

FEDERAL LAW UPDATE

Presented by

MARJORIE A. CORWIN, ESQUIRE

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GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, LLC

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for

Maryland Association of Mortgage Brokers

October 7, 2008

Topics of Discussion

- Licensing
- Business Affiliations
- Disclosures
- Appraisals
- Privacy
- Underwriting
- Advertising
- Government Loans

NEW MARYLAND REGULATIONS

Prepared by

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Website for the Maryland Commissioner of Financial Regulation: <http://www.dlr.state.md.us/finance/>

Website for Code of Maryland Regulations: <http://www.dsd.state.md.us/comar/>

Description of Regulation/ Action	Current Status	Does it apply to Mortgage Lender Licensees?	Does it apply to Mortgage Originator Licensees?
Loss Mitigation, Foreclosure Prevention, etc.	Advisory Notice dated September 24, 2008	Not directly but note	Not directly but note
Servicer Reporting Requirements	Final Regulations on August 25, 2008	Yes if servicing loans	Unlikely because not servicing
Notice of Intent to Foreclose	Emergency Regulations effective April 10, 2008	Yes if foreclosing	Unlikely because not foreclosing
Notice of Filing for Foreclosure	Emergency Regulations effective May 23, 2008	Yes if foreclosing	Unlikely because not foreclosing
Businesses Required to Register with Commissioner	Advisory Notice dated August 1, 2008	No	No
Maryland's New "Ability to Repay" Residential Mortgage Lending Requirements	Advisory Notice dated August 11, 2008	Yes	Not directly but note
Mortgage Brokers "Completed Application"	Proposed Regulations published May 23, 2008 (comment period closed June 24, 2008)	Yes when acting as broker; indirectly when acting as lender	Yes because acting as broker
Mortgage Lender Licensees: New Minimum Net Worth Requirements	Advisory Notice dated May 22, 2008	Yes	No
Mortgage Lender Licensees	Proposed Regulations published August 29, 2008 (comment period closed September 29, 2008)	Yes	No
Mortgage Originator Licensees	Proposed Regulations published August 29, 2008 (comment period closed September 29, 2008)	No	Yes
Creditors and Other Regulated Persons	Proposed Regulations published August 29, 2008 (comment period ends September 29, 2008)	Yes	Yes



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

AUG 6 2008

OFFICE OF GENERAL COUNSEL

Mr. Steve A. Brown
Chairman
Real Estate Services Advisory Board
National Association of Realtors
500 New Jersey Avenue, NW
Washington, DC 20001

Dear Mr. Brown:


This is in response to your letter that included questions concerning the Real Estate Settlement Procedures Act (RESPA) for which your members would like HUD guidance. I appreciate NAR's membership bringing to HUD's attention issues that are important to ensure compliance with RESPA.

Enclosed are responses to the questions that lend themselves to a question-and-answer format. These responses do not constitute a rule, regulation or interpretation by the Secretary, but are intended as informal guidance. The responses are also being posted as frequently asked questions (FAQ's) on HUD's RESPA website: http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm.

Some of the issues raised in your letter, however, would require responses developed through a more formal mechanism. HUD is committed to providing clear, more frequent, and more accessible guidance and information in the future, to both the various affected industries and consumers, about HUD's requirements and expectations under RESPA. For those issues that you have raised that we cannot address through this letter and on our website as FAQ's, HUD will consider responding in another format, such as through the issuance of statements of policy, rules, or other formal guidance.

I hope this information will be helpful, and appreciate the time and effort you and NAR's members have made to focus attention on these issues. If you have any further legal questions or concerns regarding RESPA and its applicability, please also feel free to contact John P. Opitz, Associate General Counsel, at 202-708-2203.

Sincerely,


Robert M. Couch
General Counsel

Enclosure

cc:

Gary M. Cunningham, Deputy Assistant Secretary
for Regulatory Affairs and Manufactured Housing

**HUD RESPONSES TO RESPA QUESTIONS: REAL ESTATE AGENT
AND OTHER SETTLEMENT SERVICES**

Q. Can real estate agents be compensated as loan officers if they perform services identified in Statement of Policy 1999-1 (64 Fed. Reg. 10080, March 1, 1999)?

