

SUBJECT: Real Estate Settlement Procedures Act (RESPA)

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INTRODUCTION

This release applies to all state and federally chartered credit unions making real estate loans, including subordinate liens. It describes the requirements of the Real Estate Settlement Procedures Act (RESPA) and the Consumer Financial Protection Bureau's (CFPB's) Regulation X.

EXECUTIVE SUMMARY

RESPA contains disclosure and other requirements for "federally-related mortgage loans," which includes most real estate transactions involving 1- to 4-family residential structures. Coverage extends to subordinate lien loans.

Certain loans are exempt from Reg. X, including loan secured by vacant land, loans on property of 25 acres or more, and loans primary for a business, commercial or agricultural purpose.

The TILA-RESPA Integrated Disclosure Rule applies to most closed-end consumer credit transactions secured by real property (other than reverse mortgages) for which an application is submitted on or after Oct. 3, 2015. For those covered loans, the TILA-RESPA rule requires creditors to provide certain disclosures, including the Loan Estimate and the Closing Disclosure. Even loans that are otherwise exempt from RESPA and Reg. X are still subject to the TILA-RESPA rule, including construction-only loans, loans secured by vacant land, and loans secured by 25 or more acres.

For applications on federally related mortgage loans received prior to Oct. 3, 2015, RESPA and Reg. X required creditors to provide a number of special disclosures, including the Good Faith Estimate and the HUD-1 or HUD-1A Settlement Statement. In addition, Truth in Lending regulations (Reg. Z) required creditors to provide an "early Truth in Lending disclosure" for any closed-end, dwelling-secured, consumer loan. This release used to contain detailed information about those disclosures. That material has been removed because the TILA-RESPA rule replaced those prior disclosures for virtually all closed-end consumer loans secured by real property. See The League's *ii Release No. B079* for information on the TILA-RESPA rule.

For escrow accounts, Reg. X imposes various requirements to:

- Limit the amount of funds required at the time the escrow account is established;

- Limit the amount of escrow funds required with the monthly payments;
- Use the "aggregate accounting method," whereby the account is viewed and calculated as a single pool of funds for paying the various tax, insurance and other authorized charges;
- Provide borrowers with initial escrow account statements;
- Provide borrowers with annual escrow account statements;
- Promptly refund escrow account surpluses of more than \$50, and choose from several options for addressing shortages and deficiencies; and
- Make payments from the account in a timely manner.

During the life of the loan, a special Notice of Transfer must be provided at the time of any assignment, sale, or transfer of the servicing of a first-lien mortgage loan. Also, once each year the lender must conduct an escrow analysis and provide an Annual Escrow Account Statement covering the previous year, if there is an escrow account.

Truth in Lending Act regulations (Reg. Z) and Real Estate Settlement Procedures Act (RESPA) regulations (Reg. X) impose various requirements on credit unions (and others) that service mortgage loans. Collectively, these regulations are known as the Mortgage Servicing Rule. Each provision covers specific types of loans. Some apply to closed-end loans, and some to open-end home equity lines of credit. Some apply to loan secured by a principal residence, and some apply to mortgage loans even if not secured by a principal residence. Credit unions that are "small servicers" are exempt from some (not all) of these rules. The credit union must ensure that it has appropriate policies and procedures in place to comply with the servicing rules that apply. The League's *ii Release No. B075* summarizes all of the requirements.

Section 8 of RESPA prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits splitting a charge for a settlement service, other than for services actually performed (i.e., no payment of unearned fees). *See Exhibit A.*

COVERAGE OF RESPA (REG. X § 1024.5)

RESPA applies to all "federally-related mortgage loans," unless an exemption set forth below applies.

A federally-related mortgage loan is defined as any loan (other than temporary loans such as certain construction loans) which is secured by a first or subordinate lien on residential real property, including a refinancing, upon which there is (or will be, using proceeds of the loan) a structure designed principally for occupancy of one to four families. This includes mobile homes (secured by mortgages), condominiums, and cooperative housing units as well as traditional houses. It also includes land contracts funded in whole or in part by a credit union. (§ 1024.2)

RESPA applies to all federally-related mortgage loans as defined above, unless one of the following exemptions apply:

1. *Loans secured by vacant land* (unless a structure is to be added within two years).
2. *Loans on property of 25 acres or more.*
3. *Loans primarily for a business, commercial, or agricultural purpose*, as defined in Regulation Z at § 1026.3(a)(1).
4. *Temporary Financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of one- to four-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a credit union issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated one- to four-family residential property, other than a loan to a bona fide builder (a person who regularly constructs one- to four-family structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a credit union takes a security interest in otherwise covered one- to four-family residential property is not covered by RESPA and this part.
5. *Assumptions without lender approval.* This exemption applies if the lender does not have the express right to approve a subsequent person as a borrower on an existing loan. If the buyer is required to get lender approval to assume the existing loan, and approval is granted, the loan is subject to RESPA.
6. *Loan conversions.* Loan conversions, changing some of the terms of a loan, are exempt from RESPA as long as a new note or mortgage is not required.

7. *Bona fide transfers to secondary market.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA, except as set forth in § 1024.21 (Mortgage – Servicing Transfers). In determining what constitutes a bona fide transfer, regulators will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary-market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary-market transaction (see Reg. X § 1024.2).

Coverage of the TILA-RESPA rule

The TILA-RESPA Integrated Disclosure Rule applies to most closed-end consumer credit transactions secured by real property (other than reverse mortgages) for which an application is submitted on or after Oct. 3, 2015. For those covered loans, the TILA-RESPA rule requires creditors to provide certain disclosures, including the Loan Estimate and the Closing Disclosure. Even loans that are otherwise exempt from RESPA and Reg. X are still subject to the TILA-RESPA rule, including construction-only loans, loans secured by vacant land, and loans secured by 25 or more acres.

