

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-94-1653; FR-3382-F-01]

RIN 2502-AG13

## Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (Subordinate Liens)

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

ACTION: Final rule.

**SUMMARY:** The Department of Housing and Urban Development is implementing the amendments to the Real Estate Settlement Procedures Act of 1974 (RESPA) contained in sections 908 and 951 of the Housing and Community Development Act of 1992, by amending HUD's RESPA regulation at 24 CFR part 3500, Regulation X. That Act expanded the coverage of RESPA to include refinancing transactions and mortgages secured by subordinate liens. This rule adopts certain definitions and disclosure requirements of the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, to minimize the burden on lenders and others in complying with different or conflicting definitions and disclosure requirements for transactions also covered by the TILA.

**DATES:** Effective date: August 9, 1994, except that exemptions set forth in § 3500.5(b) are effective March 14, 1994.

**FOR FURTHER INFORMATION CONTACT:** David Williamson, Director, RESPA Enforcement, room 5241, (202) 708-4560 or, for legal questions, Grant E. Mitchell, Senior Attorney for RESPA, Office of General Counsel, room 10252 (202) 708-1550, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The TDD number is (202) 708-4594. (These are not toll-free numbers.)

### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0491.

### I. Background

The Department of Housing and Urban Development published on May 13, 1993, a proposed rule to amend Regulation X, HUD's Real Estate Settlement Procedures Act (RESPA) regulation (58 FR 28477). HUD initiated rulemaking primarily because of section 908 of the Housing and Community Development Act of 1992 (the 1992 Act), which amended RESPA to extend coverage to refinancing and subordinate lien transactions. Section 951 of the Act amended RESPA to provide that certain information need not be disclosed to a potential borrower if the loan application was turned down within three business days. This provision is also included in the rule. The Department also proposed certain exemptions from RESPA coverage and certain technical changes to the November 2, 1992, RESPA rule. HUD requested comments on this rule, and 540 comments were received within the July 12, 1993, deadline.

### II. Discussion of the Comments Received

#### Exemptions

In the May 13, 1993, proposed rule, HUD proposed several exemptions from RESPA coverage, not only for subordinate lien transactions, but for first lien transactions covered by the November 2, 1992, rule. The following is a discussion of the exemptions proposed, the comments received, and HUD's treatment of these exemptions in this final rule.

#### 1. Reinstitution of the Exemption in the Previous Regulation X for Farms of 25 or More Acres

One hundred thirty-four commenters supported the exemption as HUD proposed it. Three commenters suggested reverting to the pre-1992 language, while three others wanted the 25-acre threshold lowered or removed. One proposed rewording the exemption. Two Federal regulatory agencies and several others suggested that the business purpose Regulation Z standard be adopted for all transactions under 25 acres. After review of various alternatives, the Department determined that it would adopt the 25-acre exemption for all properties, whether the property was vacant, the property was used for agricultural purposes, or a 1- to 4-family residential real property was involved. This provides an absolute exemption for property consisting of 25 or more acres in a single transaction. The Department is also adopting the Regulation Z business purpose test, which will apply, among other

purposes, to agricultural purpose loans under 25 acres.

#### 2. Refinancing Transactions

The Department proposed an exemption to the general coverage of refinancing transactions under RESPA for "any transaction whose purpose is to change the interest rate, term, or periodic payment amount of an existing federally related mortgage loan, including extension of the terms of a balloon note, so long as the transaction involves no charge, or nominal charges (less than ¼ of 1% of the outstanding loan amount) and does not involve a transfer of title."

Ninety-one commenters favored this exemption; one opposed it. Forty-five of these commenters addressed the ¼ of 1% limitation. They suggested various modifications, including increases in the percentage threshold for exemption from ½ of 1% to 3%, fixed dollar thresholds, and a total elimination of the cap. Eight commenters noted the absence of a definition of a "refinancing" in the rule and suggested that the Regulation Z definition be adopted. Under Regulation Z, a refinancing occurs when "an existing obligation \* \* \* is satisfied and replaced by a new obligation undertaken by the same consumer." (12 CFR 226.20(a).) Two commenters wanted refinancings to be totally exempt, while one felt they should be exempt if no new funds were involved.

Upon review of all the comments, the Department concluded that its proposed exemption would be an ineffective modality for differentiating between classes of transactions. It was determined that a more straightforward exemption should be utilized that incorporates and expands upon the Regulation Z standards. Like Regulation Z, the final rule provides that a refinancing is a covered transaction if a new obligation is created to satisfy an existing obligation with the same lender. Regulation X, however, also includes transactions with a new lender to replace an existing obligation when no transfer of title is involved.

A new loan for an increased amount with the same lender is also a covered transaction. For any covered transaction, the borrower would receive RESPA disclosures (including the Good Faith Estimate, but not currently a HUD Settlement Booklet), and the HUD-1 or new HUD-1A would be used.<sup>1</sup> If the

<sup>1</sup> While section 5 of RESPA authorizes the Booklet and Good Faith Estimate only in purchase money transactions, the Secretary has exercised his authority under section 19(a) of RESPA (12 U.S.C. 2617(a)) to extend the requirement for a good faith estimate to all covered transactions.

transaction only involves a modification of an existing obligation with the same borrower (except for converting a fixed-term obligation to a variable rate obligation, see § 226.19(b), Regulation Z), the transaction is not covered and no additional good faith estimate or HUD settlement statement is needed. If the terms of the original mortgage loan provide for conversion of the loan to a different rate or term at the borrower's option with the same lender, this is not a refinancing transaction (unless a new note is written), even if an additional fee is required for conversion.

