



# **REAL ESTATE SETTLEMENT PROCEDURES ACT**

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# Residential Mortgage Lending: A conceptual framework for identifying applicable laws

## FEDERAL LAW

Licensing &  
Registration

## STATE LAW

Substantive  
Laws

# Residential Mortgage Lending

## FEDERAL LAW

- ✓ TILA
- ✓ RESPA
- ✓ ECOA
- ✓ FCRA
- ✓ Federal

## STATE LAW

### Licensing & Registration

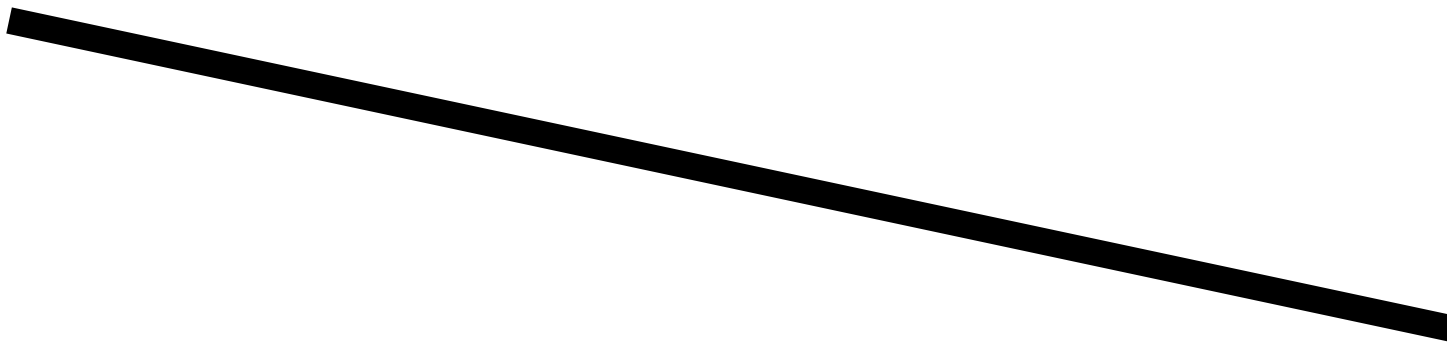
- ✓ Lending
- ✓ Corporate

### Substantive Laws

- ✓ Credit Laws
- ✓ Real Property
- ✓ Consumer Protection

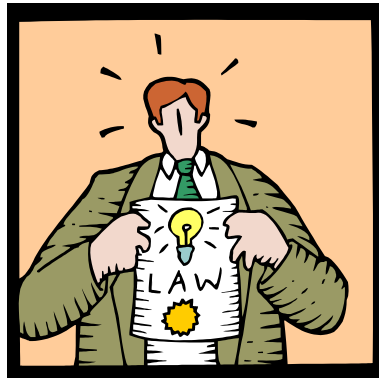
# **Legal Requirements v. Industry Requirements**

The line can be different.



# Today's Presentation

## Real Estate Settlement Procedures Act (12 USC 2601 *et seq.*)



## HUD Regulation X (24 CFR Part 3500)

# RESPA: Today's Presentation

- **Overview and Key RESPA Terms**
- **Disclosure Requirements**
- **Referral Fee Prohibitions**

[Loan Servicing: not addressed today]

# RESPA Regulations

- Major revisions to HUD Regulation X published in the Federal Register on November 17, 2008
- Most of the changes became effective January 1, 2010
- A few of the changes became effective January 16, 2009



# Loans Covered By RESPA

RESPA applies to:

"federally related mortgage loans"

Property must be improved residential real property designed principally for 1 to 4 families



# Loans Exempt From RESPA

RESPA does not apply to (among others):

- Loans made primarily for a business, commercial, or agricultural purpose; or
- Temporary financing, including short-term construction loans; or
- Loans on vacant land where proceeds will not be used to improve property; or
- Transfers of loan obligations in bona fide secondary market transactions.

# Loans Exempt From RESPA

RESPA, in general, applies to HELOCs

BUT neither the Good Faith Estimate nor the HUD-1 Settlement Statement is required in connection with HELOCs as long as the federal Truth in Lending Act disclosures required in connection with HELOCs are provided.



HELOCs

# RESPA Disclosures: Significant Terms

Until 1/1/2010, “application” meant:

- submission of an applicant's financial information in anticipation of a credit decision; *along with*
- an identification of the specific real property involved.