A. When a person who is in a position to refer settlement service business, such as a real estate agent, receives compensation for providing additional services as part of a real estate transaction, such compensation must be bona fide and for services that are actual, necessary, and distinct from the primary services provided by such person. 24 C.F.R. 3500.14(g)(1)(iv) and (3). The referral of settlement service business is not a compensable service (see 24 C.F.R. 3500.14(b)). Therefore, payment (and receipt of payment) of an amount in excess of the amount that would be reasonably related to the market value for the origination services provided by a real estate agent may be used as evidence of payment for a referral or of an unearned fee, in violation of Section 8 of RESPA. See 24 C.F.R. 3500.14(g)(2). Similarly, the real estate agents cannot be compensated for loan origination if they do not provide any loan origination services or if they provide only nominal loan origination services, and they cannot be compensated for performing loan origination services for which a duplicative fee is charged. See 24 C.F.R. 3500.14(c). If a real estate agent normally would provide such services on behalf of his or her customers anyway, additional compensation for "loan origination" services would violate RESPA and HUD's implementing regulations..

In deciding on reasonable compensation for bona fide loan origination services provided by a real estate agent, the loan originator in the transaction and the real estate agent may find guidance in Statement of Policy 1999-1. In that Statement of Policy, HUD quoted from a letter it had previously issued identifying 14 services normally performed in the origination of a loan. Both the letter, which addressed lenders that were brokering loans, and the 1999 policy statement, which applied to mortgage brokers, indicated that the mere taking of an application is not sufficient "loan origination" work to justify compensation under RESPA. Both also provided guidance on when HUD would take enforcement action under RESPA against lenders and mortgage brokers that received compensation for origination work. HUD generally would not take any action against lenders and mortgage brokers compensated for loan origination work if: (1) they took the loan application information; (2) they performed at least 5 additional services on, or akin to those on, the list of 14 services performed in origination; and (3) the compensation was reasonably related to the market value of the services that were performed. If a lender or mortgage broker is relying on taking the application and performing only "counseling type" activities to justify the compensation, HUD would also look to see that meaningful counseling, not steering, is provided. As reiterated subsequently, in Statement of Policy 2001-1 (66 Fed. Reg. 53052, Oct. 18, 2001), HUD does not consider either referrals or delivering a loan with a higher interest rate to be compensable services.

Before receiving compensation for loan origination work in a transaction, real estate agents should be familiar with the guidance to mortgage brokers on bona fide origination

services that is included in the 1999 and 2001 policy statements, as well as the HUD regulations set forth in the first paragraph of this response.

Q. If the real estate agent is an employee of the mortgage lender, is there any limitation on what the mortgage lender may pay the real estate agent?

A. As set forth in 24 C.F.R. 3500.14(g)(1)(iv), Section 8 of RESPA permits 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. Therefore, the lender may pay an employee (including an employee who is a real estate agent) bona fide compensation for goods, facilities, and services actually provided.

In addition, 24 C.F.R. 3500.14(g)(1)(vii) provides that an employer's payment to its own employees for any referral activities is permitted under Section 8 of RESPA. Therefore, the lender may also compensate a bona fide employee (including an employee who is a real estate agent) for referral activities.

Clearly, identifying who is a bona fide employee is very important in determining what is and is not permitted under the RESPA regulations in this regard.

Q. In deciding whether someone is an employee, what would be the most critical factors?

A. As set forth in 24 C.F.R. 3500.14(g)(1)(iv), Section 8 of RESPA permits 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. Therefore, in determining whether a particular payment qualifies as bona fide salary or compensation to an employee, HUD would first look to see whether actual work was performed. In addition, as discussed above, if the person being compensated is in a position to refer settlement service business, HUD would review whether the work for which the person is being compensated as an employee is actual, necessary, and distinct from the services for which the person receives compensation in another capacity, or whether the "employment arrangement" is merely a vehicle for paying kickbacks. Other factors often referenced as evidencing an employment relationship, such as the method of payment, provision of training and benefits, type of supervision, work schedule, and factors issued by the IRS, may be useful guidance in deciding whether someone is an employee, but are not necessarily determinative for purposes of RESPA.