### 3. Exemptions for Home Equity Line of Credit (Open-End Credit Plan) Transactions in Accordance With TILA (Regulation Z)

Two hundred fifty-eight commenters made comments regarding the relationship of Regulation Z and RESPA requirements. Most commenters maintained that the proposed RESPA disclosures under Regulation X would be duplicative of TILA's Regulation Z disclosures. One commenter opposed the use of Regulation Z as a standard for Regulation X exemptions. Many commenters advocated adoption of Regulation Z treatment for home equity lines of credit, citing extensive disclosure materials already issued under Regulation Z. The Federal Reserve Board materials were revised within recent years at Congress' direction. Since these disclosure materials were extensive and there had been recent thorough congressional oversight and action (Home Equity Loan Consumer Protection Act of 1988, 15 U.S.C. 1647, Pub. L. 100-709), commenters urged the appropriateness of deferral to the Regulation Z structure.

This final rule defers to the Regulation Z requirements for home equity lines of credit (open-end credit plans) for purposes of disclosure only; lenders must follow the requirements under Regulation Z for home equity lines of credit.

### 4. Exemption for Loans on Vacant Land or Unimproved Property, Unless It Will Be Improved by a Residential Structure Purchased Using the Loan Proceeds Within Two Years From the Date of the Loan

This exemption in the proposed rule was favored by 90 commenters, opposed by 1. Six commenters spoke to the difficulty of lenders monitoring the two-year period. One commenter urged that all vacant lots including post-construction activities be exempt.

In this final rule, HUD adopts the proposed exemption. Lenders must assure themselves that the purpose of

the loan on vacant or unimproved property is not to add or construct a 1- to 4-family residential structure out of loan proceeds on the property within two years from settlement of the loan. However, HUD has also included an absolute 25-acre exemption for any real property. (See discussion regarding the farm loan exemption in item 1, above.)

### 5. Temporary Financing Such as a Construction Loan

Temporary financing is exempt from coverage under RESPA. The exemption does not apply to a loan for construction or rehabilitation of a 1- to 4-family structure that is used or may be converted to permanent financing by the same lender. If a lender has issued a commitment to provide permanent funding, with or without conditions, the transaction is not exempt from RESPA. Any construction loan for a new or rehabilitated 1- to 4-family residential structure, other than a loan to a bona fide builder (a person who regularly engages in the construction of residential properties for sale or lease), is a RESPA-covered loan if its term is for two or more years. This clarifying exemption was supported by 70 commenters; one opposed it. Five commenters were uncertain about the application of the exemption to bridge or swing loans. Commenters sought several clarifications including: (i) The conversion to permanent loans provision; (ii) the coverage of convertible/refinancable construction loans; and (iii) the definition of the term "bona fide builder". Two commenters advocated substituting the Regulation Z disclosures.

The final rule clarifies that so-called "bridge" or "swing" loans, which are short-term loans to facilitate a person who is selling a property and buying another to cover interim obligations, are not covered RESPA transactions. The rule also makes minor clarifying language changes in response to comments received.

### 6. Secondary Market Transactions

A bona fide transfer of a loan obligation in the secondary market is not covered by Section 8 of RESPA. The proposed rule included a provision that stated that the assignment and transfer of "dealer loans" was not a secondary market transaction, which would remove such loans from RESPA's coverage. The Department did not seek comments regarding other portions of the secondary market exception. Nonetheless, 15 commenters maintained that "table funding" should be considered a secondary market transaction. Other commenters sought

clarification concerning: (i) The "real source of funding"; and (ii) the scope of the exemption. Five comments were received on the proposed language regarding dealer loans, including one from a trade association, which argued that such loans were not federally related mortgage loans within the purview of RESPA.

In the final rule, a dealer loan or dealer consumer credit contract originated with the intent of subsequent assignment of the dealer's interest is defined as a "federally related mortgage loan." (See definition in § 3500.2 of "federally related mortgage loan".) The dealer advances credit to the borrower based upon the lender's prior agreement to fund the loan upon completion or delivery of goods and services, with the net proceeds to be paid to the dealer. The lender to whom the advance of credit is initially assigned is defined as a lender for purposes of this rule. The initial assignment of a dealer loan is not exempt from RESPA as a secondary market transaction, and the funding lender is responsible for: (i) Assuring that the necessary disclosures, such as the good faith estimate, are made in a timely manner, by either the funding lender or the dealer; and (ii) the use of the HUD-1 or HUD 1-A settlement statements.

A "dealer loan" or "dealer consumer credit contract" describes, generally, any arrangement in which a dealer assists a borrower in obtaining a loan from the funding lender, the dealer's interests are assigned to the funding lender, and the dealer receives the net proceeds of the loan. A loan or advance by a dealer in which the dealer does not assign its interest and receives the loan payments directly would not be a covered RESPA transaction, unless the dealer qualifies as a creditor as defined under the definition of a "federally related mortgage loan".

The Department was guided in these determinations by the Committee Report language regarding the amendments in the 1992 Act. The report stated in relevant part:

The Committee included second mortgages within RESPA because of the unfortunate potential for fraud and abuse among the elderly and inner-city homeowners. The Committee heard disturbing testimony at a May, 1991, hearing in Boston that indicated some secondary [sic] mortgage lenders, home-repair specialists and banks had allegedly taken advantage of elderly and minority homeowners \* \* \*. The Committee believes that some homeowners might have been spared foreclosure and bankruptcy if comprehensive RESPA disclosures had been required during the negotiation process and if the anti-kickback provisions had been in place. (Report 102-760, of the Committee on

Banking, Finance and Urban Affairs, House of Representatives to accompany H.R. 5334, July 30, 1992.)

A new Illustration 13 of appendix B further discusses a dealer loan transaction.

The final rule also adds a definition of the term "table funding," and HUD restates its position that table-funding transactions are not secondary market transactions exempt from RESPA's coverage. If a mortgage broker funds a loan with its own money, or from a warehouse line for which the mortgage broker is liable, this is not a table-funding transaction, and the mortgage broker is a lender for purposes of this part. Section 3500.7(b) has been revised to provide that the mortgage broker's good faith estimate is sufficient and the funding lender is not required to provide additional disclosures. However, the funding lender is responsible for ascertaining that the good faith estimate has been delivered.

