DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-92-1256; FR-1942-F-06]

RIN 2502-AC09

Real Estate Settlement Procedures Act (Regulation X)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA), also known as Regulation X, to conform to section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA). With this rule, the Department is also taking the opportunity to make other clarifying and editorial changes, and to incorporate in this regulation certain matters which were previously only covered by informal legal or program advice.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: David Williamson, Director, RESPA Enforcement, room 5241, (202) 708-4560 or, for legal questions, Grant E. Mitchell or John B. Shumway, Office of General Counsel, (202) 708-1550, room 10252, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Some of the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Ancillary submissions are in process. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading **Findings and Certifications.** Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

This final rule revises 24 CFR part 3500, also known as Regulation X, the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA), and has been issued in part in response to section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA) (Pub. L. 98-181). Section 461 defined a "controlled business arrangement" in section 3 of RESPA (12 U.S.C. 2602) added an exemption under section 8 of RESPA (12 U.S.C. 2607) for certain controlled business arrangements, amended provisions on enforcement of sections 8 and 9 of RESPA (12 U.S.C. 2607 and 2608) and, in section 19 of RESPA (12 U.S.C. 2617) gave the Secretary of HUD specific investigative authority, including subpoena authority. In addition, HUD sets forth other changes to clarify the previous regulation. Section 3500.2(a)(16) includes "the origination, processing or funding of a federally-related mortgage loan" in the definition of "settlement service." Section 3500.15 contains the new controlled business provisions. Section 3500.17 is reserved for provisions regarding escrow accounts, and escrow accounting, as well as escrow account statements required by section 942 of the National Affordable Housing Act (Pub. L. 101-625, November 28, 1990). Section 3500.20 sets forth the administrative requirements regarding subpoenas. Appendix C is a Good Faith Estimate format. Appendix D is a controlled business arrangement disclosure format. Appendix E is the CLO Fee Disclosure. The Secretary has authority to prescribe such rules and regulations to achieve the purposes of the Act under section 19(a) of RESPA (12 U.S.C. 2617(a)).

Sections 941 and 942 of the Cranston-Gonzalez National Affordable Housing Act (1990 Act), added a new section 6 of RESPA (12 U.S.C. 2605) concerning notice of mortgage servicing transfers and new sections 10(b), 10(c) and 10(d) of RESPA (12 U.S.C. 2609(b), (c) and (d)) concerning escrow account statements. Rulemaking regarding section 6 in the form of an interim rule for effect creates a new section 3500.21 and was published in the **Federal Register** on April 26, 1991 (56 FR 19506) with corrections at 56 FR 22910, May 17, 1991. Rulemaking regarding section 10, subsections (b), (c) and (d) was initiated by a proposed rule published on December 9, 1991 (56 FR 64446) with corrections at 56 FR 65541 and 65542, on December 17, 1991. Section 3500.17 is reserved for these provisions.

Regulation X, 24 CFR part 3500, was issued on June 4, 1976. It covered most provisions of RESPA (Pub. L. 93-533), as amended by the Real Estate Settlement Procedures Act Amendments of 1975 (Pub. L. 94-205).

RESPA contains certain disclosure requirements and restrictions for settlements involving "federally-related mortgage loans," which include most first lien transactions involving one- to four-family residential structures. For RESPA-covered transactions, a loan applicant must be provided with a special information booklet and a good faith estimate of certain settlement charges. One day prior to settlement, the person conducting the settlement must, if requested, provide the borrower with a HUD-prescribed settlement statement, commonly known as the "HUD-1 settlement statement," completed with information on settlement costs known to such person at that time. At settlement, a fully completed HUD-1 settlement statement showing actual settlement costs must be made available to borrower and seller. These requirements are in Sections 4 and 5 of RESPA (12 U.S.C 2603 and 2604). Section 6 of RESPA (12 U.S.C. 2605), added by the 1990 Act, contains notice requirements concerning mortgage servicing transfers. Section 8 of RESPA (12 U.S.C. 2607) prohibits kickbacks for referral of business incident to or part of a settlement service and also prohibits the splitting of a charge for a settlement service, other than for services actually performed (*i.e.*, no payment of unearned fees). RESPA also prohibits a seller from requiring a buyer to use a particular title company (Section 9) (12 U.S.C. 2608), and limits the size of escrow accounts for taxes, insurance and other charges and requires certain escrow account statements be delivered to a borrower (Section 10) (12 U.S.C. 2609). Violations of Section 8 are punishable by criminal sanctions, including imprisonment and fines, as well as injunctive relief. Violations of the escrow account statement provisions in Section 10 are enforceable by civil money penalties. Section 6, as well as Sections 8 and 9, are enforceable by private actions for damages in Federal or State courts. RESPA has no specific provisions for enforcement of other sections.

Regulation X has not been amended since it was issued in final form on June 4, 1976, except for one change in 1977 regarding an equal opportunity notice (42 FR 19327). In this rule, HUD is conforming Regulation X to the amendment of RESPA contained in

HURRA. HUD has taken this opportunity to make other clarifying and editorial changes, and to incorporate in this regulation certain matters which were previously only covered by informal legal or program advice.

To initiate the rulemaking process, a proposed rule regarding RESPA was published on May 16, 1988 (53 FR 17424). One thousand, six hundred and nine (1,609) comments were received on the various subject areas covered by the proposed rule, within the comment period and the succeeding week. Comments were received from various parties, including mortgage lenders, mortgage brokers, real estate agents and brokers, title insurers, attorneys and private citizens. Numerous telephone calls and communications, in addition to nearly a thousand comments, were received by staff and counsel after the closing date for comments, but these were not considered a part of the official record.

On August 8, 1990 and September 18, 1990, Chairman Gonzalez of the House Subcommittee on Housing and Community Development held information hearings on RESPA. On September 19, 1990 Senator Cranston of the Senate Subcommittee on Housing and Urban Affairs held a "Roundtable" hearing with industry and government officials. At both of these September hearings, HUD's General Counsel, Frank Keating, presented Congress with HUD's general principles in devising this rule on RESPA.

The Department recognizes that the contents of this regulation will have a major impact on the manner in which nearly all mortgage loans will be obtained by prospective borrowers. HUD has reviewed all comments received on the proposed RESPA rule and listened to all interested parties. At OMB's request, the Department has received legal advice regarding the rule from the Office of Legal Counsel, Department of Justice, and has also consulted with five other concerned agencies in addition to the Department of Justice. The provisions of this rule are effective immediately.

II. Major Implementations in the Rule

This section discusses the subject areas of the RESPA rule in the order that they were presented in the proposed rule.

(a) Graham Mortgage

HUD has consistently taken the position that the prohibitions of Section 8 of RESPA (12 U.S.C. 2607) extended to loan referrals. Although the making of a loan is not delineated as a "settlement service" in Section 3(3) of RESPA (12 U.S.C. 2602(3)), it has always been HUD's position, based on the statutory language and the legislative history, that the section 3(3) list was not an inclusive list of all settlement services and that the origination, processing and funding of a mortgage loan was a settlement service.

In *U.S.* v. *Graham Mortgage Corp.*, 740 F.2d 414 (6th Cir. 1984), the Sixth Circuit Court of Appeals stated that HUD's interpretation that the making of a mortgage loan was a part of the settlement business was unclear for purposes of a criminal prosecution, and based on the rule of lenity, overturned a previous conviction. In response to the *Graham* case, HUD decided to amend its regulations to state clearly and specifically that the making and processing of a mortgage loan was a settlement service.

In order to get a wide range of views, HUD asked for public comments in the proposed rule concerning the interpretation that the making and processing of a mortgage loan constituted a settlement service. HUD received one hundred and eleven comments. Ninety-eight agreed with HUD's position that the making and processing of a mortgage loan is business incident to or part of a settlement service. Several comments supported this conclusion with legal analysis. Thirteen comments argued that mortgage loans should not be covered by RESPA or suggested that legislative clarifications be obtained.

Having considered the comments and after further review, HUD has concluded that *Graham Mortgage* does not prevent HUD from issuing new clarifying regulations on this matter. The Sixth Circuit based its holding in *Graham Mortgage* on the rule of lenity, finding that HUD had not unambiguously interpreted "settlement services" to include mortgage lending procedures. 740 F.2d at 423. The rule of lenity provides that when a reasonable doubt persists about a criminal statute's intended scope, after resort to the statute's language and structure, its legislative history, and its motivating policies, a court should construe the statute narrowly. The rule of lenity would not apply when a regulation is adopted to cure an ambiguity in a statute.

Accordingly, HUD restates its position unequivocally that the originating, processing, or funding of a mortgage loan is a settlement service in this rule. This rule, unlike the proposed rule, sets forth an itemized list of settlement services in § 3500.2(a)(16), including "the origination, processing or funding of a federally-related mortgage loan * * *"

As of the effective date of this rule, HUD intends to consider recommending criminal prosecutions as well as pursuing civil enforcement actions, involving the origination, processing or funding of mortgage loans in the four states located within the Sixth Circuit (Michigan, Kentucky, Ohio and Tennessee), and to proceed vigorously with ongoing enforcement actions in all other jurisdictions.

(b) Controlled Business—Section 3500.15(a): Controlled Business Arrangements

Section 461 of HURRA amended RESPA by adding provisions dealing with "controlled business arrangements" (CBAs). The amendments added a definition of "controlled business arrangement" at section 3(7) of RESPA (12 U.S.C. 2602(7)) and added language at section 8(c)(4) of RESPA (12 U.S.C. 2607(c)(4)) setting out conditions under which CBAs would not violate section 8.