See The League's *ii Release No. B079* for information on the TILA-RESPA rule.

SPECIAL INFORMATION BOOKLET

For some time, RESPA and Reg. X required credit unions to provide a copy of a "special information booklet" to consumers who apply for purchase-money consumer home loans.

This release no longer contains material regarding that booklet, because the requirement to provide it is now part of the TILA-RESPA Integrated Disclosure Rule, which applies to most closed-end consumer credit transactions secured by real property (other than reverse mortgages) for which an application is submitted on or after Oct. 3, 2015. (However, the credit union does not need to provide the booklet if the consumer is applying for a loan that is not to purchase one- to four-family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage.)

The booklet is actually entitled "Your Home Loan Toolkit: A Step-by-Step Guide" Published by the CFPB, it summarizes the settlement process, pointing out borrowers' rights under the law, explaining the disclosures, and giving suggestions on choosing service providers.

For details about the booklet, see The League's *ii Release No. B079*.

HOMEOWNERSHIP COUNSELING (§ 1024.20)

This rule applies to most federally related mortgage loans.

Credit unions must provide a list of homeownership counseling organizations to applicants for federally related mortgage loans within three business days of application. This requirement applies to most types of closed-end and open-end credit transactions, but applicants for reverse mortgages and loans for time-shares are excluded.

Reg. X gives credit unions two options to obtain the lists, but they will generally find the first option the easiest: They can generate the lists *by using this CFPB online tool*. The tool uses a search box and mapping function to show the consumer the ten closest HUD-approved counseling agencies to their zip code, and it provides contact information for them. The tool only draws on HUD's official list of housing counselors. When counselors are listed, the tool shows the consumer which services are available there, such as rental housing counseling, pre-purchase counseling, or default resolution counseling. For those consumers who would prefer to receive housing counseling in a language other than English, the tool lists the languages that each housing counseling agency offers.

The credit union can print lists directly from the website and provide them to consumers. Printed versions automatically contain the required notice language at the top:

The counseling agencies on this list are approved by the U.S. Department of Housing and Urban Development (HUD), and they can offer independent advice about whether a particular set of mortgage loan terms is a good fit based on your objectives and circumstances, often at little or no cost to you. This list shows you several approved agencies in your area. You can find other approved counseling agencies at the Consumer Financial Protection Bureau's (CFPB) website: <http://www.consumerfinance.gov/mortgagehelp/> or by calling 1-855-411-CFPB (2372). You can also access a list of nationwide HUD-approved counseling intermediaries at http://portal.hud.gov/hudportal/HUD?src=/ohc_nint.

Credit unions can instead choose a second option: They can use data provided by the CFPB or the Department of Housing and Urban Development (HUD) to create their own lists. Credit unions that choose this option should consult *the CFPB's November 2013 final rule* and *CFPB Bulletin 2013-13* for instructions.

The credit union only has to provide consumers with a list of counseling resources. It is up to consumers to decide whether to get counseling; the rule does not require them to do so, and it does not require the credit union to confirm that the consumers actually received counseling.

This requirement is separate from other homeownership counseling requirements:

- High-cost mortgages under the Home Ownership and Equity Protection Act (HOEPA) and Reg. Z §1026.32 have their own counseling requirement. For details, see The League's *ii Release No. B062*.
- Before making a closed-end, dwelling-secured loan that may result in negative amortization to a first-time borrower, the credit union must confirm that the borrower has received homeownership counseling. Reg. Z §1026.36(k). For details, see The League's *ii Release No. B042*.
- HUD requires credit unions to send two notices to certain mortgagors who are delinquent or in default on their loans. One advises delinquent borrowers of the availability of homeownership counseling. The other advises homeowners if default about the foreclosure rights of servicemembers and their dependents under the Servicemembers Civil Relief Act (SCRA). For details, see The League's *ii Release No. B058*.

GFE, EARLY TRUTH IN LENDING DISCLOSURE & SETTLEMENT STATEMENT

For applications on federally related mortgage loans received prior to Oct. 3, 2015, RESPA and Reg. X required creditors to provide a number of special disclosures, including the Good Faith Estimate (GFE) and the HUD-1 or HUD-1A Settlement Statement. In addition, Truth in Lending regulations (Reg. Z) required creditors to provide a so-called "early Truth in Lending disclosure" (or early TIL) for any closed-end, dwelling-secured, consumer loan.

This release used to contain detailed information about those disclosures, including complete copies of the regulators' instructions. That material has been removed because the TILA-RESPA rule replaced those prior disclosures for virtually all closed-end consumer loans secured by real property.

See The League's *ii Release No. B079* for information on the TILA-RESPA rule.

RESPA coverage & the TILA-RESPA rule

The TILA-RESPA rule applies to virtually all closed-end consumer credit transactions secured by real property for which an application was submitted on or after Oct. 3, 2015. The TILA-RESPA rules replaced the GFE and early TIL with the Loan Estimate. The Settlement Statement and final TIL disclosure were replaced by the Closing Disclosure. Credit unions cannot use the GFE, early TIL, or Settlement Statement for loans subject to the TILA-RESPA rule.

Even loans that are otherwise exempt from RESPA and Reg. X are still covered by the TILA-RESPA rule, including construction-only loans, loans secured by vacant land, and loans secured by 25 or more acres. Technically, Reg. X §1024.5(d)(1) includes a partial exemption for federally related mortgage loans that are subject to TILA-RESPA rule. The following provisions still appear in Reg. X, but they do not apply when a loan is subject to the TILA-RESPA rule:

- §1024.6 (Special Information Booklet, which is now required by a section of the TILA-RESPA rule),
- §1024.7 (Good Faith Estimate, replaced by the Loan Estimate),
- §1024.8 (HUD-1/1A Settlement Statement, replaced by the Closing Disclosure),
- §1024.10 (1-day advance inspection of HUD-1/1A settlement statement, delivery and recordkeeping, which is now covered in the TILA-RESPA rules), and
- §1024.33(a) (Loan Application Disclosure regarding servicing transfers, which is now included in the Loan Estimate).