Q. A real estate agent becomes affiliated with a mortgage lender that is not in any way related to the real estate brokerage with which the real estate agent is associated. When offering to assist buyers with whom the real estate agent is working in securing financing for their purchase, what, if any, disclosure is required?

A. The fact that the real estate brokerage is not directly affiliated with the mortgage lender does not affect the real estate agent's responsibilities under RESPA in this scenario. If the real estate agent is referring a customer to a mortgage lender with whom the real estate agent is affiliated, then the real estate agent should provide an affiliated business arrangement disclosure statement to the person being referred in accordance with 24 C.F.R. 3500.15(b)(1). In addition, to be compliant with the requirements of § 3500.15, the real estate agent cannot require the customer to use a particular mortgage lender, and the only thing of value that can be received by the real estate agent from the affiliated business arrangement with the lender, other than generally permitted compensation, is a return on an ownership interest. See 24 C.F.R. 3500.15(b)(2) and (b)(3).

Q. Would paying compensation to a settlement service provider sooner than they would otherwise be paid violate RESPA if such payment is made because the settlement service provider used a particular company in the transaction?

A. The question assumes compensation that is accelerated as a result of an agreement to refer settlement service business. Under Section 8(a) of RESPA, no person shall give and no person shall accept any fee, kickback, or thing of value pursuant to an 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 will be referred to any person. Accelerated payment of compensation is a "thing of value."

For example, if compensation to a settlement service provider is typically paid *after* the closing, then payment of such compensation *at* closing would constitute a "thing of value" because the compensation would be provided sooner than would otherwise occur, and, under the facts of the question, there would be a violation of Section 8(a).

Q. Does RESPA permit a settlement service provider to make a donation to another settlement service provider's favorite charity in exchange for the referral of business?

A. Under Section 8(a) of RESPA, no person may give and no person may accept any fee, kickback, or thing of value pursuant to an agreement or understanding that business incident to or a part of a real estate settlement service involving a federally related mortgage loan will be referred to any person.

The donation to the charity would be considered a "thing of value" given in exchange for the referral of business and, as such, would be prohibited under RESPA. The fact that the "thing of value" would be paid to a charity, and not directly to the referring settlement service provider, does not remove such a payment from RESPA's prohibitions since the referring settlement service provider is, in effect, receiving a "thing of value", i.e., a donation to his or her favorite charity.



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July 9, 2007

The Honorable Robert Couch
General Counsel
U.S. Department of Housing and Urban Development
451 7th Street S.W.,
Washington, DC 20410

Dear Mr. Couch:

On behalf of more than 1.3 million members of the National Association of REALTORS® (NAR) and the Real Estate Services Advisory Board, I am writing to thank you for taking the time to meet with me and my NAR colleagues during our Mid Year Meetings in May. I would also like to take this opportunity to congratulate you on your confirmation as General Counsel for the Department of Housing and Urban Development. From our meeting, I know the office is in good hands.

As a follow-up to our meeting, we polled the members of the Real Estate Services Advisory Board and others at NAR in an effort to put together a list of frequently asked questions on RESPA. As you know, our members seek greater guidance from HUD on RESPA interpretation and compliance and would greatly appreciate some system to accomplish this and your offer to attempt to obtain answers to the industry's most common and pressing RESPA questions and look forward to efforts to address the questions.

Thank you for your time and consideration. If you have any questions, concerns, or if I may be of any service to you, please do not hesitate to contact me or our Director of Real Estate Services, Ken Trepeta, at (202) 383-1294, ktrepeta@realtors.org.