The proposed rule, at 53 FR 17424, contained an extensive discussion of CBAs and HUD's proposed rulemaking determinations. In the proposed rule, HUD stated its view that in order for the controlled business arrangement exemption in RESPA to make sense, the mere existence of a controlled business arrangement must raise a presumption of a Section 8 violation. Although relatively few comments stated a position on this matter, most of the individuals who expressed a view argued that language dealing with a presumption was difficult and inappropriate.

The changes to the proposed § 3500.15 that appear in the rule respond to the concerns raised in the comments about the "presumption" in the proposed rule. Based on these comments, the concept of a presumption, a legal term relating to the burden of proof in a criminal proceeding, has been deleted from the rule. Rather, the rule simply states that controlled business arrangements do not violate Section 8 of RESPA if the conditions provided in § 3500.15(b) are met. The Department believes these modifications more clearly reflect the Congressional intent and provide businesses subject to RESPA with clear rules for complying with Section 8.

Section 3500.15(b): Controlled Business Exemption

Subsection (b) of § 3500.15 implements section 8(c)(4) of RESPA (12 U.S.C. 2607(c)(4)). The subsection states that a controlled business arrangement does not violate Section 8 of RESPA and § 3500.14 of Regulation X if the three

elements of the exemption set forth in Section 8(c)(4) of RESPA are met. The three elements of the exemption are as follows: (1) A requirement for disclosure of the relationship between the parties giving and receiving the referral, with estimated charges for the referred business; (2) a bar against the required use of a particular provider (except in specified exceptions); and (3) a bar against any thing of value being received by the referring party or an associate beyond a return on ownership interest, return on franchise relationship, or payments otherwise permissible under Section 8(c) of RESPA.

The Department had considered amplifying its interpretation in section 8(c)(4) to bar the payment of fees by an employer to its employees for the referral of settlement business to another entity in the controlled business arrangement. However, HUD sought advice from the Department of Justice with respect to whether HUD could impose such a ban. It was concluded that Section 8(c)(4) does not authorize this type of prohibition on employee compensation. In particular, payments between employers and employees are not prohibited by the requirement of Section 8(c)(4) because that section only creates a safe harbor against proscriptions in Section 8(a) for certain controlled business arrangements. To the extent that subterfuge payments between affiliated entities do not satisfy the requirements of 8(c)(4), they are already prohibited by Section 8(a).

Accordingly, the Department has not amplified Section 8(c)(4) and will rely on Section 8(a) to prosecute subterfuge payments between affiliates for the referral of business. To further clarify this issue, in § 3500.14(g)(1), HUD codifies its view that payments from an employer to its employee for referral activity are exempt from Section 8 because a business entity acts through its employees such that the action of the employees is not sufficiently distinct from the action of the employer to provide the requisite plurality of actors needed to violate Section 8. In RESPA, Congress did not prohibit referrals, but rather kickbacks and similar payments for referrals. It would be unreasonable to interpret Section 8 as prohibiting a company from making payments to its own employees because such an interpretation would effectively ban all referrals. However, if the company receiving the referral makes payments to the employer that are intended to reimburse that employer for compensation paid to its employees for referral activity, this will likely violate Section 8. Similarly, the Department maintains its view that the exemption in § 3500.14(g)(1) is not applicable to payments made by one entity to the employees of another entity even where both entities are in a controlled business arrangement.

Written disclosure of the nature of the relationship between referring party and provider (*e.g.*, owner and subsidiary) is required at § 3500.15(b)(1). A suggested format for the controlled business arrangement disclosure is set out in appendix D. Some comments asserted that HUD should not require disclosure of the "nature" of the controlled business arrangement, but rather should simply require disclosure of the existence of the controlled business arrangement. Because so many various controlled business arrangements are possible, however, it is necessary for purposes of borrower information and HUD enforcement that the precise type of arrangement is detailed. Further, in order to create a discrete document containing meaningful disclosures, the disclosure is required to be made on a separate piece of paper. A written estimate of charges is required that uses the terminology of the HUD–1 settlement statement, as does the good faith estimate required by § 3500.7. The disclosure must be provided no later than at the time of the referral (not three days after the triggering event, as set out in the good faith estimate requirement in § 3500.7). However, lenders making such referrals may provide the disclosure with the good faith estimate. Special timing rules are also set forth to cover the instances where certain attorneys may require use of a particular provider when the timing of the referral may be uncertain. (These are special statutory exceptions to the normal rule that the controlled business arrangement exemption is unavailable when use of a particular provider is required.) For an attorney requiring use of an affiliated title company, the "referral" occurs at that point where the attorney is engaged by the client.

In regard to the statutory "good faith" exception to the first element of the exemption, the rule states that judicial and administrative precedents under Section 130(c) of the Truth in Lending Act are not determinative for purposes of Regulation X.

A definition of "required use" appears in § 3500.2(k). A "required use" covers any situation where the use of a particular provider for a settlement service is a condition of the availability of some other distinct service or property.

"Return on ownership interest" is discussed in Section 8(c)(4)(C) of RESPA (12 U.S.C. 2607(c)(4)(C)). The rule makes clear that in a controlled business arrangement (1) *bona fide* dividends and capital or equity distributions, related to ownership interest or franchise relationship, between affiliated entities, are permissible, and (2) *bona fide* business loans, advances, and capital or equity contributions, between affiliated entities (in any direction) are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees. HUD does not prescribe all the acceptable methods of calculating return on the various forms of corporate, partnership and other ownership interests. The term applied to a payment is not determinative of whether it is permissible. A return on ownership interest may not be directly or indirectly related to the number or value of referrals.

Section 8(c)(4)(C) of RESPA (12 U.S.C. 2607(c)(4)(C)) discusses "return on franchise relationship." A payment to or from a franchisee must be pursuant to a franchise agreement; however, a franchise agreement cannot insulate kickbacks or referral fees. The franchise agreement may not be adjusted on the basis of a previous amount of referrals by the franchisor or franchisees. As with ownership interests, franchise payments may not be directly or indirectly related to the number or value of referrals.

Section 3500.15(c): Controlled Business Definitions

Section 3500.15 contains definitions which are exclusive to the controlled business provisions.

The statutory controlled business arrangement definition covers a referral by a person with an "affiliate relationship" with the provider receiving the referral. A 1983 House Report (H.R. Rep. No. 98–123, 1st Sess. (1983)) described an affiliate relationship and indicated that the phrase covered situations of "control" among business entities, which are also included in the "associate" definition. After considering the comments on this subject, HUD decided to retain a separate "affiliate relationship" definition in § 3500.15(c)(2).

The statutory controlled business arrangement definition also covered a referral by a person with an ownership interest greater than 1% in the provider receiving the referral. Most comments indicated that HUD should not alter this percentage, and HUD does not alter the statutory threshold in the rule.

The statutory definition of controlled business arrangement provides that the

person referring the business incident to or part of a real estate settlement service is a person in a position to so refer (12 U.S.C. 2602(7)). While this language could literally mean any person, this would make the statutory phrase "in a position to refer" unnecessary. HUD concluded that the phrase "person in a position to refer business incident to or part of a real estate settlement service" referred to real estate brokers or agents, lenders, mortgage brokers, builders or developers, attorneys, title companies, title agents, or other persons deriving a significant portion of their gross income from providing settlement services. Although some comments asserted that HUD's list of persons in a position to refer business incident to or part of a real estate settlement service should be altered in some way, for example, to delete individuals who have no "consumer contact," or to delete title companies and title agents, very few disagreed with the concept of creating such a list. Some comments stated that the last category on the list was too vague. HUD intends to give meaning to the statutory language which narrows the category of persons who may be said to be referring business without eliminating parties who are in fact in a position to refer by establishing a definition in § 3500.15(c)(9).

Illustrations contained in Appendix B of the rule constitute specific examples of controlled business situations.

(c) Computer Loan Origination Systems (CLO's)

In an informal opinion letter dated April 24, 1986, HUD General Counsel John Knapp reviewed and approved a computer loan origination program (CLO) proposed by Citicorp, Inc., also referred to as "Mortgage Power." The program contemplated participation by real estate brokers, mortgage brokers and others; participants paid a fee to gain access to loan information and possibly, to obtain loan commitments on behalf of borrowers. The opinion was based on earlier informal legal opinions in which HUD found that an independent contract for financial advice between a prospective borrower and a mortgage broker was permissible under RESPA. These previous legal opinions, however, involved a potential borrower seeking advice from an entity not otherwise involved in the transaction. HUD's informal legal opinion to Citicorp stated that the good faith estimate should disclose that a fee was paid by the borrower pursuant to a separate Consumer, Agency and Fee Agreement, directly to a participant, and was not required by the lender.

After Citicorp initiated the Mortgage Power program, HUD received a number of comments. These comments argued that although a "borrower pay" arrangement in which a potential borrower enlisted an independent party to assist in obtaining mortgage financing could be legitimate, the legislative intent of RESPA to eliminate referral fees was being subverted in circumstances where the point-of-access professional (such as a real estate broker) was also receiving a second fee from the transaction (such as a commission) in addition to the advisory fee. Some comments stated that it was a conflict of interest when a real estate broker accepted a fee from both the seller for assisting in selling the property, and buyer for assisting in obtaining mortgage financing in the same real estate transaction. Other comments stated that real estate brokers were charging two parties for the same work. Recognizing the controversies that the April 24, 1986 opinion had generated, HUD opened up the matter for review and discussion in the May 16, 1988 proposed rule by adding the following exception under § 3500.14(g)(6) to the Section 8 prohibition against kickbacks and unearned fees:

> (6) Voluntary payment by a borrower to a person who has acted as a mortgage broker or has otherwise assisted in bringing the lender and borrower together, provided that such voluntary payment is disclosed on both the good faith estimate of settlement costs and the HUD–1 settlement statement and is not a condition of the loan or other settlement service.