All other applicable provisions of Reg. X continue to apply, however, including the following, which this release describes:

- §1024.14 (prohibition against kickbacks and unearned fees),
- §1024.15 (affiliated business arrangements),

- §1024.17 (escrow accounts),
- §1024.20 (list of homeownership counseling organizations),
- §1024.30–.32 and 1024.34–.41 (servicing requirements, as explained in The League’s *ii Release No. B075*), and
- §1024.33(b) (notice of servicing transfer).

(Note that the TILA-RESPA rule does not apply to home equity lines of credit (HELOCs), which are covered in The League’s *ii Release No. B064*); to reverse mortgages; or to loans secured by “chattel” – in other words by personal property, as opposed to real property (i.e., land). For example, a loan on a mobile home that is not deemed to be real property would not be subject to the TILA-RESPA rule. For guidance on manufactured home lending, see The League’s *ii Release No. B019*.)

When a GFE, Early TIL and Closing Disclosure might still be used

The League no longer makes available its GFE, early TIL, or Settlement Statement forms, since these are obsolete for virtually all closed-end consumer loans secured by real property. Similarly, this release no longer contains a sample servicing disclosure statement, which Reg. X had required creditors to provide within three days of the submission of a mortgage loan application. That disclosure is now included in the TILA-RESPA Loan Estimate form.

However, in certain rare cases, a credit union may be required to use the old forms for a particular loan, and Reg. X still contains the sections that govern these forms. For example, even for loan applications taken on or after Oct. 3, 2015:

- Reg. X requirements still apply to reverse mortgages; and
- The TILA-RESPA rule does not apply to lenders that do not meet Reg. Z’s definition of “creditor” because they do not “regularly extend consumer credit,” meaning they have made:
 - More than 25 consumer purpose loans in the preceding or current calendar year;
 - More than 5 consumer purpose, dwelling-secured loans in the preceding or current calendar year; or
 - One “high-cost” mortgage loan under HOEPA in any rolling 12 month period.

Federally related mortgage loans by such non-creditors would still be subject to RESPA and Reg. X, however, even if they are exempt from the TILA-RESPA rules. (Be aware, though, that it would be difficult, to say the least, for most credit unions to argue that they do not regularly extend credit and are not covered by Reg. Z.)

Please contact The League or your forms vendor for guidance.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES (§ 1024.14)

RESPA Section 8 prohibits the giving or accepting of any fee, kickback, or any other thing of value in connection with any referral as part of a settlement service of a loan except in permissible circumstances. Official examples of what are and are not prohibited activities are provided in Exhibit A. Documentation of any arrangements under this section is to be retained for five years.

RESPA permits the following fees, salaries, compensation, or other payments:

- A payment to a lawyer, for services actually rendered;
- A payment by a title company to its agent, for services actually performed in the issuance of a policy of title insurance;
- A payment by a lender to its agent or contractor, for services actually performed in the origination, processing or funding of a loan;
- A payment to any person of a bona fide salary or compensation or other payment, for services actually performed or goods or facilities actually furnished;
- A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers (subject to limitation);
- Normal promotional and educational activities that are not conditioned on the referral of business and do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or
- An employer's payment to its own employees, for or any referral activities.

Please note that, NCUA's Rules and Regulations at § 701.21(c)(8) restrict a credit union when paying compensation in connection with any loan made by the credit union.

The CFPB may investigate higher prices to see if they are the result of a referral fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually provided. These facts may be used as evidence of a violation of Section 8 and may serve as a basis for a RESPA investigation.

Member referral programs

Referral programs sound like a great way to market your credit union products through satisfied members. Unfortunately, there are very significant restrictions, as indicated in *ii Release No. 0124*. Among them is the RESPA prohibition of compensation of any type for a referral in connection with a covered real estate loan. The limitation does not just prohibit giving compensation to service providers for referrals. A mortgage company paid tens of thousands of dollars to settle a HUD complaint for paying for referrals under a Refer-a-Friend program.

Affiliated Business Arrangements (§ 1024.15)

"Affiliated Business Arrangements" are specially addressed as to whether they violate the prohibition against kickbacks and unearned fees.

An affiliated business arrangement is an arrangement in which:

- A person who is in a position to refer business incident to or a part of a real estate settlement service, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services, and
- Either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

Thus, any credit union that is making federally-related mortgage loans will need to look at any arrangements it has for referring business to an "associate" or see if it has an "affiliate relationship" or "beneficial ownership" interest with a provider of settlement services and then refers business to such a provider. These terms are specially defined in Regulation X, so the credit union or its attorney may need to refer directly to the law.

An affiliated business relationship does not violate RESPA if the following three conditions are met:

- No person making a referral requires the borrower to use (see "required use" in Reg. X § 1024.2) any particular provider of settlement services (although a lender can require a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or appraiser chosen by the lender to represent the credit union's interest in the transaction),
- Nothing of value may be received by the referring party (other than a return of ownership interest, return on franchise relationship, or otherwise permissible payment), and
- A separate written disclosure of the relationship between the parties giving and receiving the referral, with estimated charges for the referred business, is given by the person making each referral to each person whose business is referred. The disclosures must be in the format of the sample Affiliated Business Disclosure provided in Appendix D to Reg. X Part 1024. That person must sign to acknowledge receipt of the disclosure.
 - The disclosures must be provided no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application. Except that Reg. X § 1024.15(b)(1)(i) says the disclosure may be provided "at the time that the good faith estimate" is provided (if applicable). (This appears to mean that the disclosure may be given at the time the creditor provides the Loan Estimate.)