Yours Truly,

Steve A. Brown
Chairman, NAR Real Estate Services Advisory Board



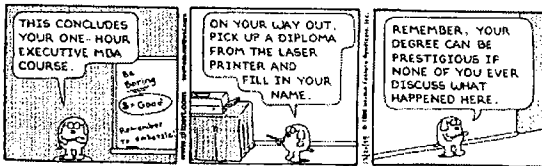
Maryland Association of Mortgage Brokers: Federal Law Update

October 2008

Presented by
Marjorie A. Corwin, Esquire

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Residential Mortgage Lending: A conceptual framework for identifying applicable laws

FEDERAL LAW

STATE LAW

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

<u>FEDERAL LAW</u>	<u>STATE LAW</u>		
	<table style="width: 100%;"> <tr> <td style="width: 50%;"><u>Licensing & Registration</u></td> <td style="width: 50%;"><u>Substantive Laws</u></td> </tr> </table>	<u>Licensing & Registration</u>	<u>Substantive Laws</u>
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**Residential Mortgage Lending:
A conceptual framework for identifying
applicable laws**

<u>FEDERAL LAW</u>	<u>STATE LAW</u>		
<ul style="list-style-type: none"> ✓ TILA ✓ RESPA ✓ ECOA ✓ FCRA ✓ Fed. Regulators 	<table style="width: 100%;"> <tr> <td style="width: 50%;"><u>Licensing & Registration</u></td> <td style="width: 50%;"><u>Substantive Laws</u></td> </tr> </table>	<u>Licensing & Registration</u>	<u>Substantive Laws</u>
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<u>Licensing & Registration</u>	<u>Substantive Laws</u>						
✓ Lending							
✓ Corporate							

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Residential Mortgage

<p><u>FEDERAL LAW</u></p> <ul style="list-style-type: none"> ✓ TILA ✓ RESPA ✓ ECOA ✓ FCRA ✓ Federal Regulators 	<p><u>STATE LAW</u></p> <p><u>Licensing & Registration</u></p> <ul style="list-style-type: none"> ✓ Lending ✓ Corporate 	<p><u>Substantive Laws</u></p> <ul style="list-style-type: none"> ✓ Credit Laws ✓ Real Property ✓ Consumer Protection
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**Legal Requirements
v.
Industry Requirements**


The line can be different.



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Big Regulatory Changes

In the past 12 months, the mortgage industry has experienced more regulatory change than in any other similar period in memory.



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Stump the "Chump"



- Licensing
- Business Affiliations
- Disclosures
- Appraisals
- Privacy
- Underwriting
- Advertising
- Government Loans

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SAFE Mortgage Lending Act

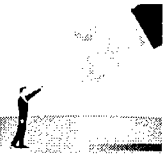
- Secure and Fair Enforcement for Mortgage Licensing Act of 2008
- Requires annual licensing of "loan originators"
- Requires unique identifiers
- Education and testing requirements
- Net worth or surety bond requirements

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Licensing Discussion

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Federal Statute (12 USC 2601 *et seq.*)



HUD Regulation X (24 CFR Part 3500)

QUESTIONS

Simply stated . . .

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



QUESTIONS

"Settlement service business"
includes all services provided
in connection with a real
estate settlement.



QUESTIONS

Opportunities for Abuse

- RESPA permits payment of bona fide salary or for goods, facilities, and services actually furnished/performed
- See HUD's August 6, 2008 letter (Q&A) to realtors regarding RESPA guidance
- See HUD's Mortgagee Letter 2008-17 regarding payments to non-approved brokers (forward mortgages)

Question Bank

Affiliated Business Arrangements

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



Question Bank

Affiliated Business Arrangements

- Cannot be "sham arrangements"
- Must read HUD Policy Statements
- It is very hard to comply!!!



Question Bank

Business Affiliations Discussion

Carroll Dunlap

- Licensing
- Business Affiliations
- **Disclosures**
- Appraisals
- Privacy
- Underwriting
- Advertising
- Government Loans



Carroll Dunlap

Expanded Early TILA Disclosure Obligations

(effective October 1, 2009)

Estimated upfront TILA disclosures are expanded in coverage and scope.

Both the FRB regulations and federal legislation make changes.

Carroll Dunlap

Expanded Early TILA Disclosure Obligations

- ✓**Coverage:** All closed-end loans secured by consumer's dwelling (regulations say principal dwelling, law does not).
- ✓**Disclosures:** The same (the law adds more).
- ✓**Fees:** Cannot collect any fees before disclosure is given (except credit report costs).

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Regulations NOT Enacted
Written Broker Agreement for YSP

➤ Proposed regulations provided that lender-paid broker fees could not exceed amount set forth in written broker agreement signed with borrower no later than submission of written application.