# RESPA Disclosures: Significant Terms

Beginning on 1/1/2010, “application” means:

- submission of borrower’s financial information in anticipation of a credit decision, which shall include 6 specific items



# RESPA Disclosures: Significant Terms

Beginning on 1/1/2010, “application“  
includes 6 specific items:

- ✓ name, ✓ monthly income, ✓ social security number
- ✓ property address and ✓ estimate of property value
- ✓ loan amount sought, and
- any other information deemed necessary by the “loan originator”

# Significant Terms

**The definition of “application” is important because it triggers the requirement to give the Good Faith Estimate disclosure.**



# RESPA Disclosures: Significant Terms

Effective 1/1/10, RESPA regulations contain a new definition: “changed circumstances”

This definition is significant in connection with the new Good Faith Estimate disclosure and the ability to provide a revised GFE.

**Changed Circumstances**

# Significant Terms

**“Changed circumstances”** means:

- Acts of God, war, disaster, emergency;
- Information particular to borrower or transaction relied on in providing GFE that changes or is found inaccurate after GFE has been provided.
- New information particular to borrower or transaction not relied on in providing the GFE; or
- Other circumstances particular to borrower or transaction (e.g., boundary disputes, flood insurance, environmental problems).

# Significant Terms

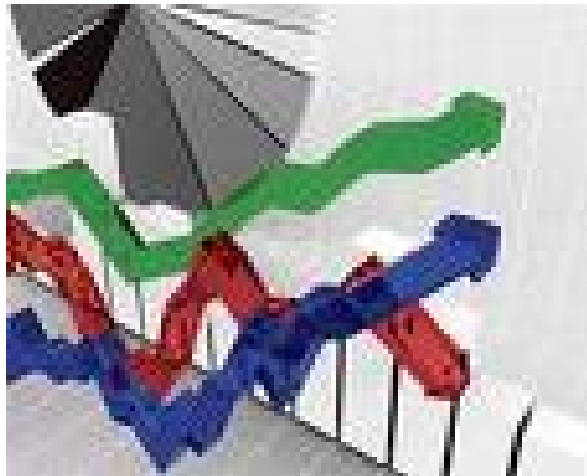
Information collected prior to issuing GFE

(for example, borrower's name, monthly income, property address, estimated property value, loan amount sought, credit report information)

may NOT be the basis for “**changed circumstances**” unless the information changes or is found to be inaccurate after GFE was provided.

# Significant Terms

**Changed circumstances** do not include market price fluctuations by themselves.



# RESPA: Today's Presentation

➤ Overview and Key RESPA Terms

➤ **Disclosure Requirements**

➤ Referral Fee Prohibitions

[Loan Servicing: not addressed today]

# Disclosure Requirements

## Until 1/16/2009, Servicing Disclosure Statement

- At or within 3 business days of **application**
- Use model form
- Needed to be signed



# Disclosure Requirements

## On 1/16/2009, Servicing Disclosure Statement

Same timing but much simpler form and  
no acknowledgment needed



# Disclosure Requirements

## Notice of Servicing Transfer (no change)

By Transferor: not less than 15 days before  
date of transfer

By Transferee: not more than 15 days after  
date of transfer

Combined Notice: not less than 15 days  
before date of transfer

# Disclosure Requirements

**Until 1/1/2010, gave Good Faith Estimate, including “required service providers”**

- At or within 3 business days of application
- **As good an estimate as possible**
- **No obligation to redisclose**
- Required service providers on separate form

# Disclosure Requirements

On 1/1/2010, Good Faith Estimate  
changed **significantly**



# Disclosure Requirements

## Good Faith Estimate changes include:

- New and expanded disclosures (charges and loan terms)
- Must use standard form
- Disclosed charges/terms must be available for at least 10 business days and, if accepted, will be **binding** except under “**changed circumstances**”
- Restrictions on if, and how much, charges may be different at closing (“tolerances”)

# Good Faith Estimate

- Must use HUD's GFE form **with no changes**
- Must prepare the GFE in accordance with the instructions in HUD's regulation\*

*\*(but as "supplemented" by HUD's Q&As and PowerPoints and webinars)*

# Good Faith Estimate

- The charges and terms in GFE for all settlement services **must be available for at least 10 business days**\* from when the GFE is provided.
- GFE charges and terms may remain available longer, if the loan originator extends the period of availability.