HUD further stated in the preamble to the proposed rule that "this is a complex issue and other variations on the program may be developing; we strongly urge public comment on this issue and request examples of potential or actual problems caused by (the Knapp) opinion."

At the conclusion of this review, HUD policy staff concluded that there were potentially substantial consumer benefits in the utilization of new technology. Further, the technology was in flux and represented, at most, no more than one to two percent of mortgage originations annually. Considering all of these factors, HUD concluded that it would issue a CLO exemption under its authority in section 19(a) of RESPA which would have the effect of eliminating possible regulatory inhibitions on the development of this technology. In line with previous HUD opinions, this exemption would apply to CLO systems where the fees, if any, are paid by the borrower on the grounds that well-informed choices by consumers do not require special protection under RESPA. Thus, in order to assure that there is complete disclosure to consumers regarding CLO systems, HUD has required that system operators provide the consumer with a written disclosure. The CLO exemption is set forth as § 3500.14(g)(2) of this rule and provides that any borrower will be provided a disclosure regarding the use of CLO services in a form approved by the Secretary (appendix E).

III. Other Changes to Regulation X

Section 3500.2 Definitions

HUD is revising some of the existing definitions and adding a number of new definitions, including some controlled business arrangement related definitions contained in § 3500.15.

Application for a federally-related mortgage loan. The phrase is defined for the first time.

Business day. The term is defined for the first time for general purposes in RESPA; a Business Day for purposes of Mortgage Servicing Transfer requirements is set forth in Section 21 of this Part.

Federally-related mortgage loan. This term is defined in § 3500.2(a)(3). The coverage of RESPA, and exemptions of some classes of loans from RESPA and Regulation X coverage, such as home equity loans or home improvement loans, are discussed in § 3500.5. There is a clarification that "reverse mortgages" are usually federally-related mortgage loans.

Good faith estimate. The term is defined for the first time. Appendix C sets forth a model form.

HUD–1 settlement statement. This term is defined for the first time. (The term "Uniform Settlement Statement" is no longer used.)

Lender. This term remains substantially the same.

Manufactured home. This defined term replaces "mobile home" in keeping with current HUD usage.

Mortgage broker. The term is defined for the first time.

Mortgaged property. The term remains substantially the same.

Person. The term remains substantially the same.

Required use. Some comments argued that HUD's application of the concept of "required use" was too broad, as applied in both Section 9 (12 U.S.C. 2608) and controlled business contexts. In response to these comments, the rule makes clear that *bona fide* discounts and certain packaging of settlement services which provide options are not violations of the "required use" provision.

RESPA. The term is defined.

Secretary. The term remains substantially the same.

Settlement. In the proposed rule, in addition to a definition of "date of settlement," HUD set out a definition of "settlement" which stated the following: "The process of conveying legal title to residential property to a purchaser who is financing the purchase of the property with a federally-related mortgage loan, including the rendering of any services which have as a purpose the facilitating of the conveyance." "In some contexts," the definition continued, "settlement means only the actual collection and distribution of funds and documents, related to the conveyance, and may also be known as 'closing' or 'escrow.'" Fourteen comments expressed concerns relating to these definitions. Many complained that changing the date of settlement to the date in which security instruments are executed would create problems. Disclosure requirements, they said, would be meaningless in states where loan documents are signed well in advance of closing. Some comments stated that the definitions of "date of settlement" and "settlement" should be the same or substantially the same. Others stated that the "settlement" definition was vague, too broad, and that the definition should include transactions where there is no title conveyance, such as refinancings. After review of these comments, HUD has eliminated the concept of "date of settlement" and substituted a restatement of the definition of settlement: "the process of executing a first lien on property which is subject to a federally-related mortgage loan." HUD also added that "settlement may also be called 'closing' or 'escrow' in different jurisdictions."

Settlement agent. This term is defined as equivalent to the statutory phrase "person conducting settlement." If no one else is chosen, the lender is considered to be the settlement agent.

Settlement service. This term is defined in Section 3(3) of RESPA (12 U.S.C. 2602(3)). The term appears in five substantive provisions of the statute: (1) Section 5(c) (12 U.S.C. 2604(c)), which requires the lender to provide a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement;" (2) Section 8(a) (12 U.S.C. 2607(a)), which prohibits compensation pursuant to any agreement or understanding that "business incident to or a part of a real estate settlement service involving a federally-related mortgage loan shall be referred to any person;" (3) Section 8(b) (12 U.S.C. 2607(b)), which prohibits the splitting of charges "made or received for the rendering of a real estate settlement service . . . other than for services actually performed;" (4) Section 3(7) (12 U.S.C. 2602(7)); and (5) Section 8(c)(4)(B) (12 U.S.C. 2607(c)(4)(B)), which refer to a provider of settlement services.

Since RESPA's enactment, HUD has considered the term "settlement service" to have the same meaning under all sections of RESPA. In all contexts the term includes the origination, processing or funding of the loan itself. This interpretation is reflected in the original Regulation X. For example, the charges for which good faith estimates are required to be made include, among other things, items payable in connection with the loan, *e.g.*, "loan origination fees," "loan discounts (*i.e.*, "points")," and "prepaid interest." *See* § 3500.7(c). A definition of "settlement service" is added in § 3500.2 and includes any services provided in connection with settlement, including, but not limited to, an itemized list of many services. A further discussion of the origination, processing, and funding of a mortgage loan as a settlement service appears above.

Special information booklet. This term is defined for the first time. The definition also indicates that the booklet is published in the **Federal Register**.

State. The term remains substantially the same.

Title company. This term is defined for the first time.

Section 3500.3: No Delegation of Authority to HUD Field Offices

All power and authority of the HUD Secretary under RESPA is currently delegated to the Deputy Assistant Secretary for Single Family Housing, and redelegated to the Director, Office of RESPA Enforcement. No authority has been delegated to any field office of HUD. Any subsequent delegation of authority will be published in the **Federal Register**.

Section 3500.4: Reliance Upon Rule, Regulation or Interpretation by HUD

Thirty comments discussed the extent to which HUD interpretations concerning RESPA should be official or unofficial in nature. A majority favored a procedure in which HUD would issue official commentary or official interpretations of general applicability. Many comments also favored HUD issuing informal opinion letters to individuals upon which the particular individuals could rely. Others argued that informal opinion letters merely confuse the process and should be abolished. In this rule HUD has used its legal authority to create a procedure for publishing official interpretations in the **Federal Register**, upon which the public may rely. Such interpretations would normally be of general applicability, rather than directed to a specific case. Such a procedure will not necessarily eliminate all unofficial staff responses to specific inquiries. The rule makes clear that courts and administrative agencies may use previous opinions to determine the validity of arrangements entered into under the previous Regulation X.

Section 3500.5: Coverage of RESPA

Seven commenters submitted views on the coverage of RESPA. Some of these expressed the opinion that HUD should more thoroughly define or explain the concept of temporary financing. Others found the language concerning construction financing in proposed § 3500.5(b)(2) to be confusing. (This section stated that the exclusion for temporary financing does not apply to a loan to finance construction of a new structure if the loan either initially has, or after completion of construction will have, a term of repayment which extends more than two years beyond the date of settlement.) Two comments supported the exemption from RESPA coverage for property for resale or investment, but stated that HUD needs to clarify the concept of "principal residence." One comment stated that HUD should exempt all non-owner occupied property. Most comments stated that the exemption for refinancing should extend to all provisions under RESPA, not just §§ 3500.6 through § 3500.11 and 3500.17. One comment indicated that the question of coverage of refinancings under RESPA should be clarified.

HUD appreciated the desirability of conforming the regulation with the statute, and for logic and consistency, stating that RESPA applied to all federally related mortgage loans. In particular, HUD believed that the exception for refinancing loans, created in the Mid-Seventies during a time of relatively stable market conditions, interest rates, and mortgage products, was outdated. For the new Section 6 (Mortgage Servicing Transfers) and Section 10 (Escrow Accounts Statements) provisions of RESPA, no distinction has been made in the outstanding rulemaking between a new loan and a refinancing loan, whether or not title is transferred. In this rule, HUD extends coverage of all portions of RESPA to all refinancings, whether or not a transfer of title is involved. Other minor exceptions to RESPA coverage have been deleted, such as the

exceptions for property exceeding 25 acres and property purchased for resale or investment, and assumptions and novations. RESPA does not apply to temporary loans such as construction loans (not used as or converted to permanent financing or for terms of two years or less) and *bona fide* secondary market transactions, except insofar as they involve mortgage servicing transfers under the new Section 6 of RESPA. HUD has clarified that "home equity conversion mortgages" or "reverse mortgages" are normally covered transactions under the Act. (HUD's Home Equity Conversion Mortgage Insurance Program (§ 206.203 of this title) does not create an escrow account covered by this Part.)