#### **7. Exemptions for Business Purpose Transactions Similar to TILA (Regulation Z)**

Two-hundred sixty-six comments were received regarding the possibility of making the business purpose test of Regulation Z applicable to RESPA. Commenters requested the following exemptions from Regulation X: (a) Loans to unnatural persons; (b) loans that are not for personal residences; (c) loans securing guarantees for general business purposes; and (d) loans that were indirect collateral, such as those taken out of an abundance of caution, as backup collateral.

The Department decided generally to adopt the "business purpose" exemptions and test of Regulation Z, but does not include in the business purpose exemption the placing of a first or subordinate lien on 1- to 4-family residential properties by individuals (natural persons). RESPA is oriented towards assuring that individual consumers are able to make meaningful choices in shopping for settlement services. The Department concluded that the disclosure and anti-kickback provisions of RESPA should apply to all individual consumer transactions.

Under this rule, loans regarding 1- to 4-family residential property made to corporations, associations, partnerships, and trusts (the other entities falling under the definition of "person" in section 3 of RESPA) are not covered. The Department was informed that certain loans are made where both an individual and a living trust, or a corporation, association, or partnership is named on the note and/or deed. As

long as any individual is named, the transaction is covered by RESPA.

#### **8. Assumptions**

Several commenters suggested that assumptions be exempt, while others recommended use of the Regulation Z test. The November 2, 1992, RESPA rule deleted the previous exemption of coverage for assumptions. HUD adopted the following test for coverage: Assumptions are covered if lender approval of the assumption is required by the mortgage instruments and is obtained, whether or not a fee is charged for the assumption. If lender approval is not required, the transaction is exempt from RESPA.

#### **9. Commenter Proposed Exemptions**

Commenters suggested several other exemptions from RESPA's coverage. Four commenters wished to exempt home improvement loans. Other exemptions suggested included: (a) All subordinate loans; (b) loans under \$10,000; (c) loans under \$30-50,000; (d) Small Business Administration guaranteed loans; (e) loans not involving a transfer of title and loans involving only modifications, balloons, or workouts; (f) cross-collateral "dragnet" loans; (g) loans with a term of two years or less; (h) "no fee" loans; (i) improved land loans; (j) transactions by mortgage bankers subject to state regulation limiting compensation; and (k) transactions by mortgage bankers or mortgage brokers subject to "pervasive" State regulation, such as in California. Some of the proposed exemptions are implicitly or explicitly covered by the Department's adoption of exemptions similar to the Regulation Z business purpose test. Otherwise, HUD has not added additional exemptions in this rule except those discussed elsewhere in this preamble.

#### **Statutory Changes**

##### **1. Special Information Booklet (§ 3500.6)**

A number of commenters took the position that because Congress had not provided for separate booklets containing information for borrowers other than those purchasing 1- to 4-family residential real property, none could be required. Eighty-six opposed a new booklet, and three supported it. Several commenters questioned whether each applicant must be presented with a copy of the booklet if the applicant is not present at the time of application. One commenter urged that the booklet be freely available in foreign languages. Forty-one commenters advocated exempting all but purchase money

transactions from a new booklet requirement. Five sought the merger of the booklet with the Regulation Z disclosure documents. Three commenters raised questions about the appropriateness of requiring a booklet if the loan is a home equity first lien. Three others advocated a combined booklet for refinancing and junior loans. Two sought a single new booklet for first and second liens.

The provisions in the existing RESPA rule have been continued in this final rule; that is, a HUD Special Information Booklet is only required to be given to persons purchasing a 1- to 4-family residential structure. HUD anticipates updating as soon as possible the HUD Special Information Booklet, which contains several outdated or inaccurate statements (e.g., it states that RESPA does not cover refinancings). This rule includes a provision giving HUD the discretion to issue other booklets on refinancings and other liens in the future, after appropriate review, which could include congressional review, and other publication requirements have been met.

##### **2. Good Faith Estimate (§ 3500.7)**

Seven commenters maintained that RESPA ties the requirement for a Good Faith Estimate (GFE) to the requirement that HUD be furnished the Booklet, so that furnishing the GFE is not required whenever furnishing a Booklet is not required, e.g., refinancings. A commenter suggested that the GFE be furnished only at the borrower's request so as to avoid needless paperwork. Another commenter suggested that the GFE should not be required if the total settlement cost does not exceed \$750. One commenter considered the second GFE backing up a mortgage broker's GFE as an unnecessary additive, and another suggested exempting brokered loans from the second GFE requirement for the same reason. One commenter maintained the GFE was not necessary for a home equity loan because of the Regulation Z disclosures.

Two commenters strongly opposed disclosure of the mortgage broker fee, maintaining that because it sometimes is included in the gross interest rate, the borrower would believe the fee was being paid twice; therefore, this double disclosure is misleading.

This final rule provides, using the Secretary's discretion under section 19 of RESPA, that a GFE is required for every covered transaction, except for the deferral to the Regulation Z's provisions for disclosure for home equity plans (open-end lines of credit).

## Miscellaneous Matters

This rule, as did the proposed rule, addresses several miscellaneous matters contained in the revised RESPA rule of November 2, 1992.

### 1. Required provider disclosures (§ 3500.7(e)(3))

With respect to this provision, which requires the listing of providers required by a lender, 17 commenters advocated that the regulations be abolished or relaxed. Twenty-three commenters maintained that these requirements interfere with the lender's performance of its obligations under the Community Reinvestment Act. Some suggested that lenders' attempts to develop relationships with low-income community institutions, including making contributions for mortgage loans generated (currently a prohibited practice under RESPA), would be adversely impacted. One commenter suggested an exemption for payments to charitable entities qualifying as such under section 501(c)(3) of the Internal Revenue Code.

