

## **First Family Credit Union Real Estate Settlement Procedures Act Policy - HUD Regulation X**

### **Introduction:**

The Real Estate Settlement Procedures Act (RESPA) was established to protect consumers and their rights in the settlement process for residential real estate closings and the associated costs. The purpose of this law is to reduce the possibility of kickbacks or referred fees that unnecessarily increase the cost of closing and settlement services; to reduce the amounts required in escrow, and to modernize the record keeping of title information. Aside from the partial exemptions listed below, the RESPA applies to all federally related mortgage loans.

Closed-end consumer mortgage loans are required to utilize disclosures under the Truth in Lending Act, which replace the Good Faith Estimate and HUD-1 and HUD-1A disclosures. The disclosure requirements under RESPA for the Good Faith Estimate; HUD-1 and HUD-1A; the related one-day advanced inspection delivery requirements of the HUD-1 or HUD-1A; along with the required servicing disclosure statement, pertain only to reverse mortgages.

### **Highlights:**

#### **1. Coverage**

RESPA applies to ("federally related mortgage") loans where:

- A. Loan proceeds are used in whole or part to purchase real estate;
- B. Security interest created in 1-4 family dwellings, including mobile homes and condominium units.
- C. Property located within the state and the lender is insured by a federally qualified plan, or the loan is made in connection with a housing or urban development program.
- D. Lender intends to sell the loan to Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC) or to another financial institution who will, in turn, sell the mortgage to FHLMC.

## 2. Exemptions

Loans exempt from RESPA regulations are:

Loans for a "business purpose" as defined in Regulation Z.

- A. Loans secured by vacant or unimproved land (unless within two years from the date of settlement of the loan, a structure or manufactured home will be constructed or placed on the real property using the proceeds from the loan).
- B. Temporary financing (such as a "bridge loan;" "swing loan;" or construction loan where the loan is not used or converted to permanent financing by the Credit Union for a 1-4 family residential home or used to finance the transfer or title to the first user.
- C. Loan conversions (so long as a new note is not required, even if the Credit Union charges and an additional fee for the conversion).
- D. Secondary market transactions.

## 3. Partial Exemptions

The following sections of RESPA only apply to **reverse mortgages**. [Federally related mortgage loans that are subject to the disclosure requirements in Regulation Z for the early disclosures, final disclosures, and special information booklet are exempt from these sections].

- A. Special information booklet at the time of closing (1024.6) – Section 4;
- B. Good faith estimate (1024.7) – Section 4;
- C. Use of HUD-1 or HUD-1A settlement standards – Section 5;
- D. One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping (1024.10) – Section 5; and
- E. Servicing disclosure statement (1024.33(a)) – Section 4.

## 4. RESPA Required Disclosures at the Time of Loan Application

- A. Good Faith Estimate (GFE)

The GFE of settlement costs lists the charges the member is likely to pay at settlement. The Credit Union may **not** charge, as a condition of providing a GFE,

any fee for an appraisal, inspection or other similar settlement services. The Credit Union may charge a fee limited to the cost of a credit report. Other fees may **not** be charged until the applicant has received the GFE.

### 1) Application Information

To issue a meaningful GFE, the Credit Union must request, at a minimum, the following information:

- a. The borrower's name, Social Security Number and gross monthly income (for purposes of obtaining a credit report);
- b. The property address;
- c. An estimate of the property value; and
- d. The amount of the mortgage loan sought.

### 2) Supplemental Information

The Credit Union may **not** require applicants to provide supplemental information to verify the information provided by the applicant on the application. This information may be requested after the GFE is provided to complete final underwriting.

### 3) Changed Circumstances

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 Credit Union may provide a revised GFE to the borrower. The term "changed circumstances" means:

- a. An Act of God, war, disaster or another emergency;
- b. Information particular to the borrower or transaction that was relied on in providing the GFE that change 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;
- c. New information particular to the borrower or transaction that was **not** relied on in providing the GFE (except information contained in a credit report that changes or is found to be inaccurate after the GFE is

provided); or

- d. Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

#### 4) Period During Which GFE Terms are Available to Borrowers

The interest rate stated on the GFE is to be available until a date is set by the Credit Union for the loan (no time is specified under RESPA). After the date is specified on the GFE, the interest rate, some of the Credit Union charges, the per diem interest, and the monthly payment estimate for the loan could change until the interest rate is locked. The estimate for all other charges is to be available for ten (10) business days from when the GFE is provided but could be available longer if the Credit Union extends the availability period.