What the provisions in RESPA on affiliated business arrangements mean for credit unions that have a relationship in the area of mortgage lending with entities such as a CUSO is an issue that credit unions need to look at closely and may require the advice of legal counsel.

See illustrations of affiliated business arrangements in Items 7-12 of Exhibit A.

CFPB FAQs

The CFPB released RESPA FAQs in 2020, related to gifts, promotional activities, and marketing services agreements (MSAs). *The FAQs* are meant to address RESPA's prohibition against kickbacks – providing anything of value for a referral relating to a settlement service in a mortgage transaction – and are broken out into four topics:

- General RESPA Section 8 provisions, including explanations of Sections 8(a) and 8(b), and what individuals, entities, and transactions are covered by the section;
- What activities are prohibited under Section 8(a);
- Gifts and promotional activity; and
- MSAs.

MORTGAGE SERVICING TRANSFERS (§ 1024.33)

This release no longer contains a sample servicing disclosure statement, which Reg. X had required creditors to provide within three days of the submission of a mortgage loan application. That application disclosure is no longer required for transactions subject to the TILA-RESPA rule, because it is built into the Loan Estimate. The TILA-RESPA rule applies to virtually all closed-end consumer credit transactions secured by real property for which an application was submitted on or after Oct. 3, 2015. For details, see The League's *ii Release No. B079*.

Notice of Servicing Transfer (§ 1024.33(b), (c))

Both the present servicer that transfers the mortgage servicing (the "transferor") and the new servicer (the "transferee") have the responsibility of notifying the borrower about the assignment, sale, or transfer of servicing rights.

The Notice Of Servicing Transfer disclosures (sometimes referred to as the "hello and goodbye letters") *do* apply to federally related mortgage loans, even if they are covered by the TILA-RESPA rule.

The transferor must give the borrower the notice at least fifteen days before the effective date of the transfer (or at closing), and the transferee must give notice to the borrower no later than fifteen days after the effective date (or at closing). All the information can be given in one notification similar to the model notice, at least fifteen days before the effective date.

If there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due, then the notice is not required for:

- A transfer between affiliates;
- A transfer that results from mergers or acquisitions of servicers or subservicers; or
- A transfer that occurs between master servicers without changing the subservicer.

Also, the Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

The Notice of Servicing Transfer must contain:

- The effective date of the transfer;
- The name, the customer inquiry address, and a toll-free or collect-call telephone number of the transferee;
- A toll-free or collect-call phone number for a person or department for both the new and old servicers to answer questions;
- The date the transferor will cease to accept payments on the loan and the date the transferee will begin accepting payments;
- Any information concerning the effects of the transfer on the terms or availability of mortgage life or disability insurance, and any action the borrower must take to maintain coverage; and
- A statement that the transfer does not affect the terms of the loan except as relating to the servicing.

A copy of the model Notice of Servicing Transfer is attached as Exhibit C. (Reg. X App. MS-2)

Consumer Protection During Transfer of Servicing (§ 1024.33(c))

A late fee may not be imposed on the borrower with respect to any timely payment on the loan mistakenly made to the transferor rather than the transferee during the 60 business day period starting on the effective date of a transfer of servicing.

CFPB guidance on servicing transfers

Please refer to *CFPB Bulletin 2014-01* for guidance on the regulator's expectations for mortgage servicers that transfer loans. It stresses that mortgage servicers should pay special attention to rules protecting consumers who apply for loss mitigation help or trial modifications.

MORTGAGE SERVICING RULE

Truth in Lending Act regulations (Reg. Z) and Real Estate Settlement Procedures Act (RESPA) regulations (Reg. X) impose various requirements on credit unions (and others) that service mortgage loans. Collectively, these regulations are known as the Mortgage Servicing Rule. Each provision covers specific types of loans. Some apply to closed-end loans, and some to open-end home equity lines of credit. Some apply to loan secured by a principal residence, and some apply to mortgage loans even if not secured by a principal residence. Credit unions that are "small servicers" are exempt from some (not all) of these rules. The credit union must ensure that it has appropriate policies and procedures in place to comply with the servicing rules that apply. The League's *ii Release No. B075* summarizes all of the requirements. The Reg. X provisions address:

- Successors in interest (§ 1024.17 and Subpart C of Regulation X).
- Error resolution and information requests (§§ 1024.35 and 1024.36).
- Force-placed insurance (§§ 1024.17 and 1024.37).
- General servicing policies, procedures, and requirements (§ 1024.38).
- Early intervention with delinquent borrowers (§ 1024.39).
- Continuity of contact with delinquent borrowers (§ 1024.40).
- Loss mitigation (§ 1024.41).

ESCROW ACCOUNTS (§ 1024.17)

RESPA's rules for escrow accounts apply to any account that a loan servicer (including a lender servicing its own loans) establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges in connection with a federally-related mortgage loan, even if the account is voluntary rather than mandatory. However, the rules do not apply to any account that is totally under the borrower's control. The rules also apply to any arrangement where the servicer adds a portion of the borrower's payments to principal and later deducts from principal to pay the taxes, insurance, or other escrow account items.

Overview. Credit unions must abide by requirements to:

- Limit the amount of funds required at the time the escrow account is established;
- Limit the amount of escrow funds required with the monthly payments;
- Use the "aggregate accounting method," whereby the account is viewed and calculated as a single pool of funds for paying the various tax, insurance and other authorized charges;
- Provide borrowers with initial escrow account statements;
- Provide borrowers with annual escrow account statements;
- Promptly refund escrow account surpluses of more than \$50, and choose from several options for addressing shortages and deficiencies; and
- Make payments from the account in a timely manner. Please see how this important issue is defined later in this release.