Section 3500.6: Special Information Booklet

A large majority of the 42 comments HUD received on the special information booklet and good faith estimate opposed the concept of providing multiple copies of each to multiple borrowers in a single transaction. Two comments indicated that multiple copies, if adopted, should not depend on marital status, but rather, on common residence, and lenders should have five days to deliver the additional copies. In response to these comments, HUD requires only one special information booklet (and, at § 3500.7(a), one copy of the good faith estimate) to be distributed to multiple borrowers. It was also decided in response to comments received that in cases where the borrower uses a mortgage broker, the mortgage broker would distribute the special information booklet and the lender need not do so. Several comments indicated that borrowers often do not understand that they are dealing with a mortgage broker rather than a mortgage banker, and they should be given the special information booklet (as well as the good faith estimate) at the earliest possible time, in many cases by the mortgage broker, to most effectively honor the intent of RESPA to provide timely and useful settlement charge information.

Section 3500.7: Good Faith Estimate

A suggested format for the good faith estimate is set forth in a new appendix C to Regulation X. Section 3500.7(d) requires any lender requiring use of a particular provider of legal or title examination services or title insurance to disclose the existence and nature of any "business relationship" with the provider. Although some comments opposed this provision, the requirement provides the borrower with more useful information than the original provision in Regulation X. A mortgage broker who is not the exclusive agent of a lender also must now distribute a good faith estimate within three days of receiving a borrower's loan application. This good faith estimate should include the minimum requirements set out in Appendix C and an additional legend for mortgage brokers who use the form. The lender shall distribute its good faith estimate when it receives the loan application and this estimate must include any mortgage broker fee.

Section 3500.8: Use of HUD–1 Settlement Statement

HUD received twenty-one comments concerning the HUD–1 settlement statement. Many opposed a requirement that the HUD–1 should be distributed to all borrowers in a transaction. One comment stated that if multiple copies are distributed, common mailing address should be the exception to this rule, rather than marital status. Other comments indicated that the proposed reduction of the HUD–1 to 8½×11 inch paper would be troublesome. In response to these comments, HUD has chosen to retain existing requirements that a single HUD–1 may be distributed to multiple borrowers in a single transaction and the 8½×14 inch HUD–1 form size will be used. All specific requirements for completing the HUD–1 Settlement Statement are contained in instructions in Appendix A to Regulation X. Any mortgage broker fee is to be included separately on the HUD–1 in a blank line in the 800 series. Revenue Ruling 92–2 and Revenue Procedures 92–11 and 12, published in Internal Revenue Bulletin 1992–93, dated January 21, 1992 have clarified that points paid to mortgage brokers are treated similarly to those paid to lenders for Federal income tax purposes.

Section 3500.9: Reproduction of HUD–1 Settlement Statement

Minor editorial changes have been made to this section.

Section 3500.10: Inspection and Delivery of HUD–1 Settlement Statement

Lenders must keep completed HUD–1 settlement statements and related documents for five years after the date of settlement because the statute of limitations for Section 8 actions by the HUD Secretary or an Attorney General or insurance commissioner of a State has been extended to three years. Some comments indicated that the recordkeeping requirement was burdensome. However, based on the recommendation of HUD's Inspector general, HUD establishes a five-year period for retention of any required records.

Section 3500.11: Mailing

Minor editorial changes have been made to this section.

Section 3500.12: No Fee

Minor editorial changes have been made to this section.

Section 3500.13: Relation to State Laws

This section discusses Section 8(d)(6) of RESPA (12 U.S.C. 2607(d)(6)), Section 18 (12 U.S.C. 2616), and Section 6(h) (12 U.S.C. 2605(h)). "State Law" as used in these sections includes State regulations as well as legal enactments by State political subdivisions.

Section 3500.14: Prohibition Against Kickbacks and Unearned Fees

HUD received several comments relating to the general provision prohibiting kickbacks and unearned fees. Some stated that HUD's definition of "referral" was too broad. Some of these comments pertained to HUD's treatment of "a thing of value." Two comments stated that HUD should delete "retained earnings" and "referrals of business" from the definition of a thing of value. Many comments requested further explanation of the employment exception to the referral fee prohibition. Others wanted the employment exception expanded to include other situations, such as the relationship between real estate agents and brokers. A great number of these comments supported various other exemptions, including the following: a general exemption for all realtor activity; an expanded cooperative brokerage exemption; an exemption for insurance companies; referrals prior to settlement; the sale of lists of names; and referrals connected with the Community Reinvestment Act.

In response to comments received, HUD reorganized this section and added some language to clarify what constitutes payments and services for purposes of Section 8.

Section 3500.15: Controlled Business Arrangements

This section is discussed at length above.

Section 3500.16: Title Companies

Section 3500.2(k) defines "required use" as it is to be applied to this section.

Section 3500.17: Escrow Accounts

[Reserved]

Section 3500.18: Validity of Contracts and Liens

This section essentially restates the statutory provision set out in Section 17 (12 U.S.C. 2615).

Section 3500.19: Enforcement

Paragraph (a) generally explains the manner of enforcement of the various provisions of RESPA. Paragraph (b) repeats, largely verbatim, Sections 8(d) (1), (2), (4) and (5) of RESPA (12 U.S.C. 2607(d) (1), (2), (4) and (5)). Paragraph (c) repeats, largely verbatim, Section 9(b) of RESPA (12 U.S.C. 2608(b)). Paragraph (d) of this new section sets forth Section 16 RESPA (12 U.S.C. 2614) involving the jurisdiction of courts and the statute of limitations for private and governmental enforcement actions.

Section 3500.20: Investigations; Subpoena Authority

The proposed rule set forth the statutory requirements for the Secretary's authority to issue subpoenas to investigate violation of the Act. Pursuant to Section 19(c) of RESPA (12 U.S.C. 2617(c)) this section explains in greater detail the subpoena authority of the Department.

Section 3500.21 is reserved for the final rule language for mortgage servicing transfers required by Section 6 of the 1990 Act.

Appendix A to this Part

HUD has considerably revised the instructions to complete the HUD–1 Settlement Statement. The HUD–1 itself is maintained in its current form.

For clearer terminology, the new instructions use terms which are defined in Regulation X (*i.e.*, settlement, settlement agent). To aid the settlement agent and the borrower, the instructions provide guidance for each section and line of the HUD–1. Use of blank lines is also explained.

Frequently, settlement agents have failed to provide all information required in each line. The new instructions emphasize the insertion of addresses and zip codes in Section F, identification of all persons and firms to whom payments have been made and listing of percentage and per diem charges. Unlike the previous instructions, the new instructions for Sections D and E require all buyers and sellers to be named on the HUD–1. The new instructions also describe in greater detail the specific settlement charges to be listed in Section L.

The concept of "P.O.C." charges (paid outside of closing) is clarified to address problems in disclosing charges paid outside of settlement in cases where borrower's deposits are held by a third party who will not serve as settlement agent but will retain all or part of the deposit as a commission or fee. The previous HUD–1 instructions did not assist settlement agents in cases where the settlement agent or someone else held the borrower's deposit against the sales price (earnest money). Instructions for Lines 201, 501, 506, 507 and 703 and P.O.C. items account for the handling of earnest money deposits.

The new instructions elaborate on certain common methods of financing. For example, new instructions for Line 202 provide for cases involving the use of conversion of temporary financing into permanent financing. The types of settlement charges may vary from other settlements, but the instructions suggest the HUD–1 should be completed taking into account adjustments and charges related to the temporary and permanent financing which are known at the date of settlement. Lines 204–209 should be used to indicate any seller financing arrangements or other new loans not listed in Line 202.

The new instructions revise the treatment of various fees in Lines 801–811 to reflect the current FHA, VA and FmHA practices and procedures. Because FHA, VA and FmHA do not charge application fees, Line 806 should only be used for application fees required by private mortgage insurance companies. VA funding fees should be listed on Line 904 and 905. Instructions for Lines 808–811 indicate that these lines are to be used to list additional items payable in connection with the loan such as a CLO Access Fee or a mortgage broker fee. Instructions for Lines 902–905 provide instructions for listing lump sum mortgage insurance premiums. Other items which are either required by the lender to be paid in advance (such as flood insurance, mortgage life insurance, credit life insurance and disability insurance) or paid at settlement should be listed on Lines 904 and 905. The new instructions also provide directions for transactions involving more than one attorney or attorneys for the buyer or seller who also act as title agents. (Lines 1100–1113).

Appendix B

Based on comments, HUD has eliminated some illustrations which are unclear or fail to illustrate a specific facet of RESPA or Regulation X, combined other illustrations, and updated or added other illustrations that conform to policies set forth in the regulations.

Appendix C

This appendix is a suggested form for the good faith estimate to correspond to the revision of § 3500.7.

Appendix D

This appendix is a suggested format for controlled business arrangement disclosures.

Appendix E

This appendix is the approved format for computer loan original (CLO) fee disclosures.

IV. Findings and Certifications

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. While the rule would have some economic impact on small lenders and other small businesses in a position to refer settlement services business such as builders, real estate brokers or agents and attorneys, the impact is not expected to be substantial. HUD finds that there are no anti-competitive discriminatory aspects of the rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

Paperwork Reduction Act

Some of the collection of information requirements contained in this rule have been submitted to OMB for review under § 3504(h) of the Paperwork Reduction Act of 1980. Sections 3500.7, 3500.8, and 3500.9, of this rule have been determined by the Department to contain new collection of information requirements, and ancillary submissions are in process. Information on these requirements is provided as follows:

Regulatory Impact Analysis

The rule constitutes a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations

issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a regulatory impact analysis (RIA) has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order because the regulation provides, at statutory direction, an update of a previously existing regulation to take into account 1983 legislative amendments regarding interrelated businesses.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this regulation does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order, because the regulation primarily provides, at statutory direction, an update of a previously existing regulation to take into account 1983 legislative amendments regarding interrelated businesses.

