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Office of Thrift Supervision
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September 2, 2009

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM:

Montrice Godard Yakimov

Managing Director, Compliance and Consumer Protection

SUBJECT:

Revised RESPA Examination Procedures

Background

The Real Estate Settlement Procedures Act (RESPA) of 1974 requires lenders and mortgage brokers to provide borrowers with timely disclosures regarding the nature and costs of real estate settlement services in connection with a federally related mortgage loan. RESPA also prohibits certain practices such as the payment of fees in exchange for referrals of settlement service business. In 2008, the Department of Housing and Urban Development (HUD) issued both technical and substantive amendments to the rule that implements RESPA.¹ The technical changes took effect on January 16, 2009 and substantive changes will take effect on January 1, 2010.

OTS has begun the process of updating its RESPA examination procedures to incorporate the changes made by the new RESPA rule. The revised examination procedures, which have been developed on an interagency basis, incorporate the technical changes that became effective on January 16, 2009. OTS will issue additional revisions to the examination procedures to incorporate the substantive changes to the RESPA regulations later this year. This memorandum provides an overview of the key provisions of the amended RESPA rule as well as a summary of the technical changes that are included in the revised examination procedures.

Overview of Amended RESPA Rule

- **Standardized Good Faith Estimate Form.** The centerpiece of the final rule is the establishment of a standard three-page Good Faith Estimate (GFE) form that is designed to allow borrowers to shop for a mortgage loan by comparing settlement costs and loan terms from various loan originators. The new GFE will be required as of January 1, 2010. A lender that chooses to provide the new GFE prior to January 1, 2010 will be subject to the

¹ 73 Fed. Reg. 68204 (Nov. 17, 2008).

tolerances and the other rules attendant to the new form and will have to ensure that the borrower is provided with the new HUD-1 at closing.

- **Binding GFE.** With limited exceptions, the lender will be bound to the settlement charges and loan terms listed on the GFE. For interest rates, the lender will be required to indicate on the GFE the period during which a rate is available. After that period, the interest rate will float until locked. For settlement charges and all other loan terms, the lender will be required to honor the estimated settlement charges and loan terms for at least ten business days from when the GFE is provided. The charges and terms in the GFE will be binding unless a new GFE is provided to the borrower prior to settlement based on “changed circumstances” as defined in the rule.
- **Tolerances.** The final rule establishes “tolerances” or limits on the amount certain settlement charges can vary at closing from the amounts stated on the GFE. The rule establishes three categories of settlement charges. The first category of charges is subject to a “zero tolerance” standard, meaning that the amounts estimated on the GFE cannot vary at closing. The second category is subject to a ten percent tolerance standard, meaning that the *total* of those charges may not exceed a ten percent increase in settlement from the *total* of those charges stated on the GFE. The third category is subject to no restriction, meaning that the total can change at closing. If a lender exceeds the tolerance at closing, the lender may cure the tolerance violation by reimbursing the borrower the amount of any overcharge within 30 days of the settlement date.
- **Revised Settlement Statement.** The rule also includes a revised HUD-1/1A Settlement Statement form that will be required as of January 1, 2010. To facilitate comparison between the HUD-1 and the GFE, each designated line on the HUD-1/1A includes a reference to the relevant line from the GFE. Inadvertent or technical errors on the HUD-1/1A will not be deemed to be a violation of RESPA if a revised HUD-1/1A is provided to the borrower within 30 days of settlement.

Technical Revisions to the RESPA Examination Procedures

The revised RESPA Examination Procedures reflect the following technical changes to the RESPA regulations that became effective on January 16, 2009:

- **Streamlined Initial Servicing Disclosure Statement.** The RESPA rule revised the mortgage servicing disclosure requirements by shortening the initial servicing disclosure statement provided to loan applicants.
- **Updated Escrow Account Regulations.** The rule eliminated provisions in the escrow account regulations regarding the phase-in period for the national standard accounting method known as aggregate accounting, because the phase-in period to adopt the method has expired.
- **Average Charge.** All settlement service providers, including lenders, are permitted to list the “average charge” for a settlement service rather than the exact cost for that service on the GFE and the HUD-1. The method of determining the average charge is

left up to the discretion of the settlement service provider. The provider must recalculate the average charge at least every six months. The average charge is permitted only for third party vendor charges and not for a provider's own internal charges. The average charge also cannot be used where the charge is based on the loan amount or value of the property.

- **ESIGN Applicability to RESPA Disclosures.** The rule clarifies that electronic disclosures permitted pursuant to the Electronic Signatures in Global and National Commerce Act (ESIGN) are also permitted disclosures in RESPA regulations.

The revised Examination Handbook, Section 1320, is available through the link provided below. Please contact Rhonda L. Daniels, Senior Program Analyst, at (202) 906-7158 if you have any questions.

Link: [Handbook Section 1320](#)