Credit unions must also comply with Wisconsin law requiring interest on escrow accounts and notice of payment options, as explained later in this release.

Limits on Payments to Escrow Accounts (§ 1024.17(c)(1))

RESPA limits the amount that a servicer/lender may require to be put into an escrow account at closing or through the course of each year during the life of the loan.

- *At the time a servicer/lender creates an escrow account for a borrower,* the servicer may escrow an "amount sufficient to pay" the tax, insurance, or other charges (such as condominium association dues) regarding the mortgaged property for the period

from the date such payments were last paid until the initial loan payment date. In addition, a cushion is permitted that shall be no greater than one-sixth of the estimated total annual payments from the escrow account.

- *During the life of the escrow account*, the servicer/lender may require a monthly escrow payment of one-twelfth of the total annual payments anticipated to be made from the account. Additional amounts may be required to maintain a cushion of one-sixth of the estimated total annual payments to be made from the account. If an escrow account analysis reveals an escrow shortage or deficiency, the servicer may require the borrower to make additional deposits, subject to the limitations on shortages and deficiencies described below.

The above are the maximum limits on payments to escrow accounts. Servicers/lenders may require smaller or even no cushions at all. Servicers must examine their mortgage documents for further restrictions on escrow balances (§ 1024.17(c)(8)).

- If the mortgage documents provide for lower cushion limits, or less pre-accrual (described below) than permitted by RESPA, those mortgage document limits prevail.
- If the mortgage documents permit greater cushions than RESPA or are silent on the issue, the RESPA limitations prevail.

In conducting an escrow account analysis, the servicer is permitted to consider only the disbursements that are expected to come due during the next 12- month period. Thus, even if the servicer knows that disbursements from an escrow account will substantially increase at a time more than 12 months in the future, the servicer cannot, when preparing the initial escrow account statement, calculate the borrower's escrow payments to cover the expected increases beyond that 12-month period.

Consumer Disclosure for Voluntary Escrow Account Payments

The bills paid out of your escrow account are expected to increase substantially after the first year [because _____]. Under normal escrow practices, your monthly escrow payment in the second year could be much higher than in the first.

You may voluntarily choose to make higher payments during the first year to reduce or eliminate the monthly payment increase in the second year. If you are interested in doing this, contact: _____. *[Identify the contact who will provide further information on making voluntary overpayments during the year, as well as their mailing address, fax number, email address, and/or telephone number.]*

A new "Public Guidance Document, Consumer Disclosure for Voluntary Escrow Account Payments" is provided above. Lenders/servicers may provide this document to borrowers when they anticipate a substantial increase in bills paid out of the escrow account after the first year of the loan. Explanation of the reason for the increase may be included. This document may be delivered separately or combined with the Initial Escrow Account Statement.

Initial and Subsequent Escrow Account Analysis (§ 1024.17(c)(2)&(3))

Most credit unions may wish to explore the purchase of software or data processing system enhancements to help achieve compliance with these requirements.

Before establishing an escrow account, the servicer/lender must conduct an "escrow account analysis" to determine the amount the borrower may be required to deposit into the escrow account at closing and the amount of the borrower's periodic payments into the escrow account, subject to the above limitations. The analysis is used to determine if there is any surplus, shortage, or deficiency in the account and make any required or permitted adjustments to the account. After completing the analysis, the servicer must provide the borrower with an initial escrow account statement as described below.

At the end of each escrow account computation year, the servicer/lender must conduct an escrow account analysis to determine the borrower's monthly escrow account payments for the next computation year. The analysis is used to determine if there is any surplus, shortage, or deficiency in the account and make any required or permitted adjustments to the account. After completing the analysis, the servicer must provide the borrower with an annual escrow account statement as described later.

To conduct an escrow account analysis, the servicer/lender must determine the amount of the escrow account items to be disbursed (§ 1024.17(c)(7)). If the amount of any charge is unknown, estimates are permitted based on the following:

- The preceding year's charge,
- The preceding year's charge as modified by the most recent year's change in the national Consumer Price Index for all urban consumers, or

- In the case of unassessed new construction, the servicer's estimate on the assessment of comparable residential property in the market area.

Using Aggregate Accounting to Determine Escrow Limits (§ 1024.17(c)(4))

Servicer/lenders must use acceptable accounting methods to conduct the above escrow account analyses, to determine proper amounts of payments into escrow accounts. All servicers must use aggregate accounting to conduct an escrow account analysis. For more information, see Exhibit B to this release.

Restrictions on Pre-accrual (§ 1024.17(c)(6))

Pre-accrual is a practice some servicers have used to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account for some period of time before the anticipated disbursement date. Pre-accrual is now *prohibited*.

Assessments for Periods Longer than One Year (§ 1024.17(c)(9))

Some escrow account items may be billed for periods longer than one year. For example, lender/servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer must estimate the borrower's payments for a full cycle of disbursements.

For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement would be required to explain this situation to the borrower.

Penalties

If the lender or servicer does not provide an initial or annual escrow statement to the borrower, regulators can assess a civil penalty of \$50 for each violation with the penalty assessed during a single year not to exceed \$100,000. If the violation is due to intentional disregard, the penalty is \$100 per violation and with no limitation for a single 12-month period.

Transfer of Servicing (§ 1024.17(e))

If the servicing is transferred and the new servicer changes either the monthly payment amount or the accounting method, then the new servicer must provide the borrower with an initial escrow account statement within 60 days of the date of transfer. The date of the transfer establishes the new escrow account computation year.