Semiannual Agenda of Regulations

This rule was listed as item 1176 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16831) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

Accordingly, 24 CFR chapter XX is amended by revising part 3500 to read as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

Sec.

Authority: 12 U.S.C. 2601 *et seq.*

§ 3500.1 Designation.

This part may be referred to as Regulation X.

§ 3500.2 Definitions.

(a) As used in this part:

(1) *Application for a federally-related mortgage loan* means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer generated, relating to a federally-related mortgage loan.

(2) *Business day* means a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions. "Business Day" for purposes of compliance with Section 6 (12 U.S.C. 2605) is defined in § 3500.21.

(3) *Federally-related mortgage loan* means any loan (other than temporary financing, such as a construction loan, (see § 3500.5(b)(2)) which—

(i) Is secured by a first lien on residential property:

(A) Upon which there is located, or will be constructed following settlement using proceeds of the loan, a structure or structures designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests such as a share in the cooperative or right to occupancy of the unit); or

(B) Upon which there is located, or will be placed following settlement using proceeds of the loan, a manufactured home; and

(ii) (A) Is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(B) Is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors); or

(D) Is made in whole or in part by any "Creditor," as defined in Section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), as such provisions may be amended from time to time, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this section the term "creditor" does not include any agency or instrumentality of any State and a "residential real estate loan" means any loan (including temporary financing) secured by a lien (including a junior lien) on property described in § 3500.2(a)(5) except that such property may also be designed for occupancy by more than four families or may be more than an individual cooperative or condominium units; or

(E) Is the subject of a "home equity conversion mortgage" or "reverse mortgage" issued by any maker of mortgage loans specified in paragraph (a)(3)(ii)(A)–(D) of this section.

(4) *Good faith estimate* means an estimate of charges which a borrower is likely to incur in connection with a settlement, prepared in accordance with section 5 of RESPA (12 U.S.C. 2604).

(5) *HUD–1 settlement statement* or *HUD–1* means the standard form for the

statement of settlement charges which is prescribed by the Secretary pursuant to Section 4 of RESPA (12 U.S.C. 2603).

(6) *Lender* means the secured creditor or creditors named as such in the debt obligation and document creating the lien.

(7) *Manufactured home* has the meaning given in § 3280.2(a)(16) of this chapter.

(8) *Mortgage broker* means a person (not an employee of a lender) who brings a borrower and lender together to obtain a federally-related mortgage loan and renders services such as those described in § 3500.2(a)(16).

(9) *Mortgaged property* means the real property which is security for the federally-related mortgage loan.

(10) *Person* means any individual, corporation, partnership, trust, association or other entity.

(11) *Required use.* For purposes of this rule, a person is "required" to use a particular provider of a settlement service whenever use of such provider is a condition of the availability to such person of some distinct service or property and the person will pay for the settlement service of such provider or will pay a charge attributable in whole or in part to such settlement service. However, the offering of a package, or combination of settlement services, or the offering of discounts or rebates to consumers for the purchase of multiple settlement services, does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available and must not be made up by higher costs elsewhere in the settlement process.

(12) *RESPA* means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*, as it is amended from time to time.

(13) *Secretary* means the Secretary of Housing and Urban Development or any official who is delegated the authority of the Secretary with respect to RESPA.

(14) *Settlement* means, generally, the process of executing legally binding documents regarding a first lien on property that is subject to a federally-related mortgage loan. "Settlement" may also be called "closing" or "escrow" in different jurisdictions.

(15) *Settlement agent* means the person conducting or handling the settlement. If no other person is designated by the lender or the other parties to the settlement, the lender shall be considered to be the settlement agent.

(16) *Settlement service* means any service provided in connection with a prospective or actual settlement including, but not limited to, the following:

(i) The origination, processing, or funding of a federally-related mortgage loan;

(ii) The rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(iii) The providing of any services related to the origination, processing, or funding of a federally-related mortgage loan;

(iv) The providing of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(v) The rendering of services by an attorney;

(vi) The preparing of documents, including notarization, delivery and recordation;

(vii) The rendering of credit reports and appraisals;

(viii) The rendering of inspections, including inspections required by applicable law, or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(ix) The conducting of settlement by a settlement agent and any related services;

(x) The providing of services involving mortgage insurance;

(xi) The providing of services involving hazard, flood, or other casualty insurance or homeowners warranties;

((xii) The providing of services involving mortgage life, disability or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, if required by the lender as a condition of the loan;

(xiii) The providing of services involving real property taxes or any other assessments or charges on the real property;

(xiv) The rendering of services by a real estate agent or broker; and

(xv) The providing of any other services for which a settlement service provider requires a borrower or seller to pay.

(17) *Special information booklet* means the booklet prepared by the Secretary pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services, in the form most recently published in the **Federal Register.**

(18) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(19) *Title company* means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company.

(b) Reserved.

§ 3500.3 No delegation of authority to HUD field offices.

No authority granted to the Secretary under RESPA has been delegated to HUD field offices. In the event of a change of this policy, a notice of any such delegation of authority will be published in the **Federal Register.** Any questions or suggestions from the public regarding RESPA should be directed to the Director, RESPA Enforcement, Department of Housing and Urban Development, room 5241, 451 7th Street, SW., Washington, DC 20410–8000.

§ 3500.4 Reliance upon rule, regulation or interpretation by HUD.

(a) *Statutory provision.* Section 19(b) of RESPA (12 U.S.C. 2617(b)) provides that no provision of this Act or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(b) *Rule, regulation or interpretation.*—(1) For purposes of Section 19(a) of RESPA (12 U.S.C. 2617(a)) only the following constitute a rule, regulation or interpretation of the Secretary:

(i) All provisions of this Part and all Appendices thereto, and the HUD–1 Settlement Statement; any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document which is published in the **Federal Register** by the Secretary which states that it is an "interpretation," "interpretive rule," "commentary," or a "statement of policy" for purposes of section 19(a) of RESPA. Such documents will be prepared by HUD staff and counsel. Such documents may be revoked or amended by a subsequent document published in the **Federal Register** by the Secretary.

(2) A "rule, regulation, or interpretation thereof by the Secretary" for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Secretary or any other statement or issuance, whether oral or written, by an officer or representative of the Department of Housing and Urban Development (HUD), letter or memorandum by the Secretary, General Counsel, any Assistant Secretary or other officer or employee of HUD, preamble to a regulation or other issuance of HUD, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (b)(1) of this section.

(c) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this Part or by an official interpretation issued under paragraph (b)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of HUD staff or counsel. Written requests for such interpretations should be directed to the address indicated in § 3500.3. Such interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this Part or by official interpretations or commentaries issued under paragraph (b)(1)(ii) of this section.

(d) All informal counsel's opinions and staff interpretations issued before the effective date of this rule are hereby withdrawn as of the date of this rule. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X. Any recipient of an informal opinion letter issued before the effective date of this rule may, within 30 days after the effective date of this rule, request a clarification regarding the content of this rule and the substance of its opinion letter.

§ 3500.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all federally-related mortgage loans.

(b) *Exemptions.* RESPA does not apply to the following:

(1) Home equity loans, home improvement loans, or any other loan not secured by a first lien on the related loan property.

(2) Temporary financing such as a construction loan. The exemption for temporary financing, such as a construction loan stated in § 3500.2(a)(3), does not apply to a loan made to finance construction of a new structure if the loan is used as or may be converted to permanent financing to finance transfer of title to the first user. In addition, any construction loan for a new structure will be presumed to be a RESPA covered loan if its term is in excess of two years.

(3) *Secondary market transactions.* A *bona fide* transfer of the loan obligation in the secondary market is not covered by Section 8 of RESPA. In determining what constitutes a *bona fide* transfer, HUD will consider the real source of funding and the real interest of the settlement lender. Mortgage broker transactions commonly called "table funding" wherein there is a contemporaneous advance of loan funds and assignment of the loan is not considered to be a secondary market transaction.

§ 3500.6 Special information booklet at time of loan application.

(a) *Lender to provide information booklet.* The lender shall provide a copy of the special information booklet to a person from whom the lender receives or for whom it prepares a written application on an application form or forms normally used by the lender for a federally-related mortgage loan, unless the application is for a refinancing of the borrower's property. Where more than one person apply together for a loan, the lender is in compliance if the lender supplies a copy of the booklet to one of the individuals applying, but may supply additional booklets to other applicants or guarantors. The lender shall supply the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (see § 3500.2(a)(2)) after the application is received or prepared. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive this special information booklet at the earliest possible date.

(b) *Revision.* The Secretary may from time to time revise the special information booklet by publishing a notice in the **Federal Register.**

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes.* (1) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Secretary shall be made other than those specified in this paragraph (d) of this section or any others approved in writing by the Secretary. A request to the Secretary for approval of any changes shall be submitted in writing to the address indicated in § 3500.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

(3) The special information booklet may be translated into languages other than English.

§ 3500.7 Good faith estimate.

(a) *Lender to provide.* The lender shall provide the good faith estimate required under this section (a suggested format is set forth in appendix C of this part) to all applicants for a federally-related mortgage loan by delivering the good faith estimate or placing it in the mail to the loan applicant not later than three business days after the application is received or prepared. If a mortgage broker is the exclusive agent of the lender, either the lender or the mortgage broker shall provide the good faith estimate.

(b) *Mortgage broker to provide.* In the event an application is received by a mortgage broker who is not an exclusive agent of the lender, the mortgage broker must provide a good faith estimate within three days of receiving a loan application based on his or her knowledge of the range of costs (a suggested format is set forth in appendix C of this part).