*\*Business days are days the entity is open to the public for carrying on normal business functions*

# Good Faith Estimate

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, the loan originator is no longer bound by the GFE.

***What does this mean in the real world?***

# Good Faith Estimate

If the borrower expresses an intent to continue with the loan application, the loan originator is bound, within specific tolerances, to the charges and terms listed on the original GFE provided to the borrower, unless a **revised GFE** may be and is provided prior to settlement.



# Good Faith Estimate

This is important:

- If borrower expresses intent to continue with loan application,
- loan originator is bound, **WITHIN SPECIFIC TOLERANCES**, to the charges and terms listed on the original GFE
- unless a **revised GFE** *both* may be and is provided prior to settlement.



# Good Faith Estimate

*When can loan originator provide revised GFE?*

- A revised GFE is permitted under certain **limited** circumstances.
- **Recordkeeping:** The loan originator must document the reasons that a revised GFE was provided, and then retain documentation of the reasons for at least 3 years after settlement.

# Good Faith Estimate

Revised GFE is permitted for:

- 1) **Changed circumstances** that increase settlement costs.
- 2) **Changed circumstances** affecting borrower's eligibility for loan terms.
- 3) Borrower-requested changes.

# Good Faith Estimate

Repeat: Revised GFE is permitted for:

- 1) **Changed circumstances** that increase settlement costs.
- 2) **Changed circumstances** affecting borrower's eligibility for loan terms.
- 3) Borrower-requested changes.

In these circumstances,

- Revised GFE must be issued within 3 business days of loan originator receiving information allowing the GFE to be revised.
- Revised GFE may increase only those charges affected by the changes.

# Good Faith Estimate

Revised GFE is permitted for:

- 4) Interest rate dependent charges and terms if interest rate moves from float to lock or if locked rate expires.

**This “exception” is confusing and difficult to use by brokers who are compensated by lender-paid broker fee (YSP).**



# Good Faith Estimate

Revised GFE is permitted for:

- 5) Expiration of original GFE (10-business day rule).
- 6) New home purchases (special 60-day rule).

# Good Faith Estimate

The loan originator is bound, within **specific tolerances**, to the charges and terms listed on the original GFE provided to the borrower, unless a revised GFE is provided prior to settlement.



# Good Faith Estimate

## No Tolerance:

Actual charges at settlement may not exceed amounts shown on GFE for:

- The origination charge;
- While interest rate is locked, the credit or charge for the interest rate chosen; and
- While interest rate is locked, the adjusted origination charge

# Good Faith Estimate

No Tolerance:

Actual charges at settlement may not exceed amounts shown on GFE for:

- Transfer taxes

**In Maryland, this includes recordation taxes (document stamp taxes).**

# Good Faith Estimate

## 10% Tolerance:

Sum of charges at settlement for the following services may not be greater than 10% above sum of amounts shown on the GFE:

- Lender-required settlement services, where lender selects third party service provider;
- Lender-required services, title services and required title insurance, and owner's title insurance, when borrower uses service provider identified by loan originator; and
- Government recording charges.

# Good Faith Estimate

## Complete Tolerance:

- The amounts charged for all other settlement services included on the GFE may be changed.



# Good Faith Estimate

## Correcting Tolerance Violations

- ✓ If any settlement charges exceed permitted tolerances, ***loan originator*** may cure the tolerance violation by reimbursing to borrower the amount by which the tolerance was exceeded.
- ✓ Reimbursement must occur either at settlement or within 30 calendar days after settlement.
- ✓ Borrower receives timely reimbursement if loan originator delivers or mails payment within 30 calendar days after settlement.

# Good Faith Estimate

## Questions about completing the Good Faith Estimate Form?



### Good Faith Estimate (GFE)

OMB Approval No. 2502-0265

Name of Originator
Originator Address
Originator Phone Number
Originator <u>email</u>

Borrower
<u>Property</u> Address
Date of GFE

# Good Faith Estimate


http://www.hud.gov/offices/hsg/ramh/res/gfestimate.pdf - Windows Internet Explorer

http://www.hud.gov/offices/hsg/ramh/res/gfestimate.pdf

http://www.hud.gov/offices/hsg/ramh/res/gfestimate...

1 / 3 102% Find

OMB Approval No. 2502-0265



## Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	Date of GFE
Originator Email	

**Purpose**  
This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at [www.hud.gov/respa](http://www.hud.gov/respa). If you decide you would like to proceed with this loan, contact us.