If the new servicer retains the old servicer's monthly payments and accounting method, the new servicer may continue to use the escrow account computation year of the old servicer or establish a different one by using a short-year statement. At the end of the escrow account computation year or short year, the new servicer must perform an escrow analysis and provide the borrower with an annual escrow account statement.

Shortages, Surpluses, and Deficiencies Requirements (§ 1024.17(f))

The servicer conducts an escrow account analysis upon establishing the account and at the end of each computation year to determine whether a surplus, shortage, or deficiency exists.

If such an analysis discloses a *surplus* (i.e., an amount by which a current escrow account balance exceeds the target balance for the account), the servicer is to refund the surplus to the borrower within 30 days if the surplus is \$50 or more. If the surplus is less than \$50, the servicer may refund the amount or credit it against next year's escrow payments. This only applies if the borrower is current at the time of the analysis.

If the analysis discloses a *shortage* (i.e., an amount by which a current escrow account balance falls short of the target account balance) of less than one month's escrow account payment then the servicer has three options:

- Allow it to exist and do nothing;
- Allow the borrower to pay the shortage amount within 30 days; or
- Allow the borrower to repay the shortage in equal monthly payments over a 12-month period.

However, if the shortage is greater than or equal to one month's payment, then the servicer has two options:

- Allow the shortage to exist and do nothing; or

- Allow the borrower to repay the shortage in equal monthly payments over a 12-month period.

If there is a *deficiency* (i.e., the amount of a negative balance in the escrow account) which is not the result of the borrower's payment default, the servicer is to conduct an analysis to determine the extent of the deficiency before seeking repayment of the funds. The servicer can require the borrower to pay additional monthly deposits to eliminate the deficiency. If the deficiency is less than one month's payment, the servicer may:

- Allow it to exist and do nothing;
- Require the borrower to repay the deficiency within 30 days; or
- Allow the borrower to repay it in two or more equal monthly payments over a period of up to 12 months.

If the deficiency is greater than or equal to one month's payment, the servicer may:

- Allow the deficiency to exist and do nothing; or
- Allow the borrower to repay it in two or more equal monthly payments over a period of up to 12 months.

If the borrower is not current at the time of the deficiency, the servicer can recover the deficiency pursuant to the terms of the loan documents.

If there is a shortage or deficiency, the servicer must notify the borrower at least once during the computation year. This notice may be part of the annual statement or a separate document.

Initial Escrow Account Statement (§ 1024.17(g))

As stated above, the servicer must conduct an escrow account analysis before establishing an escrow account, in order to properly determine the amount the borrower must deposit into the account. After conducting the analysis, the servicer must provide an Initial Escrow Account Statement, in the Reg. X model format.

Note that the TILA-RESPA Integrated Disclosure Rule, which is described in The League's *ii Release No. B079*, also requires the disclosure of escrow information. However, Reg. X still requires this Initial Escrow Account Statement, even if the loan is subject to the TILA-RESPA rule.

The Initial Escrow Account Statement must show:

- The amount of the borrower's monthly mortgage payment;
- The portion of the monthly payment going into the escrow account;
- An itemization of the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the coming escrow account computation year (the statement need not identify the specific payees by name, but must provide sufficient information to identify use of the funds, e.g., county taxes, hazard insurance, flood insurance, condominium dues);
- The anticipated disbursement dates of the items to be paid from the account (if paid in installments, list each due date);
- The amount of any escrow cushion the servicer (within the limits of RESPA); and
- A trial running balance for the account.

This statement is to be given to the borrower at the time of closing or within 45 days thereafter. If an escrow account is established after closing, the Initial Escrow Account Statement must be provided within 45 days.

Annual Escrow Account Statements (§ 1024.17(i)&(j))

The servicer must do an escrow account analysis first and then provide an annual escrow account statement to the borrower within 30 days of the completion of the "escrow account computation year."

The "escrow account computation year" is not necessarily a calendar year. Reg. X §1024.17(i)(4) defines the term to mean "a 12-month period that a servicer establishes for the escrow account *beginning with the borrower's initial payment date*. The term includes each 12-month period thereafter, *unless a servicer chooses to issue a short year statement ...*"

This means that for a given loan, the escrow account computation year runs from the date that the first payment was due. Credit unions can change when the computation year begins and ends on a given loan by sending out a “short year statement,” as explained in the next subsection of this release. Whatever the “account computation year” is for a given loan, Reg. X requires the credit union to send an annual escrow account statements “within 30 days of the completion of the escrow account computation year.”

This annual statement must provide an account history, showing the activity of the account during the computation year and a projection of the activity for the next year. At a minimum the annual statement must include: the amount of the borrower's current monthly payment and the amount that goes into the escrow account; the amount of the past year's monthly payment and the portion that went into the account; the total amount paid into the account for the past computation year; the total amount paid out during that same period for taxes, insurance, and other charges; the balance in the account at the end of the period; an explanation of how any surplus is being handled by the servicer; an explanation of how any shortage or deficiency is to be paid by the borrower; and if applicable, the reason why the estimated low monthly balance was not reached.

No annual statement is necessary in the case of default (when the servicer does the analysis and the borrower is 30 days overdue) or foreclosure.

The annual statement may be delivered to the borrower along with other material and statements, including the IRS Form 1098.

Short year statements

A servicer may issue a *short year statement* to change one escrow account computation year to another. Thus, credit unions can use the short year statement to establish whatever “escrow account computation year” works best for their operations. For example, a credit union could use short year statements to put all of its loans with escrow accounts on the same cycle, with all annual escrow account statements sent during the same month each year. Others may choose to stagger the cycles throughout the calendar year to balance workloads. Others may choose not to use short year statements and simply to leave different “escrow account computation years” in place for each loan. This short year statement establishes a beginning date for the new computation year and must be provided to the borrower within 60 days after the end of the short year.