(c) *Content of good faith estimate.* A good faith estimate consists of an estimate, as a dollar amount or range, of each charge which:

(1) Will be listed in Section L of the HUD–1 in accordance with the instructions set forth in appendix A to this part; and

(2) That the borrower will normally pay or incur at or before settlement based upon common practice in the locality of the mortgaged property. Each such estimate must be made in good

faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement, and must be based upon experience in the locality of the mortgaged property. As to each charge with respect to which the lender requires a particular settlement service provider to be used, the lender shall make its estimate based upon the lender's knowledge of the amounts charged by such provider.

(d) *Form of good faith estimate.* A suggested good faith estimate form is set forth in appendix C to this part and is in compliance with the requirements of the Act except for any additional requirements of paragraph (e) of this section. The good faith estimate may be provided together with disclosures required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, so long as all required material for the good faith estimate is grouped together. The lender may include additional relevant information, such as the name/signature of the applicant and loan officer, date, and information identifying the loan application and property, as long as the form remains clear and concise and the additional information is not more prominent than the required material.

(e) *Particular providers required by lender.* If the lender requires the use of a particular provider of a settlement service and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must clearly state that use of the particular provider is required and that the estimate is based on charges of the designated provider, give the name, address and telephone number of each such provider, and describe the nature of any relationship between each such provider and the lender. For purposes of the preceding sentence, a "relationship" exists:

(1) If the provider is an associate of the lender, or;

(2) If within the last 12 months the provider has maintained an account with the lender or had an outstanding loan or credit arrangement with the lender; or

(3) If the lender has repeatedly used or required borrowers to use the services of the provider within the last 12 months.

Section 3500.2(a)(11) defines "required use" of a provider of settlement services.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.8 Use of HUD-1 settlement statement.

(a) *Use by settlement agent.* The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally-related mortgage loan.

(b) *Charges to be stated.* The settlement agent shall complete the HUD-1 in accordance with the instructions set forth in appendix A to this part.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.9 Reproduction of HUD-1 settlement statement.

(a) *Permissible changes.* The HUD-1 settlement statement may be reproduced with the following permissible changes and insertions:

(1) The person reproducing the HUD-1 may insert in Section A its business name and/or logotype and may rearrange, but not delete, the other information which appears in Section A.

(2) The name, address and other information regarding the lender and settlement agent may be printed in Sections F and H, respectively.

(3) Reproduction of the HUD-1 must conform to the terminology, sequence and numbering of line items as presented in lines 100-1400. However, blank lines or items listed in lines 100-1400 which are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be correspondingly shortened. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

(4) Charges not listed on the HUD-1 but which are customary locally or pursuant to the lender's practice may be inserted in blank spaces; or where existing blank spaces on the HUD-1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD-1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print, vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of Sections B through I where necessary to accommodate computer printing; and manner of placement on the HUD-1 of the HUD number but not the OMB approval number, neither of which in any case may be deleted from the HUD-1. Any changes in the HUD number or OMB approval number may be announced by notice in the **Federal Register** rather than by amendment of this rule. The designation of the expiration date of the OMB number may be deleted.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements, for example, breakdown of payoff figures; a breakdown of the borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between buyer and seller; and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(10) As required by HUD/FHA in FHA loans.

(11) As allowed by Section 17 of this Part relating to an initial escrow account statement.

(b) *Written approval.* Any other deviation in the HUD-1 form is only permissible upon receipt of written approval of the Secretary. A request to the Secretary for approval shall be submitted in writing to the address indicated in § 3500.3, stating the reasons why the applicant believes such deviation is needed. The prescribed form must be used until such approval is received.

(Approved by the Office of Management and Budget under control number 2502-0265)

§ 3500.10 One day advance inspection of HUD-1 settlement statement; delivery; recordkeeping.

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD-1 settlement statement, completed to set forth those items which are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transactions may be omitted.

(b) *Delivery.* The settlement agent shall provide a completed HUD-1 to the borrower, the seller and the lender (if the lender is not the settlement agent), and/or their agents. Where borrower's and seller's copies differ as permitted by

the instructions in appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD–1 no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 shall be mailed or delivered to the borrower, seller and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* Where the borrower or the borrower's agent does not attend the settlement or where the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD–1 and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 for the remainder of the five-year period. The Secretary shall have the right to inspect or require copies of records covered by this paragraph (e) of this section.

(Approved by the Office of Management and Budget under control number 2502–0265.)

§ 3500.11 Mailing.

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

§ 3500.12 No fee.

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally-related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(1)) for or on account of the preparation and distribution of the HUD–1 settlement statement, escrow account statements, or statements required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

§ 3500.13 Relation to State laws.

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annual, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Secretary is authorized to determine if inconsistencies with State law exist; in doing so, the Secretary shall consult with appropriate Federal agencies.

(1) The Secretary may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Secretary determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Secretary to determine whether an inconsistency exists by submitting to the address indicated in § 3500.3, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Secretary that an inconsistency with State law exists will be made by publication of a notice in the **Federal Register.** "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(d) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 3500.21(h).

§ 3500.14 Prohibition against kickbacks and unearned fees.

(A) *Section 8 violation.* Any violation of this section is a violation of Section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under § 3500.19(b).

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a settlement service involving a federally-related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in paragraph of § 3500.14(g)(2). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally-related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this Part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value.* "Thing of value" is broadly defined by section 3(2) of RESPA (12 U.S.C. 2602(2)) to include any payment, advance, fund, loan, service, or other consideration. Under section 8 of RESPA (12 U.S.C. 2607), a thing of value can take many forms including, but not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments 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 of another person's expenses, or reduction in credit against an existing obligation. The term "payment" is used throughout § 3500.14 and § 3500.15 as synonymous with the giving or receiving any "thing of value" and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.*—(1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (as described in § 3500.2(a)(11) a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits a payment:

(i) To an attorney at law for services actually rendered; or

(ii) By a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance; or

(iii) By a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan; or

(iv) To any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed; or

(v) Pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers.

(2) Section 8 of RESPA does not prohibit:

(i) Normal promotional and educational activities that are not conditioned on the referral of business and that 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;

(ii) An employer's payment to its own employees for any referral activities; or

(iii) Any payment by a borrower for computer loan origination services, so long as the disclosure set forth in appendix E of this part is provided the borrower.

(3) The Department may investigate high prices to see if they are the result of a referral fee or a split of a 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 performed or provided. These facts may be used as evidence of a violation of Section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (*i.e.*, the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the #primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part.* Illustrations in appendix B of this part illustrate some of the provisions of this section.

§ 3500.15 Controlled business arrangements.

(a) *General.* A controlled business arrangement is an arrangement in which:

(1) A person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, 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

(2) Such person directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

(b) *Violation and exemption.* A controlled business arrangement is not a violation of section 8 of RESPA and of § 3500.14 if the conditions set forth in this section are satisfied.

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as Section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper 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:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied as part of and at the time that the good faith estimate or a statement under § 3500.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client. Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in § 3500.2(a)(11) any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except of such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in § 3500.14(g) is a return on an ownership interest or franchise relationship.

(i) In a controlled business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliated relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in a affiliated relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labelling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number of amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

(1) *Associate* means with respect to a particular person:

(i) A spouse, parent or child of such person;

(ii) A corporation or other business entity that controls, is controlled by, or is under common control with such person;

(iii) An employer, officer, director, partner, franchisor or franchisee of such person; or

(iv) Anyone who has an agreement or understanding with such person, the purpose or substantial effect of which is to enable such person to benefit financially from the referral of business incident to or part of a settlement service.

(2) *Affiliate relationship* means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

(3) *Beneficial ownership* means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

(4) *Control,* as used in the definitions of "associate" and "affiliate relationship," means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

(5) *Direct ownership* means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

(6) *Franchise,* means any continuing commercial relationship created by any arrangement or arrangements whereby:

(i) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(A) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

(B) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(*1*) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs; or

(*2*) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs; Provided, however, that assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance; or

(ii) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(A) Supplied by another person (hereinafter "franchisor"); or

(B) Supplied by a third person (*e.g.*, a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(C) Supplied by a third person (*e.g.*, a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(*1*) The franchisor:

(*i*) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(*ii*) Secures for the franchisee locations or sites for vending machines,

rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(*iii*) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (c)(6)(i)(B)(*1*) and (*2*) of this section; and

(*2*) Reserved.

(iii) The franchisee is required, as a condition of obtaining or commencing the franchise operation, to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

(iv) *Exemptions.* The provisions of this part shall not apply to a franchise:

(A) Which is a "fractional franchise" (which means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the franchisee); or

(B) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly required to do business with by the retailer-grantor or advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(C) Where the total of the payments referred to in paragraph (c)(6)(i)(B) of this section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than $500; or

(D) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

(v) *Exclusions.* The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

(A) The relationship between an employer and an employee, or among general business partners; or

(B) Membership in a bona fide "cooperative association"; or

(C) An agreement for the use of a trademark, service mark, trade name, seal, advertising or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services; or

(D) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(vi) Any relationship which is represented either orally or in writing to be a franchise (as defined in paragraph (c)(6)(i) of this section) is subject to the requirements of this part.

(Paragraph (c)(6) of this section is consistent with the definition contained in 16 CFR 436.2)

(7) *Franchisor* means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (c)(6) of this section.

(8) *Franchisee* means any person:

(i) Who participates in a franchise relationship as a franchisee, as denoted in paragraph (c)(6) of this section; or

(ii) To whom an interest in a franchise is sold.

(9) *Person who is in a position to refer settlement service business* means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years after the date of execution.