While five commenters were in favor of the list of "five or more" providers as suggested in the proposed rule, nine were opposed to the concept. One advocated providing the list to the borrower only on request, to avoid needless paperwork. Four commenters suggested the threshold (of five providers) be lowered, because in certain areas it would be impractically high. Five suggested requiring less detailed information, such as permitting a range of costs. Two commenters maintained that the reality of settlement transactions dictated that, due to conflicts and the press of work, one never really knew who would be providing the service until the settlement.

Ten commenters asserted a conflict between the "required provider" rule and the non-RESPA (FIRREA) requirement to use approved appraisers. It was suggested that the use of appraisers not be deemed a "required use" under such circumstances. One of these commenters pointed out that the borrower had a right under the Equal Credit Opportunity Act, upon request and payment, to obtain the appraisal. Another commenter maintained that an even greater problem was presented by obtaining construction engineering inspectors, because of the limited number of inspectors deemed competent by bank staff that are available to perform construction inspections.

Ten commenters sought exemptions from the required provider provisions

for all non-purchase money loans, for all "No Fee" loans, and for all loans that close within 3 days of application. In this final rule, HUD adopts the proposed modification to the required provider disclosures, with the listing of five or more required providers. (See further discussion regarding controlled business disclosures in item 8, of this section.) Instructions for completing the Good Faith Estimate and HUD-1 or HUD-1A for "no point" or "no cost" loans are included in § 3500.7 and in the Appendix B instructions.

### 2. Definition of "Table Funding"

One commenter suggested that the table-funded loan provision, § 3500.5, be clarified. The commenter believed that "lender" is intended to refer to funder, and that a change to "wholesale lender" would better identify the real parties in interest. In this final rule, HUD clarifies the definition of lender and defines "table funding."

### 3. Three-day Denial of Credit Period

Several commenters suggested that the three-day denial-of-credit period in the proposed rule, which provided that if credit is denied the booklet and good faith estimate would not be required, is impractically short and should be closer to ten days to two weeks. Another commenter suggested that the three-day denial period be expanded to include a withdrawal of an application by a borrower within three days. A third urged that the GFE time clock run from approval rather than application. Another inquiry was received about the effective date of section 951 of the Housing and Community Development Act of 1992, which establishes the denial of credit provision.

The three-day period is a statutory requirement contained in section 951 of the Housing and Community Development Act of 1992 (1992 Act), and HUD does not believe it has the regulatory discretion to extend it. The provision does not, on its face, require rulemaking and was included in a subtitle of the 1992 Act entitled "Bank Regulatory Clarification Provisions." While HUD is including the provision in this rulemaking, HUD takes the position that the provision has been in effect since the effective date of the 1992 Act (October 28, 1992).

### 4. Escrow Account Requirements and Mortgage Servicing Transfer Requirements

Eighteen commenters advocated exempting subordinate liens from escrow requirements, because lenders would not establish an escrow account unless they were holding a first lien. A

commenter maintained that escrow fees were reasonable charges because the funds were held for the borrower's account and benefit.

Nine commenters questioned whether the section 6 provisions of RESPA, regarding disclosures when mortgage servicing is transferred, extended to secondary liens. Two commenters suggested that servicing transfer disclosures should only be required in the event of an actual transfer.

HUD will implement separately a final rule regarding mortgage servicing requirements of section 6 of RESPA (currently set forth in an interim rule of April 26, 1991, which continues in effect until supplanted by a final rule). That interim rule will continue to apply only to first mortgage liens, including first mortgage refinancing transactions, unless the final mortgage servicing rule changes this position. A new § 3500.17, relating to escrow accounts, is being developed concurrently, which will state HUD's position regarding escrow accounts and accounting procedures. (See the proposed rule published at 58 FR 64065 (December 3, 1993).)

### 5. Form of HUD Settlement Statement for Refinancings and Subordinate Lien Transactions

Forty-three commenters supported the proposed form set out as Appendix F for use in one-party transactions, while 10 opposed the form and 2 advocated that it be optional. Another commenter suggested that no Appendix F be required if the total settlement cost does not exceed \$750. A significant number of commenters (56), while supporting the form as effective, advocated combining Appendix F and the HUD-1, so as to be able to cut back on the stock of paper as well as the paperwork. Three commenters suggested that permission be granted to modify the HUD-1, arguing that this would be particularly beneficial for those lenders making few subordinate loans in the course of a year.

Seventeen commenters wished to follow only Regulation Z and sought an exemption from use of appendix F for all subordinate liens. Seven sought an exemption from all subordinate lien loans without reliance on Regulation Z.

Twenty-four commenters sought specific instructions for using the form. Clarifications were requested for when the form is used: (i) For assumptions; (ii) in non-purchase money, non-refinance situations; and (iii) in modifying a first lien.

Three commenters wished an exemption for "no fee" transactions, and three sought an exemption for fixed-fee transactions. A commenter

suggested that the disclosure form be used only on request of the borrower. Another commenter suggested that secondary (vacation or rental) homes be exempt from disclosure. One commenter requested guidance on how to reconcile the Appendix F form with the specific State law requirements.

In the final rule, appendix F has been adopted, basically as proposed. The form is denominated as HUD-1A and is included in appendix A of this rule. HUD has provided instructions for filling out this form at the end of appendix A. The final rule makes clear that settlement agents may use this form for refinancing or any other one-party transactions, but may also use the borrower's side of a HUD-1 settlement statement to convey the same information.