When servicing is transferred, the new servicer must provide a short year statement to the borrower within 60 days of the transfer. If the borrower pays off the mortgage during the computation year, the servicer must provide a short year statement to the borrower within 60 days after receiving the pay-off funds.

Timely Payment (§ 1024.17(k))

Timely disbursements. If the terms of any loan subject to RESPA require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

Advance of funds. The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency but only as permitted by § 1024.17(f), described earlier.

Property taxes. For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with these points:

- If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis.
- If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with the *timely disbursements* and *advance of funds* requirements described above.

The CFPB encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

The first bullet point could create a complication in Wisconsin, where homeowners can choose to pay in installments without paying extra interest. However, the regulation goes on to provide that a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required above, so long as the agreement meets the *timely disbursements* and *advance of funds requirements* above. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different

disbursement basis or disbursement date. This flexibility by use of a voluntary agreement to pay in a lump sum also makes it easier to comply with Wisconsin's escrow payment option notice law, described in *ii Release No. B047*.

Escrow and force-place insurance

Material earlier in this release discussed the Reg. X provisions in the Mortgage Servicing Rule. These include rules on force-placing insurance for mortgage loans. These rules are covered in detail in *ii Release No. B075*.

One part of the mortgage servicing rule, Reg. X §1024.17, applies to "federally related mortgage loans" including HELOCs. It says that if a consumer has an escrow account for paying insurance, the credit union may not obtain force-placed insurance unless it is unable to maintain the consumer's existing coverage.

The credit union is not considered unable to maintain the consumer's hazard insurance just because a consumer's mortgage loan is overdue or the escrow account has insufficient funds. Therefore, generally, *the credit union will have to advance funds through escrow to maintain coverage*. The credit union can add this cost to the escrow balance or otherwise seek reimbursement from the consumer for the funds it advances.

The credit union is considered unable to maintain the consumer's hazard insurance (meaning that it can obtain force-placed insurance rather than advance funds through escrow) if it has a reasonable basis to believe that the hazard insurance provider has canceled the policy for reasons other than non-payment or that the property is vacant.

Under an exception to the rule, a "small servicer" may purchase force-placed insurance for a consumer with an escrow account whose mortgage loan is more than 30 days overdue – if the cost of the force-placed insurance to the consumer is less than the amount the small servicer would need to disburse from the consumer's escrow account to pay the consumer's hazard insurance premium. (As explained in *ii Release No. B075*, a credit union is a small servicer if it, together with any affiliates, service 5,000 or fewer mortgage loans, and the credit union (or an affiliate) is the creditor or assignee for all of them.)

Escrow Requirements under Wisconsin Law (Wis. Stats. § 138.052)

Two requirements imposed by state law must be kept in mind when working with escrow accounts.

First, state-chartered credit unions must pay an indexed interest (dividend) rate on escrows required on a first or equivalent mortgage that is the borrower's principal residence on many loans originated prior to April 18, 2018, Wis. Stat. § 138.052(5). [For 2026, the mandatory interest rate on certain required escrow accounts originated before April 18, 2018 will be 0.17% \(down from 0.20% in 2025\).](#)

The payment of dividends is not required if the funds are held by a third party in a non-dividend bearing account, or if the parties agree to waive payment of dividends (under certain conditions).

Credit unions that want to stop paying dividends on escrow accounts for loans already originated since April 18, 2018, should verify that their loan documents or other agreements do not require the payment of interest (other than when required by law). If a Truth in Savings disclosure was provided for the escrow account, a 30-day advance change in terms notice may be appropriate, reflecting the change to a non-dividend bearing account. Websites and Truth in Savings rate sheets should clarify that any rates listed for escrow accounts only apply to escrow accounts for loans originated before April 18, 2018, if that is the case. For details, please see [this 2018 Compliance Courier](#).

Second, if an escrow account is required on a first or equivalent mortgage that is the borrower's principal residence, an "Escrow Payment Option Notice" is required, as described in *ii Release B047*. The notice is not required if the credit union pays the funds escrowed for taxes to the borrower by December 20 (formerly December 18) of each year, Wis. Stat. § 138.052(5m).

In Wisconsin, taxes are billed in December and can be paid in two installments in the following January and July (some communities allow even more installments). The taxing authority neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursement.

In addition, Wis. Stats. § 138.052(5m) requires the servicer to issue a joint check to the borrower and the taxing authority by December 20, or give the borrower three options:

- Pay in full by December 31 if the tax bill is received by December 20,
- Pay the full tax when installments are due, or
- Issue a joint check to the borrower and taxing authority by December 20.

If the servicer offers the three options, the servicer is required to follow the borrower's preference.

Thus, a lender/servicer in Wisconsin must make disbursements on the installment basis, unless the servicer and borrower agree otherwise.

If the servicer advances funds to make the disbursement, then the servicer can seek repayment from the borrower for the deficiency as described above.

See *ii Release No. B047* for details about these requirements of Wisconsin law.

Escrow Closing Notice

With certain exceptions, the TILA-RESPA Integrated Disclosure Rule requires the creditor or servicer to give consumers a notice before the consumer's escrow account is canceled. For details, see The League's *ii Release No. B079*.

RECORDKEEPING REQUIREMENTS

Prohibition Against Kickbacks and Unearned Fees

Any documents, such as the "Affiliated Business Arrangement Disclosure Statement," provided under this section must be retained for five years.

Escrow Account

The escrow account servicer, which is usually the credit union, must maintain a system of recordkeeping reflecting its handling of the escrow accounts. This must include its making payments from the accounts and the submission of the initial and annual escrow account statements to the borrower.