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Proposed Regulations

- Totally Revamped GFE Form
- Restrictions on Information Changes
- Broker Fee Disclosures that change how brokers get compensated

(More to come . . .)

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Federal Mortgage

Statements published by the federal regulators provide guidance on:

- Acceptable loan terms and underwriting standards
- Portfolio and risk management practices
- Consumer protection issues

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Federal Mortgage

Nontraditional Mortgage Product Risks

- Published October 4, 2006 (applies to all depository institutions and affiliates)
- Covers loans that defer repayment of principal or interest (e.g., interest only, negative amortization, etc.)
- Illustrative disclosures published June 8, 2007

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Subprime Mortgage Lending

- Published July 10, 2007 (applies to depository institutions and affiliates)
- Covers ARM loans with low, fixed-rate payments for initial short term (e.g., 2/28s)
- Illustrative disclosures published May 29, 2008

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Disclosures Discussion

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- Disclosures
- **Appraisals**
- Privacy
- Underwriting
- Advertising
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Appraisal Prohibitions
(effective October 1, 2009)

In connection with a loan secured by a consumer's principal dwelling, no creditor or broker may coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of the dwelling.

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Expanded Early TILA Disclosure Obligations
(effective October 1, 2009)

✓Coverage: All closed-end loans secured by consumer's dwelling (regulations say principal dwelling, law does not).

✓Fees: Cannot collect any fees – including appraisal fees – before disclosure is given (except credit report costs).

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Fannie Mae and Freddie Mac entered into a "cooperation" (settlement) agreement with New York's Attorney General which, starting January 1, 2009, prohibits mortgage brokers from selecting, retaining, or paying appraisers for any loans purchased by the GSEs.

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Appraisals Discussion


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- Appraisals
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- Underwriting
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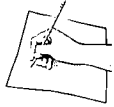
- Notices describing your company's policy about privacy of customer information must be given to customers at the beginning of the customer relationship



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Safeguarding Customer Information

Your company must have a written information security program in place that describes how personal customer information is protected.




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Security Breach Laws
Your company must have an established process to investigate a security breach and to notify affected individuals.



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FACT Act Red Flags Program
(required by November 1, 2008)
Your company must have a written program that identifies identity theft "red flags" for your business and that establishes a process for detecting and responding to identity theft "red flags."

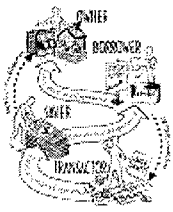


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Privacy Discussion

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• Disclosures
• Appraisals
• Privacy
• **Underwriting**
• Advertising
• Government Loans



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New TILA regulations (effective October 1, 2009) establish a category of "higher-priced" mortgage loans for which the creditor must:

- Consider borrower's ability to repay
- Obtain third-party documentation for income and assets relied upon

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Nontraditional and Subprime loan federal guidances impose minimum underwriting standards for these products.

(There are Maryland law implications.)

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Underwriting Discussion

GreenPoint

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- Disclosures
- Appraisals
- Privacy
- Underwriting
- **Advertising**
- Government Loans



GreenPoint

New TILA Regulations
(effective October 1, 2009)

Significantly More Advertising Requirements

Will apply to Broker's Advertising

GreenPoint

• Advertising "preapproved" credit requires a "firm offer of credit"

• FTC has layered advertising requirements for "preapproved" credit

Preapproved!


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Advertising Discussion

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- Privacy
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• Government Loans




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**Government Loans
Discussion**

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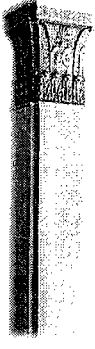


Thank you!

For more information contact:
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Truth in Lending Act for Mortgage Lending

Presented October 7, 2008

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Residential Mortgage Lending: A conceptual framework for identifying applicable laws

<u>FEDERAL LAW</u>		<u>STATE LAW</u>
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Truth in Lending Act
 (15 USC 1601 et seq.)



FRB Regulation Z
 (12 CFR Part 226)

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Applies to "Creditors"
Persons (1) who regularly extend credit and
(2) to whom the obligation is initially
payable.