#### 6. Compliance Burden

Fifty-three comments addressed the burden of compliance. They generally indicated that first lien disclosures and the disclosures under the proposed rule constituted a substantial paperwork burden on lenders. The commenters believed that few borrowers read any disclosure material, except, perhaps, the HUD-1. Seventeen commenters estimated the additional cost per loan as being from \$25-32; two commenters alleged \$1,000,000 each in compliance costs. HUD's own estimate of the costs of complying with this regulation was substantially less than these amounts. Commenters maintained that the compliance burden caused a chilling effect on the making of loans. Commenters also noted a training burden, because the lender staff making the loans in question normally would not have dealt with RESPA.

In developing the final rule, and consistent with the Administration's directives to ease the burden of regulations insofar as possible, the Department has expended substantial effort in interagency consultation to reduce the compliance and regulatory burdens. As a result of this consultation, the interrelated regulations, Regulation X and Regulation Z, function in harmony, as far as possible. This, of course, was done within the various statutory constraints placed upon HUD and the Federal Reserve Board.

#### 7. Multiple Liens

The Department was advised that there are certain circumstances when a first mortgage and a subordinate lien may be created at the same settlement (such as when a residential property is purchased through an affordable housing program with an advance of funds for down-payment or closing

costs under a subordinate lien). If the subordinate lien meets the definition of a federally related mortgage loan, the related charges for settlement services must be documented on a HUD-1 or HUD-1A, as appropriate for the circumstances, but a single HUD-1 can be used for both the first mortgage and the subordinate lien. If the subordinate lien does not meet the definition of federally related mortgage loan (e.g., it is held by a governmental entity), the related charges may still be shown on the HUD-1 for the first mortgage or on a separate HUD-1 or HUD-1A.

#### 8. Controlled Business Disclosures

As noted previously, in this final rule the modification to the required provider disclosures, with the list of five or more required providers, has been adopted. The rule is also clarified to indicate that it does not apply to in-house settlement service providers. A related question is: what is the extent of effort that is needed by a person in a position to refer business (such as a bank with a related mortgage lending company) to warrant a controlled business disclosure? This question has been deferred to future rulemaking, which may deal further with controlled business disclosures. However, the Department wishes to make clear that incidental and uncompensated referrals, such as brochures in the bank lobby or street directions given by a bank employee, are not perceived as rising to the level necessary to require a controlled business disclosure.

#### 9. Effective Date

Twenty-five commenters suggested that HUD allow sufficient time for implementation of this rule, so that the form, software, and technical compliance materials could be created by affected parties. A range of two months to one year was suggested to be adequate. The commenters suggested that the exemptions should be made effective as soon as possible or within 30 days after publication.

The final rule is effective 180 days after publication, while exemptions contained in this rule are effective 30 days after the publication date. Persons covered by this rule also may comply with this rule before the effective date.

### III. Other Matters

#### Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the

docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the RESPA statute.

#### Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### 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 will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

#### Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those



policies and programs relate to family concerns.

#### Regulatory Agenda

This rule was listed as item 1552 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56433), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### List of Subjects in 24 CFR Part 3500

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

For the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is amended as set forth below.

### PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 continues to read as follows:

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

2. Section 3500.2 is revised to read as follows:

#### § 3500.2 Definitions.

As used in this part:

**Application** 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. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

**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 of RESPA (12 U.S.C. 2605) is defined in § 3500.21.

**Dealer** means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.

**Dealer loan or dealer consumer credit contract** means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan.

The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a "creditor" as defined under the definition of "federally related mortgage loan" in this part, the dealer is the lender for purposes of this part.

**Federally related mortgage loan** means as follows:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for 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) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

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

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary or any other officer or agency of the Federal Government; or

(2) 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 officer or agency of the Federal Government;

(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 the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a "creditor," as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. For purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by

residential property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition. If the residential property securing a mortgage loan is not located in a State, it is not a federally related mortgage loan.

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

**HUD-1 or HUD-1A settlement statement** (also HUD-1 or HUD-1A) means the statement that is prescribed by the Secretary in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

**Lender** means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under "federally related mortgage loan" in this section. See also § 3500.5(b)(5), secondary market transactions.

**Manufactured home** means the same as the term is defined in § 3280.2 of this chapter.

**Mortgage broker** means a person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally related mortgage loan, and who renders services as described in the definition of "settlement services" in this section. A loan correspondent meeting the requirements of the Federal Housing Administration under § 202.2(b) or

202.15(a) of this title is a mortgage broker for purposes of this part.

**Mortgaged property** means the real property that is security for the federally related mortgage loan.

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

**Refinancing** means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of "refinancing" as to transactions with the same lender is similar to Regulation Z, 12 CFR 226.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

**Regulation Z** means the regulations issued by the Board of Governors of the Federal Reserve System (12 CFR part 226) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

**Required use** means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the 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.

**RESPA** means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*

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

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

**Settlement service** means any service provided in connection with a prospective or actual settlement, including any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) 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);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

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

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) 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;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar

insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

**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. The Secretary publishes the form of the special information booklet in the *Federal Register*. The Secretary may issue or approve additional booklets or alternative booklets by publication of a Notice in the *Federal Register*.

**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.

**Table funding** means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see § 3500.5(b)(7)).

**Title company** means any institution, or its duly authorized agent, that is qualified to issue title insurance.

Section 3500.5 is revised to read as follows:

#### § 3500.5 Coverage of RESPA.

(a) **Applicability.** RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) **Exemptions.** (1) *A loan on property of 25 acres or more.* Any loan on property constituting 25 or more acres, regardless of:

- (i) Whether the land is vacant;
- (ii) Whether the land contains a residential structure; and
- (iii) The purpose of the loan.