#### 5) Tolerances

If a tolerance is exceeded, the borrower must be reimbursed. The amount of fees the Credit Union may or may not exceed those listed on the GFE are as follows:

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

- a. Credit Union required settlement services, where the Credit Union selects the third-party settlement service provider;
- b. Lender required services, title services, and required title insurance, and owner's title insurance with then borrower uses a settlement service provider identified by the Credit Union; and
- c. Government recording charges.
- d. Absent "changed circumstances," originators must adhere to the quoted price of its own services.
- e. There is zero tolerance for the amount of transfer taxes (if there are changes in the tax rates or in the property's price after the GFE is provided, those changes would either constitute "changed circumstances," or new information that would be the basis for providing a revised GFE.

B. Mortgage Servicing Statement

The Credit Union will provide a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. The Credit Union will utilize the model form with Regulation X to comply with the content requirements.

C. Timing of Disclosures

If members do not get these documents at the time of application, the Credit Union must deliver them (by mail, unless the member agrees to receive them by fax or other electronic means) within **three business days** of receiving the loan application. However, if the Credit Union turns down the application within those three business days, the Credit Union is **not** required to provide these documents.

**5. RESPA REQUIRED DISCLOSURES BEFORE SETTLEMENT**

For any federally related mortgage transactions, the Credit Union must provide the Affiliated Business Arrangement (ABA) disclosure whenever the Credit Union refers the member to a settlement service provider with whom the Credit Union has an ownership or other beneficial interest. The Credit Union must provide this disclosure to the member at or before the time of referral. The disclosure must describe the business arrangement that exists between the two parties and gives the member an estimate of the settlement service provider's charges.

- A. Except in cases where the Credit Union refers a member to an attorney, a credit reporting agency or real estate appraiser to represent the Credit Union's interest in the transaction, the Credit Union may **not** require the member to use the particular provider being referred.
- B. In order to qualify under the RESPA affiliated business exemption, a settlement service provider may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate or other economic incentive) lower than the sum of the market prices of the individual settlement services and will not be found to have required the use of the settlement service providers, so long as:
  - 1) The use of any such combination is optional to the purchaser; and
  - 2) The lower price for the combination is not made up by higher costs elsewhere in the settlement process.

## **6. RESPA REQUIRED DISCLOSURES at SETTLEMENT.**

For all federally related mortgage transactions, the Credit Union must provide the following disclosures at settlement

### **A. Initial Escrow Statement**

This statement itemizes the estimated taxes, insurance premiums and other charges anticipated to be paid from the escrow account during the **first 12 months** of the loan. It lists the escrow payment amount and any required cushion. Although the statement is usually provided at settlement, the Credit Union has **45 days** from settlement to deliver it. This statement may be incorporated in the HUD-1 or HUD-1A (in the basic text or as an attachment).

- 1) The initial notice must contain the following information:
  - a. The amount of the monthly mortgage payments.
  - b. The portion of the monthly payment going into the escrow account.
  - c. Any discretionary payment made part of the mortgage payment.
  - d. An itemization of the types and amounts of charges that the Credit Union reasonably anticipates will be paid out of the escrow account over the following 12 months.
  - e. The anticipated disbursement dates for each of the charges.
  - f. The permitted cushion chosen by the servicer.
  - g. A trial running balance of the account.

## **7. RESPA DISCLOSURES AFTER SETTLEMENT**

For all federally related mortgage transactions, the Credit Union must provide the following disclosures after settlement:

### **A. Annual Escrow Statement**

When the Credit Union is the servicer of the loan, an Annual Escrow Statement, which summarizes all escrow account deposits and payments during the Credit Union's 12-month computation year, and a projection of activity in the account for the next year.

1) Content

Specifically, the following must be included in the annual statement:

- a. The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;
- b. The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;
- c. The total amount paid into the escrow account during the past computation year;
- d. The total amount paid out of the escrow account during the same period for taxes, insurance premiums and other charges (as separately identified);
- e. The balance in the escrow account at the end of the period;
- f. An explanation of how any surplus is being handled by the servicer;
- g. An explanation of how any shortage or deficiency is to be paid by the borrower; and
- h. 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 the last year's projection.

2) Timing

The annual statement must be provided within **30 days** of the completion of the escrow account computation year, which may be delivered with other statements or materials, including the Substitute 1098. There is **no** requirement to provide this statement under the following circumstances:

- a. The borrower is more than 30 days overdue;
- b. The Credit Union has brought an action for foreclosure under the underlying mortgage loan; or
- c. The borrower is in bankruptcy proceedings.
- d. If the borrower under one or more of the above situations becomes current, the Credit Union must provide a history of the account since the

last statement, within 90 days of when the account became current.