Does not apply to "Brokers"
Except see new regulations on appraisal
prohibitions

NEW!
CREDIT FINANCIAL

**Residential Mortgage
Transaction**

**A transaction in which a mortgage is
taken on the consumer's principal
dwelling to finance the acquisition or
initial construction of that dwelling.**


(Read: Purchase Money)

CREDIT FINANCIAL

The cost of credit as a dollar amount.

- What is "Finance Charge"?
- Any charge payable by the consumer as an incident to or a condition of the extension of credit.

(Unless an exclusion applies)



CREDIT FINANCIAL

Definition: Finance Charge

Finance Charge includes broker fees paid by borrower.

But Finance Charge does not include broker compensation paid by lender under a separate agreement between broker and lender.

(Read: YSP)

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“226.4(c)(7) Charges”

The following fees in a transaction secured by real property are not “finance charge,” but only if the fees are bona fide and reasonable in amount:

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“226.4(c)(7) Charges”

- Fees for title examination, abstract of title, title insurance, property survey, and similar purposes
- Fees for preparing loan-related documents
- Notary, appraisal, and credit-report fees
- Fees related to any pest infestation or flood hazard inspections conducted prior to closing

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Special Rules Closing


Fees charged by a third party that conducts the loan closing will be finance charges *only if* the creditor

- (i) Retains a portion of the third-party charge, to the extent of the portion retained; **or**
- (ii) Requires the imposition of the charge; **or**
- (iii) Requires the particular services for which the consumer is charged.

Case 1:19-cv-01001

Exclusions not Finance Charge

- Characterizing charges as **exclusions** from Finance Charge must be done carefully
- Incorrect characterizations lead to TILA violations




Case 1:19-cv-01001

Closing Disclosures

Who provides disclosures?

- Creditor


(Which does not include broker)



Case 1:19-cv-01001

Who gets them?

Primary Borrower, but
 All borrowers and property owners for
 transactions subject to "rescission"




GREEN PINE TREE

When?

OLD RULES

Before loan "consummation"



"Consummation" means the time that a consumer become contractually obligated on a credit transaction.

GREEN PINE TREE

When?

NEW RULES

Before loan "consummation," but
 at or within 3 business days after
 application for loan subject to RESPA
 secured by consumer's principal dwelling

GREEN PINE TREE

Disclosure Requirements

Form?

Disclosures must be clear and conspicuous, in a written form that the consumer may keep.

If any required information is unknown, disclosure must be made based on the best information available and must be identified as "estimates."

CARSON • FINLEY

Disclosure Requirements

What?

1. TILA "Preliminary" Disclosure Statement
2. ARM Disclosures (if applicable)
3. Section 32 Mortgage Loan Disclosure (if applicable)
4. "Final" Truth-in-Lending Disclosure Statement
5. Notices of Right of Rescission

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Disclosure Requirements

Who provides? *Creditor*

Who gets them? *Borrower*

When? *Consummation*

Form? *Clear and Conspicuous*



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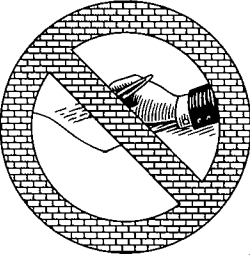
OPEN ENDED

What?

1. "Early" Disclosure
2. Home Equity Brochure
3. "Initial" Disclosure Statement
4. Notices of Right of Rescission
5. Periodic Statement

CARDIN FINANCIAL


Right of Rescission



CARDIN FINANCIAL

RIGHT OF RESCIND

The right to rescind arises when a security interest is or will be retained or acquired in a consumer's principal dwelling.



CARDIN FINANCIAL

Effect of Rescission on Fees Paid by Borrower



(They must be refunded.)

CORWIN • FENBLATT

The right only applies to principal dwellings.
(A vacation or second home is not a principal dwelling.)

Only a natural person who has an ownership interest in and is a resident of the dwelling has the right to rescind.

(A nonresident co-owner of the property would not be entitled to receive notification or to exercise the right of rescission.)

