount shown in the "Summary of your loan" section for "Your initial monthly amount owed for principal, interest, and any mortgage insurance" must be entered in the space for the monthly amount owed in this section.

"Summary of your settlement charges."--On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

Page 2

"Understanding your estimated settlement charges."--This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD-1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.

"Your Adjusted Origination Charges"

Block 1, *"Our origination charge."*--The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, i.e., the amount may not increase at settlement.

Block 2, *"Your credit or charge (points) for the specific interest rate chosen."*--For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that "The credit or charge for the interest rate you have chosen" is included in "Our origination charge" above (see Block 1 instructions above), must insert the interest rate, and must also insert "0" in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (i.e., the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (i.e., the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert "0" in Block 2 and may check either the box indicating there is a credit of "0" or the box indicating there is a charge of "0".

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, i.e., any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (Note: An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A, "*Your Adjusted Origination Charges.*"--The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of "no cost" loans, where "no cost" refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

"Your Charges for All Other Settlement Services"

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3, "*Required services that we select.*"--In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4, "*Title services and lender's title insurance.*"--In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan originator. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5, "*Owner's title insurance.*"--In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For non-purchase transactions, the loan originator may enter "NA" or "Not Applicable" in this Block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6, "*Required services that you can shop for.*"--In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (e.g., survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7, "*Government recording charges.*"--In this block, the loan originator must estimate the state and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8, "*Transfer taxes.*"--In this block, the loan originator must estimate the sum of all state and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9, "*Initial deposit for your escrow account.*"--In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check "other" and then list the items included.

Block 10, "*Daily interest charges.*"--In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11, "*Homeowner's insurance.*"--The loan originator must estimate in this block the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the loan originator's requirements. The loan originator must also separately indicate the nature of each type of insurance required along with the charges. To the extent a loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B, "*Your Charges for All Other Settlement Services.*"--The loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A + B, "*Total Estimated Settlement Charges.*"--The loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A + B.

Page 3

"Instructions"

"*Understanding which charges can change at settlement.*"--This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.

"*Using the tradeoff table.*"--This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the

GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

"Using the shopping chart."--This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

"If your loan is sold in the future."--This section requires no loan originator action.

HISTORY:

[As amended Dec. 1, 1992, *57 F.R.* 56857; Feb. 10, 1994, *59 F.R.* 6521, effective Aug. 9, 1994; *63 F.R.* 3237, Jan. 21, 1998, effective Feb. 20, 1998; *73 F.R.* 68253, Nov. 17, 2008, effective Jan. 16, 2009]Click to view image

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TITLE 12. BANKS AND BANKING
CHAPTER 27. REAL ESTATE SETTLEMENT PROCEDURES
REGULATION X (24 CFR PART 3500)--REAL ESTATE SETTLEMENT PROCEDURES
APPENDIX D TO PART 3500--AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT
FORMAT

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Appendix.

Affiliated Business Arrangement Disclosure Statement Format
Notice

To: ----- Property: -----
From: ----- Date: -----
(Entity Making Statement)

This is to give you notice that [referring party] has a business relationship with [settlement services provider(s)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. **THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.**

[provider and settlement service] [charge or range of charges]

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[provider and settlement service] [charge or range of charges]

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that [referring party] is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. (Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 24 CFR 3500.15(b)(1) of Regulation X.) These INSTRUCTIONS TO PREPARER should not appear on the statement.]

HISTORY:

[As amended April 1, 1993, 58 F.R. 17166; 61 F.R. 58477, Nov. 15, 1996, effective Jan. 14, 1997]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Delay in effectiveness of amendment. The effectiveness of an amendment to Appendix D, which was published on June 7, 1996 at 61 F.R. 29252 (corrected and revised Aug. 12, 1996 at 61 F.R. 41944), was delayed until further notice pursuant to a notice published on Oct. 4, 1996 at 61 F.R. 51782.



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HISTORY:

[Added Oct. 26, 1994, *59 F.R.* 53890, effective April 24, 1995; Feb. 15, 1995, *60 F.R.* 8817, effective May 24, 1995; *61 F.R.* 58479, Nov. 15, 1996, effective Jan. 14, 1997; *73 Fed. Reg.* 68259, Nov. 17, 2008, effective Jan. 16, 2009]



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APPENDIX F TO PART 3500 [REDESIGNATED]

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[Redesignated Appendix E (61 F.R. 58479, Nov. 15, 1996, effective Jan. 14, 1997).]



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[Removed (61 F.R. 18674, April 29, 1996, effective April 25, 1996).]



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Appendix.

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (*12 U.S.C. 2601 et seq.*). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]

HISTORY:

[As amended Dec. 19, 1994, *59 F.R. 65448*, effective June 19, 1995; *60 F.R. 2642*, Jan. 10, 1995, effective June 19, 1995; Jan. 31, 1995, *60 F.R. 5962*, effective June 19, 1995; *73 F.R. 68259*, Nov. 17, 2008, effective Jan. 16, 2009]



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[Sample language; use business stationery or similar heading]

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from ----- to -----, effective -----.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice not later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is ----- . If you have any questions relating to the transfer of servicing from your, present servicer call ----- [enter the name of an individual or department here] between ---- a.m. and ---- p.m. on the following days ----- . This is a [toll-free] or [collect call] number.

Your new servicer will be ----- .

The business address for your new servicer is:

The [toll-free] [collect call] telephone number of your new servicer is ----- . If you have any questions relating to the transfer of servicing to your new servicer call [toll free or collect call telephone number] between ---- a.m. and ---- p.m. on the following days -----.

The date that your present servicer will stop accepting payments from you is ----- . The date that your new servicer will start accepting payments from you is ----- . Send all payments due on or after that date to your new servicer.

[Use this paragraph if appropriate; otherwise omit] The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

and you should take the following action to maintain coverage:

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. [If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

-----]

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating

foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

HISTORY:

[As amended *61 F.R. 13252*, March 26, 1996, effective April 25, 1996]



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[Removed (61 F.R. 58476, Nov. 15, 1996, effective Jan. 14, 1997).]