(2) **Business purpose loans.** An extension of credit primarily for a business, commercial, or agricultural purpose. The definition of such an extension of credit for purposes of this exemption generally parallels Regulation Z, 12 CFR 226.3(a)(1). However, the definition of business purpose loans does not include any transaction in which one or more persons, acting in an individual

capacity (natural persons), place a lien on a 1- to 4-family residential property, whether used for occupancy or investment.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a bona fide builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA and § 3500.21. In determining what constitutes a bona fide transfer, HUD will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the

first assignment of such loan or contract to a lender, is a secondary market transaction (see § 3500.2.)

4. Section 3500.6 is amended by revising paragraph (a) to read as follows:

**§ 3500.6 Special information booklet at time of loan application.**

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying, but the lender may provide additional booklets to other applicants and to guarantors.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 3500.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. 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 the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in § 226.2(a)(20) of Regulation Z, a lender or mortgage broker that provides the borrower with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit", or any successor brochure issued by the Board of Governors of the Federal Reserve System, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA, the Secretary may issue a revised or separate special information booklet that deals with these transactions, or the Secretary may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the

**Federal Register.** This paragraph shall apply to the following transactions:

- (i) Refinancing transactions;
- (ii) Closed-end loans, as defined in § 226.2(a)(10) of Regulation Z, when the lender takes a subordinate lien; and
- (iii) Reverse mortgages.

\* \* \* \* \*

5. Section 3500.7 is amended by revising paragraphs (a), (c)(1), and (e); adding two sentences at the end of paragraph (b); by removing the undesignated paragraph following paragraph (e); and adding a new paragraph (f), to read as follows:

**§ 3500.7 Good faith estimate.**

(a) *Lender to provide.* Except as provided in this paragraph or paragraph (f) of this section, the lender shall provide all applicants for a federally related mortgage loan with a good faith estimate of the amount of or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement. The lender shall provide the good faith estimate required under this section (a suggested format is set forth in appendix C of this part) either by delivering the good faith estimate or by placing it in the mail to the loan applicant, not later than three business days after the application is received or prepared.

(1) If the lender denies the application for a federally related mortgage loan before the end of the three-business-day period, the lender need not provide the denied borrower with a good faith estimate.

(2) For "no cost" or "no point" loans, the charges to be shown on the good faith estimate include any payments to be made to affiliated or independent settlement service providers. These payments should be shown as P.O.C. (Paid Outside of Closing) on the Good Faith Estimate and the HUD-1 or HUD-1A.

(3) In the case of dealer loans, the lender is responsible for provision of the good faith estimate, either directly or by the dealer.

(4) If a mortgage broker is the exclusive agent of the lender, either the lender or the mortgage broker shall provide the good faith estimate within three business days after the mortgage broker receives or prepares the application.

(b) \* \* \* As long as the mortgage broker has provided the good faith estimate, the funding lender is not required to provide an additional good faith estimate, but the funding lender is responsible for ascertaining that the good faith estimate has been delivered. If the application for mortgage credit is denied before the end of the three-



business-day period, the mortgage broker need not provide the denied borrower with a good faith estimate.

(c) \* \* \*

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

\* \* \* \* \*

(e) *Particular providers required by lender.* (1) If the lender requires the use (see § 3500.2, "required use") of a particular provider of a settlement service, other than the lender's own employees, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must:

(i) Clearly state that use of the particular provider is required and that the estimate is based on the charges of the designated provider;

(ii) Give the name, address, and telephone number of each provider; and

(iii) Describe the nature of any relationship between each such provider and the lender. Plain English references to the relationship should be utilized, e.g., "X is a depositor of the lender," "X is a borrower from the lender," "X has performed 60% of the lender's settlements in the past year." In the event that more than one relationship exists, each should be disclosed.

(2) For purposes of paragraph (e)(1) of this section, a "relationship" exists if:

(i) The provider is an associate of the lender, as that term is defined in § 3500.15(c)(1);

(ii) 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

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

(3) Except for a provider that is the lender's chosen attorney, credit reporting agency, or appraiser, if the lender is in a controlled business relationship (see § 3500.15) with a provider, the lender may not require the use of that provider.

(4) If the lender maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others, and at the time of application the lender has not yet decided which provider will be selected from that list, then the lender may satisfy the requirements of this section if the lender:

(i) Provides the borrower with a written statement that the lender will require a particular provider from a lender-controlled or -approved list; and

(ii) Provides the borrower in the Good Faith Estimate the range of costs for the required provider(s), and provides the name of the specific provider and the actual cost on the HUD-1 or HUD-1A.

(f) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 226.5(b) of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

6. Section 3500.8 is revised to read as follows:

**§ 3500.8 Use of HUD-1 or HUD-1A settlement statements.**

(a) *Use by settlement agent.* The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the HUD-1 statement. Alternatively, the form HUD-1A may be used for these transactions. Either the HUD-1 or the HUD-1A, as appropriate, shall be used for every RESPA-covered transaction, but may be modified as permitted under this part.

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

(Approved by the Office of Management and Budget under control numbers 2502-0265 and 2502-0491)

7. Section 3500.9 is revised to read as follows:

**§ 3500.9 Reproduction of settlement statements.**

(a) *Permissible changes—HUD-1.* The following changes and insertions are permitted when the HUD-1 settlement statement is reproduced:

(1) The person reproducing the HUD-1 may insert its business name and logotype in Section A and may rearrange, but not delete, the other information that 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 that 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 shortened correspondingly. 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 that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. 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, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The designation of the expiration date of the OMB number may be deleted. 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 part.

(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-insured loans.

(11) As allowed by § 3500.17, relating to an initial escrow account statement.

(b) *Permissible changes—HUD-1A.*

The changes and insertions on the HUD-1 permitted under paragraph (a) of this section are also permitted when the HUD-1A settlement statement is reproduced, except the changes described in paragraphs (a) (3), (6), and (11).