**Shopping for your loan**  
Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

**Important dates**

1. The interest rate for this GFE is available through . After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through .
3. After you lock your interest rate, you must go to settlement within  days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least  days before settlement.

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BLATT LLANDER, LLC

### Summary of your loan

Your initial loan amount is	\$
Your loan term is	_____ years
Your initial interest rate is	_____ %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ _____ per month
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of _____ %. The first change will be in _____.
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$ _____.
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be in _____ and the monthly amount owed can rise to \$ _____. The maximum it can ever rise to is \$ _____.
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____.
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years.

### Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ \_\_\_\_\_.

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

### Summary of your settlement charges

<b>A</b>	Your Adjusted Origination Charges (See page 2.)	\$ _____
<b>B</b>	Your Charges for All Other Settlement Services (See page 2.)	\$ _____
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	\$ _____

Navigation bar with back, forward, and search buttons. Address bar shows: http://www.hud.gov/offices/hsg/ramh/res/gfestimate.pdf. Search bar contains "Google".

Vertical sidebar with icons for document, list, help, and other navigation functions.

## Understanding your estimated settlement charges

*Some of these charges can change at settlement. See the top of page 3 for more information.*

### Your Adjusted Origination Charges

1. Our origination charge This charge is for getting this loan for you.	
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [ ] for this interest rate of [ ] %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ [ ] for this interest rate of [ ] %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	

<b>A</b> Your Adjusted Origination Charges	\$
--	----

### Your Charges for All Other Settlement Services

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Service	Charge							
Service	Charge								
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.									
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.									

<p>6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.</p> <table border="1"> <thead> <tr> <th data-bbox="714 462 1228 495"><i>Service</i></th> <th data-bbox="1228 462 1585 495"><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Service</i>	<i>Charge</i>				
<i>Service</i>	<i>Charge</i>					
<p>7. Government recording charges These charges are for state and local fees to record your loan and title documents.</p>						
<p>8. Transfer taxes These charges are for state and local fees on mortgages and home sales.</p>						
<p>9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other _____.</p>						
<p>10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$_____ per day for _____ days (if your settlement is _____).</p>						
<p>11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire.</p> <table border="1"> <thead> <tr> <th data-bbox="714 1193 1228 1226"><i>Policy</i></th> <th data-bbox="1228 1193 1585 1226"><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Policy</i>	<i>Charge</i>				
<i>Policy</i>	<i>Charge</i>					
<p><b>B</b> Your Charges for All Other Settlement Services</p>		\$				
<p><b>A + B</b> Total Estimated Settlement Charges</p>		\$				

# Instructions

## Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> <li>■ Our origination charge</li> <li>■ Your credit or charge (points) for the specific interest rate chosen <i>(after you lock in your interest rate)</i></li> <li>■ Your adjusted origination charges <i>(after you lock in your interest rate)</i></li> <li>■ Transfer taxes</li> </ul>	<ul style="list-style-type: none"> <li>■ Required services that we select</li> <li>■ Title services and lender's title insurance <i>(if we select them or you use companies we identify)</i></li> <li>■ Owner's title insurance <i>(if you use companies we identify)</i></li> <li>■ Required services that you can shop for <i>(if you use companies we identify)</i></li> <li>■ Government recording charges</li> </ul>	<ul style="list-style-type: none"> <li>■ Required services that you can shop for <i>(if you do not use companies we identify)</i></li> <li>■ Title services and lender's title insurance <i>(if you do not use companies we identify)</i></li> <li>■ Owner's title insurance <i>(if you do not use companies we identify)</i></li> <li>■ Initial deposit for your escrow account</li> <li>■ Daily interest charges</li> <li>■ Homeowner's insurance</li> </ul>

## Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

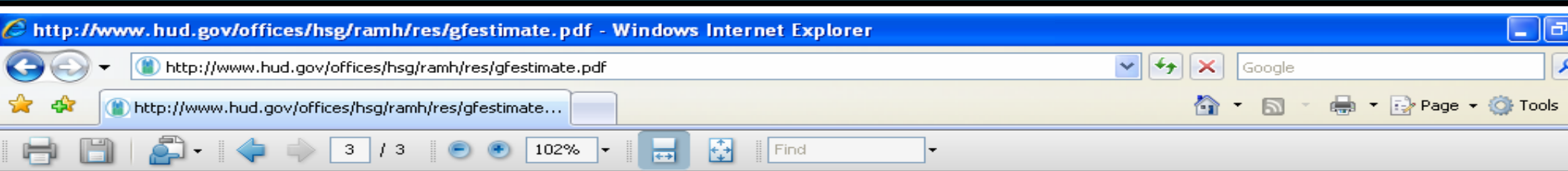
If you would like to choose an available option, you must ask us for a new GFE.

*Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.*

Done

Unknown Zone

# Good Faith Estimate



	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate <sup>1</sup>	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ <b>more</b> every month	You will pay \$ <b>less</b> every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be <b>reduced</b> by \$	Your settlement charges will <b>increase</b> by \$
How much your total estimated settlement charges will be	\$	\$	\$

<sup>1</sup> For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

## Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				

# Disclosure Requirements

## Until 1/1/2010, HUD Settlement Statements

- At closing
- Amounts need to be correct
- Complete responsibility of person closing loan

**A. Settlement Statement** U.S. Department of Housing and Urban Development OMB No. 2502-0265

**B. Type of Loan**  
 FHA  FHAa  Conv. Unins.  File Number  Loan Number  Mortgage Insurance Case Number  
 VA  Conv. Ins. XXXXXXXX

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "to/cd" if were paid outside the closing they are shown here for information purposes and are not included in the totals.

**D. Name and Address of Borrower** **E. Name and Address of Seller** **F. Name and Address of Lender**  
 BUYER  
 12345 MAIN STREET  
 USA  
 SELLER  
 12345 MAIN STREET  
 USA  
 THE MORTGAGE COMPANY

**G. Property Location** **H. Settlement Agent** **I. Settlement Date**  
 12345 MAIN STREET  
 USA  
 CAPITOL TITLE INSURANCE AGENCY, INC.  
 1300 ROCKVILLE PIKE, SUITE 500  
 ROCKVILLE, MD 20852  
 08/01/04

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER	375,000.00	400. GROSS AMOUNT DUE TO SELLER	375,000.00
101. Contract sales price	375,000.00	401. Contract sales price	375,000.00
102. Prepaid property taxes	400	402. Prepaid property taxes	
103. Settlement charges to borrower (line 1400)	400	403. Settlement charges to seller (line 1400)	
104.	404	404.	
105.	405	405.	
<b>Adjustments for items paid by seller in advance</b>		<b>Adjustments for items paid by seller in advance</b>	
106. City/town taxes	to	406. City/town taxes	to
107. County taxes	to	407. County taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	375,000.00	430. GROSS AMOUNT DUE TO SELLER	375,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money	300,000.00	501. Business Deposit (see instructions)	
202. Principal amount of new loan(s)	300,000.00	502. Settlement charges to seller (line 1400)	
203. Escrow (amount) taken subject to		503. Escrow (amount) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
<b>Adjustments for items unpaid by seller</b>		<b>Adjustments for items unpaid by seller</b>	
210. City/town taxes	to	510. City/town taxes	to
211. County taxes	to	511. County taxes	to
212. Assessments	to	512. Assessments	to
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	300,000.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	375,000.00	601. Gross amount due to seller (line 420)	375,000.00
302. Less amount paid by/bor borrower (line 220)	300,000.00	602. Less reduction amount due to seller (line 520)	
303. CASH FROM BORROWER	75,000.00	603. CASH TO SELLER	375,000.00

RESFA: HB 43052 - REV. 11/01/99

# Disclosure Requirements

## On 1/1/2010, HUD Settlement Statements

- New form (modifies and adds to existing forms)
- Requires lender or broker to provide information that is input into forms

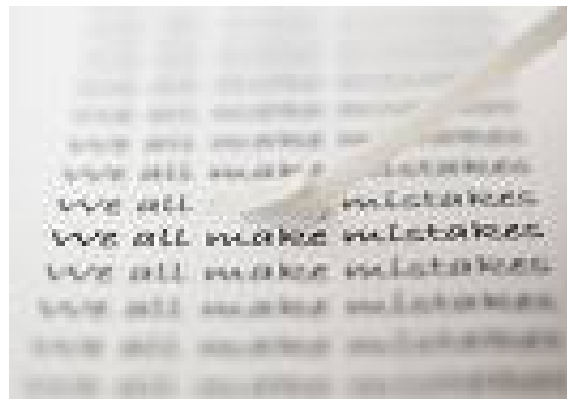
# HUD Settlement Statements

## New Concept for Settlement Statement:

- Lender/broker may show an “average charge” for certain third-party fees
- An “average charge” disclosure is not permitted for any settlement service based on loan amount or property value

# HUD Settlement Statements

An inadvertent or technical error in completing the HUD-1 or HUD-1A shall not be deemed a violation of RESPA if a revised HUD-1 or HUD-1A is provided in within 30 calendar days after settlement.