(e) *Appendix B of this part.* Illustrations in appendix B of this part illustrate some of the requirements of this section.

§ 3500.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require, directly or indirectly, as a condition of selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. Section 3500.2(a)(11) defines "required" use of a provider of a settlement service. Section 3500.19(c) explains the liability of a seller for a violation of this section.

§ 3500.17 Escrow accounts. [Reserved]

§ 3500.18 Validity of contracts and liens.

Nothing in RESPA or this part shall affect the validity or enforcement of any sale or contract for the sale of real property or any loan, loan agreement, mortgage or lien made or arising in connection with a federally related mortgage loan.

§ 3500.19 Enforcement

(a) *Manner of enforcement.* RESPA contains specific penalty provisions for enforcing section 8 and section 9 of RESPA (12 U.S.C. 2607 and 2608) which correspond to §3500.14, 3500.15 and 3500.16. Specific provisions for enforcing the escrow account statement provisions (12 U.S.C. 2609(c) and (d)) are reserved. Enforcement provisions for section 8 and 9 are set forth in this section. It is the policy of the Secretary to cooperate regarding RESPA enforcement matters with Federal, State or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by the Secretary under part 24 of this title concerning debarment, suspension, ineligibility of contractors and grantees, or under part 25 of this title concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement which may be legally available.

(b) *Violations of Section 8 of RESPA (12 U.S.C. 2607), § 3500.14, or § 3500.15 of this part.*—(1) Any person or persons who violate Section 8 of RESPA (12 U.S.C. 2607), § 3500.14 or § 3500.15 shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

(2) Any person or persons who violate any of the provisions identified in paragraph (b)(1) of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service. For purposes of computing the charge paid for a mortgage loan, the loan origination fee and loan discount are included, but the principal and interest are not included.

(3) The Secretary or, to the extent authorized by State Law, the Attorney General of any State or the insurance commissioner of any State, may bring an action to enjoin violations of the provisions identified in paragraph (b)(1) of this section.

(4) In any private action brought pursuant to paragraph (b) of this section, a court may award to the prevailing

party the court costs of the action together with reasonable attorney's fees.

(c) *Violations of Section 9 of RESPA (12 U.S.C. 2608) or § 3500.16.* Any seller who violates the provisions of section 9 of RESPA or § 3500.16 is liable to the buyer in an amount equal to three times all charges made for the title insurance.

(d) *Jurisdiction of courts.* Any action pursuant to the provisions of the above-cited sections may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

§ 3500.20 Investigations; subpoena authority.

(a) *Authority of Secretary.* (1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of RESPA, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized by section 19(c) of RESPA (12 U.S.C. 2617(c)(1)) to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Under section 19(c) of RESPA (12 U.S.C. 2617(c)(2)) any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Secretary issued pursuant to Section 19(c), issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof. For purposes of determining the jurisdiction of a court over a subpoena enforcement action, HUD's headquarters in Washington, D.C. is the location in which HUD enforcement staff carries on inquiries under the Act.

(b) *Subpoenas in investigations* (1) The Secretary may issue subpoenas relating to any matter under investigation for any or all of the following purposes:

(i) Requiring testimony to be taken by interrogatories.

(ii) Requiring the attendance and testimony of witnesses at a specific time and place.

(iii) Requiring access to, examination of, and the right to copy documents, books, records, and papers.

(iv) Requiring the production of documents, books, records, and papers at a specified time and place.

(2) A subpoenaed person may petition the Secretary or his designee to modify or withdraw a subpoena by filing the petition within 10 days after service of the subpoena. The petition may be in letter form but must set forth the facts and the laws upon which the petition is based.

(c) *Investigational proceedings.* (1) For the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation, investigational proceedings may be conducted in the course of any investigation including rulemaking proceedings.

(2) Investigational proceedings shall be presided over by the Secretary or his designee and may be stenographically or mechanically reported. A transcript may be a part of the record of investigation.

(3) Unless the Secretary determines otherwise, investigational proceedings shall be public.

(d) *Rights of witnesses in investigations.*—(1) Any person compelled to testify or to submit data in connection with any public investigational proceedings shall be entitled to retain a copy or, on payment of lawfully prescribed costs, procure copies of any data submitted and testimony as stenographically or mechanically reported, except that in a nonpublic proceeding, the witness may for good cause be limited to inspection of the official transcript of the testimony.

(2) Any witness compelled to appear in person in an investigational proceeding may be accompanied, represented, and advised by counsel as follows:

(i) A witness may be advised by counsel, in confidence, upon the initiative of either the counsel or of the witness, with respect to any question asked of the witness; if the witness is advised to refuse to answer a question, counsel may briefly state on the record that the witness has been advised not to answer the question and the legal grounds for the refusal.

(ii) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or it is claimed that the witness is privileged to refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement may state briefly and precisely the grounds therefore.

(iii) Objections made under the rules in this subpart will be continuing objections throughout the course of the proceeding, and repetitious or cumulative statements of an objection or of the grounds therefore are unnecessary and impermissible.

(iv) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (d)(2)(i) and (ii) of this section, interrupt the examination of the witness by making any objections or statements on the record. Petitions challenging the authority of the Secretary to conduct the investigation or the sufficiency or the legality of the subpoena must have been presented to the Secretary pursuant to § 3500.21(b)(2). Copies of such petitions may be filed with the presiding official at the proceeding as part of the investigation record, but no argument in support thereof shall be allowed.

(v) Upon completion of the examination of a witness, counsel for the witness may request that the presiding official permit the witness to clarify on the record any answers in order that specified points of ambiguity, equivocation, or incompleteness may be corrected. The granting or denial of such request in whole or in part shall be within the sole discretion of the presiding official.

(vi) The presiding official shall take all necessary action to regulate the course of the proceeding to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist or contumacious conduct or contemptuous language.

§ 3500.21 Mortgage servicing transfers. [Reserved]

Appendix A to Part 3500—Instructions for Completing HUD–1 Settlement Statement

The following are instructions for completing Sections A through L of the HUD–1 settlement statement, required under Section 4 of RESPA and Regulation X of the Department of Housing and Urban Development (24 CFR part 3500). This form is to be used as a statement of actual charges and adjustments to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of Regulation X for specific definitions of many

of the terms which are used in these instructions.

General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to Regulation X regarding rules applicable to reproduction of the HUD–1. An additional page(s) may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in settlements, for example, a breakdown of payoff figures; a breakdown of the Borrower's total monthly mortgage payments; check disbursements; a statement indicating receipt of funds; applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the Lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a non-settlement agent (*i.e.*, attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower's deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD–1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided for additional insertions in Sections J and K. The names of the recipients of the settlement charges in Section L and the names of the recipients of adjustments described in Section J or K should be included on the blank lines.

Lines and columns in Section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in Section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

Line Item Instructions

Instructions for completing the individual items on the HUD–1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is requiif needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be given. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, and zip code of settlement agent; address and zip code of "place of settlement."

Section I. Date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the gross sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the gross sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender or first user loan (a loan to finance construction of a new structure or purchase of manufactured home where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user). For other loans covered by Regulation X which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Examples include cases in which the Seller has taken a trade-in or other property from the Borrower in part payment for the property being sold. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for carpets or drapes which the Borrower is to purchase separately. Lines 204–209 can also be used to indicate any Seller financing arrangements or other new loan not listed in Line 202. For example, if the Seller takes a note from the Borrower for part of the sales price, insert the principal amount of the note with a brief explanation on Lines 204–209.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 may indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction) or cash payable to the Borrower at settlement (if, for example, the Borrower's deposit against the sales price (earnest money) exceeded the Borrower's cash obligations in the transaction). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds the deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party, and if that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in Section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit which is being disbursed as proceeds and enter in column for Line 506 the amount retained by the above described party for settlement services. If the settlement agent holds the deposit insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other payoffs of Seller obligations should be shown on Lines 506–509 (but not on Lines 1303–1305). They may also be used to indicate funds to be held by the settlement agent for the payment of water, fuel, or other utility bills which cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter total in Line 420 on Line 610. Enter total in Line 520 on Line 602.

Line 603 may indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction) or cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

Section L. Settlement Charges.

For all items except for those paid to and retained by the Lender, the name of the person or firm ultimately receiving the payment should be shown.

Line 700 is used to enter the sales commission charged by the sales agent or broker. If the sales commission is based on a percentage of the price, enter the sales price, the percentage, and the dollar amount of the total commission paid by the Seller.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record the fee charged by the Lender for processing or originating the loan. If this fee is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 802 is used to record the loan discount or "points" charged by the Lender, and, if it is computed as a percentage of the loan amount, enter the percentage in the blank indicated.

Line 803 is used for appraisal fees if there is a separate charge for the appraisal. Appraisal fees for HUD and VA loans are also included on Line 803.

Line 804 is used for the cost of the credit report if there is a charge separate from the origination fee.

Line 805 is used only for inspections by the Lender or the Lender's agents. Charges for other pest or structural inspections required to be stated by these instructions should be entered in Lines 1301–1305.

Line 806 should be used for an application fee required by a private mortgage insurance company.

Line 807 is provided for convenience in using the form for loan assumption transactions.

Lines 808–811 are used to list additional items payable in connection with the loan including a CLO Access fee, a mortgage broker fee, fees for real estate property taxes or other real property charges.