The escrow recordkeeping must be kept up for a given account throughout the account's existence and for five years after the servicer last services the escrow account. If the CFPB requests information relating to the escrow accounts, the servicer must respond within thirty days.

ELECTRONIC DISCLOSURES

RESPA's required disclosures may be delivered electronically, pursuant to the Electronic Signatures in Global and National Commerce Act (E-Sign). E-SIGN has special rules for giving consumers electronic disclosures. Under E-SIGN, consumer disclosures required by other laws or regulations can be made electronically if the consumer voluntarily consents. Two conditions must be met for a valid consent under E-SIGN:

1. The consumer must be given a notice regarding his/her rights (such as the right to withdraw consent) and describing the hardware and software requirements needed to access and retain electronic records.
2. The consumer must provide his/her consent electronically in a way that "reasonably demonstrates" he/she can access the information in the electronic form that the parties will use.

E-SIGN does not affect the content or timing of any disclosures or records required to be provided to consumers.

For details on E-SIGN's consent and notice requirements, see The League's *ii Release No. 0175, "Electronic Signatures and Records."*

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local; or (800) 242-0833. For specific legal advice, please consult your credit union's attorney

Legal Affairs Department

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EXHIBITS:

Exhibit A - Illustrations of the requirements of RESPA.

Exhibit B - Aggregate accounting method.

Exhibit C - Model Notice of Servicing Transfer.

EXHIBIT A - ILLUSTRATIONS OF THE REQUIREMENTS OF RESPA

Appendix B To 12 CFR Part 1024 Illustrations of Requirements of RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

- 1. Facts:** A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments: The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business and both A and B are in violation of Section 8 of RESPA.

- 2. Facts:** B, a lender, encourages persons who receive federally-related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of Section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

- 3. Facts:** A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of Section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

- 4. Facts:** A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent "services" from the client's title insurance premium to B.

Comments: A and B are violating Section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a "title agent" is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes, at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under Section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated Section 8 of RESPA.

- 5. Facts:** A, a "mortgage originator," receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of Section 8 of RESPA. For purposes of Section 8, in determining whether a bona fide transfer of the loan obligation has taken place, the Bureau [the CFPB] examines the real source of funding, and the real interest of the named settlement lender.

- 6. Facts:** A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates Section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

- 7. Facts:** A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B, B performs the title search and examination, makes determinations of insurability, issues the commitment,

clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of Section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate Section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate Section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

- 8. Facts:** Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from Section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see Appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

- 9. Facts:** A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from Section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B's charges to each person referred to B (see Appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, e.g., an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

- 10. Facts:** A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere "shell" and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of Section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to Section 8.

- 11. Facts:** A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (e.g., loan officers, secretaries, etc.) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not "required use" of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from section 8 under §1024.14(g)(1). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate section 8.

- 12. Facts:** A is a mortgage broker who provides origination services to submit a loan to a Lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comment. The mortgage broker's fee must be itemized in the Good Faith Estimate and on the HUD-1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD-1 Settlement Statement, and reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD-1 Settlement Statement.

- 13. Facts:** A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check

and employment verification, and frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

Comments. The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a "creditor" under the definition of "federally related mortgage loan" in §1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD-1 or HUD-1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under §1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

EXHIBIT B - AGGREGATE ACCOUNTING METHOD

Regulation X § 1024.17 Escrow Accounts; Appendix E Arithmetic Steps

(d) Methods of escrow account analysis

(1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in §1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) *Aggregate analysis.* (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by State law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. RESPA Reg. X Appendix E to this part illustrates these steps.

Example Illustrating Aggregate Analysis based on the following assumptions:

Disbursements:

\$360 for school taxes disbursed on September 20
\$1,200 for county property taxes:
\$500 disbursed on July 25
\$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1 – INITIAL TRIAL BALANCE				STEP 2 –ADJUSTED TRIAL BALANCE [Increase monthly balances to eliminate negative balances]				STEP 3 – TRIAL BALANCE WITH CUSHION			
	Aggregate				Aggregate				Aggregate		
	pmt	disb	bal		pmt	disb	bal		pmt	disb	bal
Jun	0	0	0	Jun	0	0	780	Jun	0	0	1040
Jul	130	500	-370	Jul	130	500	410	Jul	130	500	670
Aug	130	0	-240	Aug	130	0	540	Aug	130	0	800
Sep	130	360	-470	Sep	130	360	310	Sep	130	360	570
Oct	130	0	-340	Oct	130	0	440	Oct	130	0	700
Nov	130	0	-210	Nov	130	0	570	Nov	130	0	830
Dec	130	700	-780	Dec	130	700	0	Dec	130	700	260
Jan	130	0	-650	Jan	130	0	130	Jan	130	0	390
Feb	130	0	-520	Feb	130	0	260	Feb	130	0	520
Mar	130	0	-390	Mar	130	0	390	Mar	130	0	650
Apr	130	0	-260	Apr	130	0	520	Apr	130	0	780
May	130	0	-130	May	130	0	650	May	130	0	910
Jun	130	0	0	Jun	130	0	780	Jun	130	0	1040

EXHIBIT C - MODEL NOTICE OF SERVICING TRANSFER

Regulation X 12 CFR 1024; Appendix MS-2

ABC CREDIT UNION

[Address, Phone]

[DATE]

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

Send all payments due on or after [Date] to [Name of new servicer] at this address: [New servicer address].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:	New Servicer:
[Name of present servicer]	[Name of new servicer]
[Individual or Department]	[Individual or Department]
[Telephone Number]	[Telephone Number]
[Address]	[Address]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

You should do the following to maintain coverage:

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

[NAME OF PRESENT SERVICER]

Date

[and] [or]

[NAME OF NEW SERVICER]

Date