(c) *Written approval.* Any other deviation in the HUD-1 or HUD-1A forms is permissible only 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 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

(Approved by the Office of Management and Budget under control numbers 2502-0265 and 2502-0491)

8. Section 3500.10 is revised to read as follows:

**§ 3500.10 One-day advance inspection of HUD-1 or HUD-1A 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 or HUD-1A settlement statement, completed to set forth those items that 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 transaction may be omitted from the HUD-1.

(b) *Delivery.* The settlement agent shall provide a completed HUD-1 or HUD-1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD-1 or HUD-1A 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 or HUD-1A 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 or HUD-1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD-1 or HUD-1A 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.* When the borrower or the borrower's agent does not attend the settlement, or when 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 or HUD-1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD-1 or HUD-1A 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 or HUD-1A 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 or HUD-1A 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).

(Approved by the Office of Management and Budget under control numbers 2502-0265 and 2502-0491)

9. Section 3500.12 is revised to read as follows:

**§ 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 or HUD-1A settlement statement, escrow account statements required pursuant to section 10 of RESPA, or statements required by the Truth in Lending Act, 15 U.S.C. 1601 et seq.

10. Section 3500.14 is amended by revising paragraphs (f)(2) and (g)(1)(v), to read as follows:

**§ 3500.14 Prohibition against kickbacks and unearned fees.**

\* \* \* \* \*

(f) \* \* \*

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

(g) \* \* \*

(1) \* \* \*

(v) Pursuant to cooperative brokerage and referral arrangements or agreements

between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.)

\* \* \* \* \*

**§ 3500.15 [Amended]**

Section 3500.15 is amended by revising the phrase "(as defined in § 3500.2(a)(11))" in paragraph (b)(2) to read "(as defined in § 3500.2, 'required use')".

12. Section 3500.16 is amended by revising the second sentence, to read as follows:

**§ 3500.16 Title companies.**

\* \* \* Section 3500.2 defines "required use" of a provider of a settlement service. \* \* \*

13. Appendix A to part 3500 is amended by revising the title of the appendix; by revising the introductory text and the paragraph beginning with "Line 902" in Section L under the text heading "Line Item Instructions"; and by adding additional text, a HUD-1 settlement statement form, and a HUD-1A settlement statement form at the end of the appendix, to read as follows:

**Appendix A to Part 3500—Instructions for Completing HUD-1 and HUD-1A Settlement Statements**

\* \* \* \* \*

*Line Item Instructions*

\* \* \* \* \*

**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. In the case of "no cost" or "no point" loans, the charge to be paid by the lender to an affiliated or independent service provider should be shown as P.O.C. (Paid Outside of Closing) and should not be used in computing totals. Such charges also include indirect payments or back-funded payments to mortgage brokers that arise from the settlement transaction. When used, "P.O.C." should be placed in the appropriate lines next to the identified item, not in the columns themselves.

\* \* \* \* \*

Line 902 is used for mortgage insurance premiums due and payable at settlement, except reserves collected by the Lender and recorded in the 1000 series. A lump sum mortgage insurance premium paid at settlement should be inserted on Line 902; with a note that indicates that the premium is for the life of the loan.

\* \* \* \* \*

**Line Item Instructions for Completing HUD-1A**

**Note:** HUD-1A is an optional form that may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions as set forth above. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

**Background**

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction in which there is a transfer of title and a first lien is taken as security.

Refer to the "definitions" section of Regulation X for specific definitions of terms 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 § 3500.9 regarding rules for reproduction of the HUD-1A. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A.

The settlement agent shall complete the HUD-1A to itemize all charges imposed upon the borrower by the lender, whether to be paid at settlement or outside of settlement, and any other charges that the borrower will pay for at settlement. In the case of "no cost" or "no point" loans, these charges include any payments the lender will make to

affiliated or independent settlement service providers relating to this settlement. These charges shall be included on the HUD-1A, but marked "P.O.C." for "paid outside of closing," and shall not be used in computing totals. Such charges also include indirect payments or back-funded payments to mortgage brokers that arise from the settlement transaction. When used, "P.O.C." should be placed in the appropriate lines next to the identified item, not in the columns themselves.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided in Section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in Section L and the names of the recipients of the loan proceeds in Section M should be set forth on the blank lines.

**Line Item Instructions**

The identification information at the top of the HUD-1A should be completed as follows:

The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with § 3500.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

**Section L. Settlement Charges.** This section of the HUD-1A is similar to Section L of the HUD-1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for Section L in the HUD-1, should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1602 as well. This total should include Section L amounts from additional pages, if any are attached to this HUD-1A.

**Section M. Disbursement to Others.** This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same

lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in Section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in Section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in Section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in Section M.

**Section N. Net Settlement.** Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that are both included in the totals for lines 1400 and 1602 and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. P.O.C. amounts should not be included in line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

**BILLING CODE 4210-27-P**

## A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB Approval No. 2502-0265

## B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.  
4. ☐ VA 5. ☐ Conv. Ins.

6. File Number

7. Loan Number

8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower

E. Name and Address of Seller

F. Name and Address of Lender

G. Property Location

H. Settlement Agent

Place of Settlement

I. Settlement Date

## J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract sales price

102. Personal property

103. Settlement charges to borrower (line 1400)

104.

105.

Adjustments for items paid by seller in advance

106. City/town taxes to

107. County taxes to

108. Assessments to

109.

110.

111.

112.

120. Gross Amount Due From Borrower

200. Amounts Paid By Or In Behalf Of Borrower

201. Deposit or earnest money

202. Principal amount of new loan(s)

203. Existing loan(s) taken subject to

204.

205.

206.

207.

208.

209.

Adjustments for items unpaid by seller

210. City/town taxes to

211. County taxes to

212. Assessments to

213.

214.

215.

216.

217.

218.

219.

220. Total Paid By/For Borrower

300. Cash At Settlement From/To Borrower

301. Gross amount due from borrower (line 120)

302. Less amounts paid by/for borrower (line 220)

303. Cash ☐ From ☐ To Borrower

## K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract sales price

402. Personal property

403.