Lines 901–905. This series is used to record the items which the Lender requires (but which are not necessarily paid to the lender, *i.e.*, FHA mortgage insurance premium) to be paid at the time of settlement, other than reserves collected by the Lender and recorded in 1000 series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for all mortgage insurance premiums due and payable at settlement. A lump sum mortgage insurance premium paid at settlement should be inserted on Line 902 with a note which indicates the premium is for the life of the loan and represents the total amount of insurance.

Line 903 is used for hazard insurance premiums which the Lender requires to be paid at the time of settlement except reserves collected by the Lender and recorded in the 1000 series.

Lines 904 and 905 are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000 series) including flood insurance, mortgage life insurance, credit life insurance and disability insurance premiums. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1008. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an "escrow", "impound", or "trust" account. In addition to the items listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc.

Lines 1100–1113. This series covers title charges and charges by attorneys. The title charges include a variety of services performed by title companies or others and includes fees directly related to the transfer of title (title examination, title search, document preparation) and fees for title insurance. The legal charges include fees for Lender's, Seller's or Buyer's attorney, or the attorney preparing title work. The series also includes any fees for settlement or closing agents and notaries. In many jurisdictions the same person (for example, an attorney or a title insurance company) performs several of the services listed in this series and makes a single overall charge for such services. In such cases, enter the overall fee on Line 1107 (for attorneys), or Line 1108 (for title companies), and enter on that line the item numbers of the services listed which are covered in the overall fee. If this is done, no individual amounts need be entered into the borrower's and seller's columns for the individual items which are covered by the overall fee. In transactions involving more than one attorney, one attorney's fees should appear on Line 1107 and the other attorney's fees should be on Line 1111, 1112 or 1113. If an attorney is representing a buyer, seller, or lender and is also acting as a title agent, indicate on line 1107 which services are covered by the attorney fee and on line 1113 which services are covered by the insurance commission.

Line 1101 is used for the settlement agent's fee.

Lines 1102 and 1103 are used for the fees for the abstract or title search and title examination. In some jurisdictions the same person both searches the title (that is, performs the necessary research in the records) and examines title (that is, makes a determination as to what matters affect title, and provides a title report or opinion). If such a person charges only one fee for both services, it should be entered on Line 1103 unless the person performing these tasks is an attorney or a title company in which case the fees should be entered as described in the general directions for Lines 1100–1113. If separate persons perform these tasks, or if separate charges are made for searching and examination, they should be listed separately.

Line 1104 is used for the title insurance binder which is also known as a commitment to insure.

Line 1105 is used for charges for preparation of deeds, mortgages, notes, etc. If more than one person receives a fee for such work in the same transaction, show the total paid in the appropriate column and the individual charges on the line following the word "to."

Line 1106 is used for the fee charged by a notary public for authenticating the execution of settlement documents.

Line 1107 is used to disclose the attorney's fees for the transaction. The instructions are discussed in the general directions for Lines 1100–1113. This line should include any charges by an attorney to represent a buyer, seller or lender in the real estate transaction.

Lines 1108–1110 are used for information regarding title insurance. Enter the total charge for title insurance (except for the cost of the title binder) on Line 1108. Enter on Lines 1109 and 1110 the individual charges for the Lender's and owner's policies. Note that these charges are not carried over into the Borrower's and Seller's columns, since to do so would result in a duplication of the amount in Line 1108. If a combination Lender's/owner's policy is purchased, show this amount as an additional entry on Lines 1109 and 1110.

Lines 1111–1113 are for the entry of other title charges not already itemized. Examples in some jurisdictions would include a fee to a private tax service, a fee to a county tax collector for a tax certificate, or a fee to a public title registrar for a certificate of title in a Torrens Act transaction. Line 1113 should be used to disclose services that are covered by the commission of an attorney acting as a title agent when Line 1107 is already being used to disclose the fees and services of the attorney in representing the buyer, seller, or lender in the real estate transaction.

Lines 1201–1205 are used for government recording and transfer charges. Recording and transfer charges should be itemized. Additional recording or transfer charges should be listed on Lines 1204 and 1205.

Lines 1301 and 1302 are used for fees for survey, pest inspection, radon inspection, lead-based paint inspection, or other similar inspections.

Lines 1303–1305 are used for any other settlement charges not referable to the categories listed above on the HUD–1, which are required to be stated by these instructions. Examples may include structural inspections or pre-sale inspection of heating, plumbing, or electrical equipment. These inspection charges may include a fee for insurance or warranty coverage.

Line 1400 is for the total settlement charges paid from Borrower's funds and Seller's funds. These totals are also entered on Lines 103 and 502, respectively, in Sections J and K.

(Approved by the Office of Management and Budget under control number 2502–0265.)

Appendix B to Part 3500—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, HUD 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 a controlled business arrangement. The payments 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 controlled 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 controlled business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 8, 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 CBA 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 a controlled 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 a controlled business arrangement. However, the controlled business arrangement exemption does not provide exemption between a controlled 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 (i.e., 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/of the package of services that is available, the customers are provided with a controlled 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 controlled 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 Section 3500.14(g)(2). 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.

BILLING CODE 4210-27-M

APPENDIX C TO PART 3500 -

SAMPLE FORM OF GOOD FAITH ESTIMATE

[NAME OF LENDER][1]

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed.

The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 settlement statement which you will be receiving at settlement. The HUD-1 settlement statement will show you the actual cost for items paid at settlement.

ITEM [2]	HUD-1	Amount or Range
Loan Origination Fee	801	$_____
Loan Discount Fee	802	$_____
Appraisal Fee	803	$_____
Credit Report	805	$_____
Inspection Fee	805	$_____
Mortgage Broker Fee	[Use blank line in 800 Section]	$_____
CLO Access Fee	"	$_____
Tax Related Service Fee	"	$_____
Interest for [X] days at $_____ per day	901	$_____
Mortgage Insurance Premium	902	$_____
Hazard Insurance Premiums	1001	$_____
Tax and Assessment Reserves		$_____
Settlement Fee	1101	$_____
Abstract or Title Search	1102	$_____
Title Examination	1103	$_____
Document Preparation Fee	1105	$_____
Attorney's Fee	1107	$_____

Title Insurance	1108	$_____
Recording Fees	1201	$_____
City/County Tax Stamps	1202	$_____
State Tax	1203	$_____
Survey	1301	$_____
Pest Inspection	1302	$_____
[Other fees - list here]	____	$_____

_____ _____
Applicant Authorized Official

_____
Date

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender.

FOOTNOTES

1/ The name of the lender shall be placed at the top of the form. Additional information identifying the loan application and property may appear at the bottom of the form or on a separate page. Exception: If the disclosure is being made by a mortgage broker who is not an exclusive agent of the lender, the lender's name will not appear at the top of the form, but the following legend must appear:

> This Good Faith Estimate is being provided by _____, a mortgage broker, and no lender has yet been obtained. A lender will provide you with an additional Good Faith Estimate within three Business Days of the receipt of your loan application.

2/ Items for which there is estimated to be no charge to the borrower are not required to be listed. Any additional items for which there is estimated to be a charge to the borrower shall be listed if required on the HUD-1.

APPENDIX D TO PART 3500 -

CONTROLLED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT FORMAT

Notice

To: Buyer or Seller _____

_____

Property: _____

From: [Entity Making Statement] _____

Date: _____

This is to give you notice that [referring party] has a business relationship with [provider]. [Describe the nature of the relationship between the referring party and the provider, including ownership and financial interests.]

Set forth below is the estimated charge or range of charges by [provider] for the following settlement services:

_____: $_____

_____: $_____

_____: $_____

You are not required to use [provider] as a condition for [settlement of your loan on] [or] [purchase or sale of] the subject property. You may be able to get these services at a lower rate by shopping with other settlement service providers.

A lender is allowed to require the use of an attorney, credit reporting agency or real estate appraiser chosen to represent the lender's interest.

APPENDIX E TO PART 3500 -

CLO FEE DISCLOSURE

Instructions: Whenever it is anticipated that a fee will be paid by the borrower for CLO access and related services, a disclosure form must be fully completed and delivered to the borrower itemizing the services provided and the specified fee to be charged as well as the other information set forth below. The form must provide a place for the purchaser to acknowledge its receipt. The disclosure format set forth below is satisfactory to the Secretary.

CLO FEE DISCLOSURE

To: [Potential Borrower] From: [Person Making Disclosure]

NOTICE: I am proposing to charge you a fee in the amount of $_____ for the following services:

[ ] Displaying a variety of mortgage loans and rates which may be available to you.

[ ] Counseling you regarding the different types of loans available and the relative rates in a fair and equitable manner.

[ ] Relating your personal housing needs with available loan programs; and assisting you in deciding which, if any, loan meets your needs.

[ ] Entering information regarding you into the Computer Loan Origination System (CLO).

[ ] Other_____

_____

THIS IS TO INFORM YOU THAT YOU ARE PAYING THIS FEE DIRECTLY TO [Person or Company Making Disclosure].

YOU ARE ADVISED THAT YOU MAY AVOID THIS FEE ENTIRELY IF YOU APPROACH A LENDER OR MORTGAGE BROKER DIRECTLY. ADDITIONALLY, LOWER MORTGAGE RATES OR OTHER LOWER FEES MAY BE AVAILABLE FROM OTHER MORTGAGE LENDERS WHO ARE NOT LISTED ON THIS COMPUTER SYSTEM.

I hereby pay [commit to pay] a CLO Fee in the amount of $_____.

Borrower

Received by:_____

BILLING CODE 4210-27-C

(Approved by the Office of Management and Budget under control number 2502-0265.)

Dated: October 26, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-26547 Filed 10-30-92; 8:45 am]

BILLING CODE 4210-27-M