### 3) Servicing Transfer Statement

This statement is required if the Credit Union, as loan servicer, transfers or assigns the servicing rights to a member's loan to another loan servicer.

#### a) Timing

Generally, the Credit Union must notify the member **15 days before** the effective date of the loan transfer. So long as the member makes a timely payment to the Credit Union (the old servicer) within 60 days of the loan transfer, the member cannot be penalized.

#### b) Content

The Servicing Transfer Statement must include the following information:

- The effective date of the transfer;
- The name and address of the new servicer;
- Toll-free telephone numbers (of the old and new servicer);
- The date the new servicer will begin accepting payments;
- Information concerning any effect the transfer will have on the terms or the continued availability of mortgage life, disability or other insurance, and any action the borrower must take to maintain coverage;
- 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
- A statement of the borrower's rights in connection with complaint resolution.

The following transfers are **not** considered an assignment, sale, or transfer requiring a Servicing Transfer Statement:

- Transfers between affiliates;



- Transfers resulting from mergers or acquisitions of servicers or sub-servicers; and
- Transfers between master servicers, where the sub-servicer remains the same.

## **8. CONSUMER PROTECTIONS and PROHIBITED PRACTICES**

### **A. Prohibition Against Kickbacks, Fee-Splitting, and Unearned Fees**

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or “thing of value” in exchange for referrals of settlement service business involving a RESPA loan. RESPA also prohibits fee splitting and receiving unearned fees for services not performed.

#### **1) “Thing of Value”**

This term is defined broadly and includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payment 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 or another person’s expenses, or reduction in credit against an existing obligation.

### **B. Permitted Payments**

The following types of fees, compensation, and other payments are *permitted* under RESPA Section 8:

- 1) A payment to an attorney for services actually rendered;
- 2) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;
- 3) A payment by the Credit Union to its duly appointed agent or contractor for services actually performed in the origination, processing or funding of a loan;

- 4) 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;
- 5) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers;
- 6) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that would otherwise be incurred by persons in a position to offer settlement services or business incident thereto;
- 7) An employer's payment to its own employees for generating business for that employer (which may include bonuses tied to performance, so long as the amount is not calculated as a multiple of the number or value of referrals of settlement service business).

#### C. Title Insurance

Section 9 of RESPA prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale.

#### D. Escrow Account Limits

Section 10 of RESPA sets limits on the amounts that the Credit Union (as the servicer) may require a member to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property. RESPA does not require escrow accounts; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

##### 1) Escrow Fees

Each month, the Credit Union may require a member to pay into the escrow account no more than 1/12 of the total of all disbursements payable during the year, plus an amount necessary to pay for any shortage in the account. Additionally, the Credit Union may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year.

##### 2) Escrow Surpluses

- a) The Credit Union must perform an escrow account analysis once during the year and notify members whether a surplus, shortage, or deficiency exists. Any excess of \$50 or more must be returned to the member. If the escrow surplus is less than \$50, the Credit Union may refund the amount to the borrower or credit the amount against the next year's escrow

payments.

### 3) Escrow Shortages

If a shortage of less than one month's escrow payment exists, the Credit Union may allow the shortage to exist and do nothing to change it; require the borrower to repay the shortage amount within 30 days, or require the borrower to repay the shortage in equal monthly payments over at least a 12-month period. If the shortage is greater than or equal to one month's escrow payment, the Credit Union may allow the shortage to exist and do nothing to change it or require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

- a. The Credit Union must notify the borrower at least once during the escrow account computation year if there is a shortage. The notice may be a part of the Annual Escrow Account Statement or may be a separate document.

### 4) Escrow Deficiencies

If a deficiency of less than one month's escrow payment exists, the Credit Union may allow the deficiency to exist and do nothing to change it; require the borrower to repay the deficiency within 30 days, or require the borrower to repay the deficiency in 2 or more equal monthly payments. If the deficiency is greater than or equal to one month's escrow payments, the Credit Union may allow the deficiency to exist and do nothing to change it, or require the borrower to repay the deficiency in 2 or more equal monthly payments.

- a. The deficiency provisions apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the Credit Union receives the borrower's payments within 30 days of the payment due date.
- b. If the Credit Union does not receive the borrower's payment within 30 days of the payment due date, the Credit Union may recover the deficiency pursuant to the terms of the mortgage loan documents.
- c. The Credit Union must notify the borrower at least once during the escrow account computation year if there is a deficiency. The notice may be part of the Annual Escrow Account Statement or may be a separate document.