# HUD Settlement Statements

## Questions about completing the HUD Settlement Statement Form?

Settlement Charges					
<b>001. Lender Fees (Include in Item 001)</b>					
001.1. Broker of commission (see 001.2) as follows:				Paid from	Paid from
001.2	to			Settlement's	Settlement's
001.3	to			Funds of	Funds of
001.4	to			Settlement	Settlement
001.5	to				
<b>002. Fees Payable to Certain Third Parties</b>					
002.1	Fee description	to	of	to	
002.2	Fee description	to	of	to	
002.3	Fee description	to	of	to	
002.4	Fee description	to	of	to	
002.5	Fee description	to	of	to	
002.6	Fee description	to	of	to	
002.7	Fee description	to	of	to	
002.8	Fee description	to	of	to	
<b>003. Fees Payable to Lender to be Paid by Borrower</b>					
003.1	Fee description	to	of	to	
003.2	Fee description	to	of	to	
003.3	Fee description	to	of	to	
003.4	Fee description	to	of	to	
003.5	Fee description	to	of	to	
<b>004. Borrower Fees Payable to Lender</b>					
004.1	Fee description	to	of	to	
004.2	Fee description	to	of	to	
004.3	Fee description	to	of	to	
004.4	Fee description	to	of	to	
004.5	Fee description	to	of	to	
004.6	Fee description	to	of	to	
004.7	Fee description	to	of	to	
004.8	Fee description	to	of	to	
<b>005. Title Charges</b>					
005.1	Fee description	to	of	to	
005.2	Fee description	to	of	to	
005.3	Fee description	to	of	to	
005.4	Fee description	to	of	to	
005.5	Fee description	to	of	to	
005.6	Fee description	to	of	to	
005.7	Fee description	to	of	to	
005.8	Fee description	to	of	to	
<b>006. Government Recording and Transfer Charges</b>					
006.1	Fee description	to	of	to	
006.2	Fee description	to	of	to	
006.3	Fee description	to	of	to	
006.4	Fee description	to	of	to	
006.5	Fee description	to	of	to	
<b>007. Additional Settlement Charges</b>					
007.1	Fee description	to	of	to	
007.2	Fee description	to	of	to	
007.3	Fee description	to	of	to	
007.4	Fee description	to	of	to	
007.5	Fee description	to	of	to	
<b>008. Total Settlement Charges (Include in Item 001, see Item 1 and 001, Section B)</b>					

# RESPA: Today's Presentation

- Overview and Key RESPA Terms
- Disclosure Requirements
- **Referral Fee Prohibitions**

[Loan Servicing: not addressed today]

# Penalties For Disclosure Violations

## ***Special Information Booklet, Good Faith Estimate, or HUD Settlement Statement disclosures:***

- Administrative action is possible
- RESPA does not impose express penalties for failure to comply with these disclosure requirements
- Consider possible “unfair practices” claims

# Penalties For Disclosure Violations

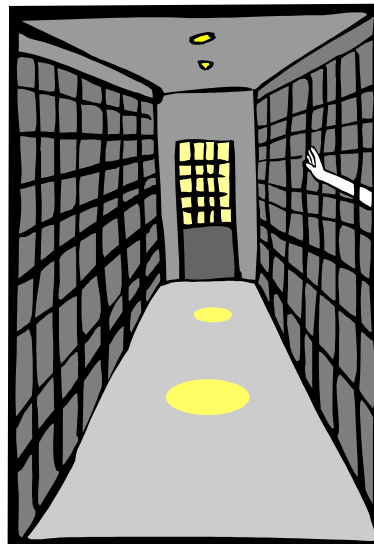
## ***Failure to provide Servicing Disclosures:***

- Administrative action is possible.
- RESPA imposes penalties for failure to provide servicing disclosures:
  - ✓ Individuals may bring a private case and recover actual damages plus additional damages up to \$1,000 plus attorney fees.
  - ✓ Class action is available.



# Penalties For RESPA Referral Fee Violations

- **Criminal Penalties.** Each violation of RESPA Section 8 is punishable by imprisonment for up to one year, a fine of \$10,000, or both.