CORWIN • FENBLATT


Simple rule: consider each person who is required to sign the mortgage or deed of trust as a grantor to be a consumer entitled to rescind.



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RIGHT OF RESCISSON

- Must deliver 2 copies of the rescission notice along with 1 copy of the TILA disclosure statement to each consumer whose principal residence is collateral for the loan



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- Borrower must be able to keep two copies of the rescission notice



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Additional Consumer Information

Home Ownership Equity Protection Act (HOEPA)



FRB Regulation Z, Section 32
(12 CFR 226.32)


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Section 32 Applies Only to Certain Types of Loan:

- Non-Purchase Money,
- Closed-End,
- Consumer Credit, *and*
- Secured by Borrower's Principal Dwelling

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Section 32 Applies Only if the Loan Meets Either One of Two Tests:

Test #1: Annual Percentage Rate 

Test #2: Fees and Charges 

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"Points and Fees" means:

1. All items required to be disclosed as finance charge *less* regularly accruing and per diem interest; *plus*
2. Premiums and other charges for credit insurances or debt-cancellation coverage paid at or before closing; *plus*

CORIN FINVEST

HOEPA/Section 32


3. All items normally excluded from finance charge under 226.4(c)(7) if:

- a. the charge is not reasonable; or
- b. the creditor receives, directly or indirectly, compensation in connection with the charge; or
- c. the charge is paid to an "affiliate" of the creditor; *plus*

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HOEPA/Section 32

4. All compensation paid to mortgage brokers.



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HOEPA/Section 32

If HOEPA/Section 32 applies, the creditor has three additional types of obligations:

- Disclosure Requirements
- Limitations on Loan Terms
- Prohibitions on Lender Practices

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New Regulations

Published July 30, 2008, effective October 1, 2009

- ✓New Category: "Higher-Priced" Mortgages
- ✓Expanded Early Disclosure Obligations
- ✓Appraisal Prohibitions
- ✓New Servicing Requirements
- ✓More Advertising Requirements



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New Category: "Higher-Priced" Mortgages
("Section 35")

Applies to:

Consumer credit secured by consumer's principal dwelling where APR at time rate is locked exceeds "index plus margin"

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New Category: "Higher-Priced" Mortgages
("Section 35")

- Determined based on APR at time of interest rate lock
- Index: "Average Prime Offer Rate" (to be based on Freddie Mac's Primary Mortgage Market Survey)
- First Liens: 1.5% above weekly index
- Second Liens: 3.5 above weekly index

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Higher-Priced” Mortgages

Does not apply to:

- Initial Construction Loan
- Temporary Bridge Loan
- Reverse Mortgage Loan
- HELOC

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New Category: “Higher-Priced” Mortgages
("Section 35")

- >Must consider borrower’s ability to repay
- >Requires third-party documentation verifying income and assets relied upon
- >Limitations on prepayment fees
- >Requires escrows for taxes and insurance
(escrow provisions have delayed effective date until October 1, 2010)

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Expanded Early Disclosure Obligations

Estimated upfront TILA closed-end disclosures are expanded in coverage and scope.

Both the FRB regulations and federal legislation make changes.

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Expanded Early Disclosure Obligations

- ✓Coverage: All closed-end loans secured by consumer's dwelling (regulations say principal dwelling, law does not).
- ✓Disclosures: The same (the law adds many more).
- ✓Fees: Cannot collect any fees before disclosure is given (except credit report costs).

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Expanded Early Disclosure Obligations

The Federal Reserve Board must issue regulations to "coordinate" the law and the new regulations by July 29, 2009.



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Appraisal Prohibitions

In connection with a loan secured by a consumer's principal dwelling, no creditor **or broker** may coerce, influence, or otherwise encourage an appraiser to misstate or misrepresent the value of the dwelling.

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Expanded Advertising Requirements

There are big changes regarding the advertising of loans secured by dwellings.


This is a subject that needs careful consideration before advertising any mortgage loan on or after October 1, 2009.

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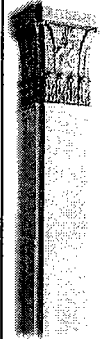
Servicing Practices

For the first time TILA will address substantive loan servicing practices.

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Thank you!

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