# Penalties For RESPA Referral Fee Violations

- **Civil Liability.** Private action, including class actions, for 3 times the amount of any charge paid for settlement service involved in the violation. The court may award court costs and reasonable attorneys fees.



# RESPA Referral Fee Prohibitions

Simply stated . . .

No person may give or receive any thing of value for the referral of settlement service business.



# RESPA Referral Fee Prohibitions

Stated simply . . .

No person may give or receive a part of any charge for settlement services except for services actually performed.





# RESPA Referral Fee Prohibitions

3 basic elements to a Section 8 violation:

- A fee or thing of value
- In exchange for referral of settlement service business
- Pursuant to an agreement or understanding between the referring party and the settlement service provider



# RESPA Referral Fee Prohibitions

*What is a “thing of value”?*



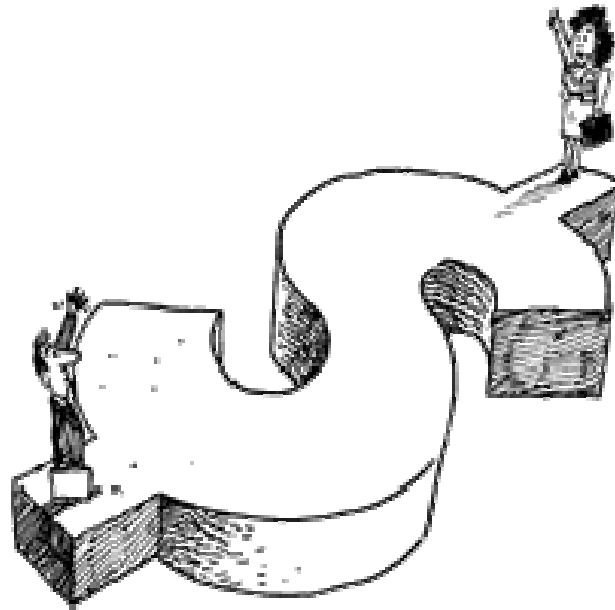
HUD considered but declined to redefine it as a part of November 2008 rulemaking.

HUD clarified that negotiated discounts that are ultimately passed on to the borrower **in full** likely do not violate RESPA Section 8.

# RESPA Referral Fee

## Not Prohibited

- ✓ An employer's payment to its own employees for any referral activities.



# RESPA Referral Fee

## Not Prohibited

- ✓ Payments, including bona fide salaries and other compensation, to any person for goods or facilities actually furnished or for services actually performed.



# RESPA Referral Fee Prohibitions

HUD has provided a framework to determine whether fees for loan origination (broker) services are justified under RESPA.



# RESPA Referral Fee Framework

- HUD Policy Statement 2001-1 addresses 3 basic subjects:
  - ✓ Payment by Lender of “Back-End” Fees (“YSP”)
  - ✓ Treatment of Unearned Fees
  - ✓ Increased Disclosure and Explanation

# RESPA Referral Fee Framework

- Disclosures concerning broker fees
- Must be meaningful, provided in writing, and acknowledged by the consumer



# RESPA Referral Fee

## Not Prohibited

- ✓ An "affiliated business arrangement" that meets the statutory criteria does not violate RESPA's anti-kickback rule.



# Affiliated Business Arrangements ("AfBAs")

An AfBA exists when:

- Person in position to refer settlement service business, or associate of that person
- Has affiliate relationship with, or direct or beneficial ownership interest of more than 1% in, settlement service provider, and
- Person or associate refers settlement service business to the provider or influences a borrower's selection of the provider.

# Affiliated Business Arrangements

AfBA does not violate RESPA if:

1. Person making referral provides an AfBA Disclosure to each person whose business is referred



# Affiliated Business Arrangements

2. Person making referral does not **require use** of any particular provider of services (*except* that lender may require borrower to pay for attorney, credit reporting agency, or real estate appraiser chosen by lender) and



# Affiliated Business Arrangements

3. Only *thing of value* received from arrangement by person making referral, other than payments otherwise permitted by RESPA, is legitimate return on person's ownership interest in the affiliated service provider.



# Disclosure Requirements

## AfBA Disclosure

- At or within 3 business days of application
- Must be a separate paper
- Must be signed by borrower
- **Use model form!**

# HUD Statement of Policy 1996-2

## Sham Affiliated\* Business Arrangements

\*Formerly called Controlled Business Arrangements



# Thank you!

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