404.

405.

Adjustments for items paid by seller in advance

406. City/town taxes to

407. County taxes to

408. Assessments to

409.

410.

411.

412.

420. Gross Amount Due To Seller

500. Reductions in Amount Due To Seller

501. Excess deposit (see instructions)

502. Settlement charges to seller (line 1400)

503. Existing loan(s) taken subject to

504. Payoff of first mortgage loan

505. Payoff of second mortgage loan

506.

507.

508.

509.

Adjustments for items unpaid by seller

510. City/town taxes to

511. County taxes to

512. Assessments to

513.

514.

515.

516.

517.

518.

519.

520. Total Reduction Amount Due Seller

600. Cash At Settlement To/From Seller

601. Gross amount due to seller (line 420)

602. Less reductions in amt. due seller (line 520)

603. Cash ☐ To ☐ From Seller

Previous Edition is Obsolete

HUD-1 (3-86)  
RESPA, HB 4305.2

L. Settlement Charges					
700. Total Sales/Broker's Commission based on price \$				% =	
Division of Commission (line 700) as follows:					
701. \$	to			Paid From Borrowers Funds at Settlement	Paid From Seller's Funds at Settlement
702. \$	to				
703. Commission paid at Settlement					
704.					
800. Items Payable in Connection With Loan					
801. Loan Origination Fee	%				
802. Loan Discount	%				
803. Appraisal Fee	to				
804. Credit Report	to				
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808.					
809.					
810.					
811.					
900. Items Required By Lender To Be Paid In Advance					
901. Interest from	to	@ \$	day		
902. Mortgage Insurance Premium for			months to		
903. Hazard Insurance Premium for			years to		
904.			years to		
905.					
1000. Reserves Deposited With Lender					
1001. Hazard Insurance	months@ \$		per month		
1002. Mortgage Insurance	months@ \$		per month		
1003. City property taxes	months@ \$		per month		
1004. County property taxes	months@ \$		per month		
1005. Annual assessments	months@ \$		per month		
1006.	months@ \$		per month		
1007.	months@ \$		per month		
1008.	months@ \$		per month		
1100. Title Charges					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title Insurance binder	to				
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to				
(includes above items numbers:				)	
1108. Title insurance	to				
(includes above items numbers:				)	
1109. Lender's coverage	\$				
1110. Owner's coverage	\$				
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Recording fees: Deed \$		Mortgage \$		Releases \$	
1202. City/county tax/stamps: Deed \$		Mortgage \$			
1203. State tax/stamps: Deed \$		Mortgage \$			
1204.					
1205.					
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Pest inspection to					
1303.					
1304.					
1305.					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)					

Public Reporting Burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0265), Washington, D.C. 20503



**Settlement Statement**  
**Optional Form for**  
**Transactions without Sellers**

 U.S. Department of Housing  
 and Urban Development

OMB Approval No. 2502-0491

Name & Address of Borrower:		Name & Address of Lender:	
Property Location: (if different from above)		Settlement Agent:	
Loan Number:		Place of Settlement:	
		Settlement Date:	

L. Settlement Charges	M. Disbursement to Others
<b>800. Items Payable in Connection with Loan</b>	
801. Loan origination fee % to	1501.
802. Loan discount % to	1502.
803. Appraisal fee to	1503.
804. Credit report to	1504.
805. Inspection fee to	1505.
806. Mortgage insurance application fee to	1506.
807. Mortgage broker fee to	
808.	
809.	
810.	
811.	
<b>900. Items Required by Lender to be Paid in Advance</b>	
901. Interest from to @ \$ per day	1507.
902. Mortgage insurance premium for months to	1508.
903. Hazard insurance premium for year(s) to	1509.
904.	1510.
<b>1000. Reserves Deposited with Lender</b>	
1001. Hazard insurance months @ \$ per month	1511.
1002. Mortgage insurance months @ \$ per month	1512.
1003. City property taxes months @ \$ per month	
1004. County property taxes months @ \$ per month	1513.
1005. Annual assessments months @ \$ per month	1514.
1006. months @ \$ per month	
1007. months @ \$ per month	
1008. months @ \$ per month	
<b>1100. Title Charges</b>	
1101. Settlement or closing fee to	1515.
1102. Abstract or title search to	
1103. Title examination to	<b>1520. TOTAL DISBURSED (enter on line 1603)</b>
1104. Title insurance binder to	
1105. Document preparation to	
1106. Notary fees to	
1107. Attorney's fees to	
(includes above item numbers )	
1108. Title insurance to	
(includes above item numbers )	
1109. Lender's coverage \$	
1110. Owner's coverage \$	
1111.	
1112.	
1113.	
<b>1200. Government Recording and Transfer Charges</b>	
1201. Recording fees:	
1202. City/county tax/stamps:	
1203. State tax/stamps:	
1204.	
1205.	
<b>1300. Additional Settlement Charges</b>	
1301. Survey to	
1302. Pest inspection to	
1303. Architectural/engineering services to	
1304. Building permit to	
1305.	
1306.	
1307.	
<b>1400. Total Settlement Charges (enter on line 1602)</b>	

N. NET SETTLEMENT	
1600. Loan Amount	\$
1601. Plus Cash/Check from Borrower	\$
1602. Minus Total Settlement Charges (line 1400)	\$
1603. Minus Total Disbursements to Others (line 1520)	\$
1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$

Borrower(s) Signature(s):

X

 form HUD-1A (2/94)  
 ref. RESPA

Public reporting burden for this collection of information is estimated to average 0.35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0491), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

#### Instructions for completing form HUD-1A

**Note:** This form is issued under authority of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 *et seq.* The regulation for RESPA is Regulation X, codified as 24 CFR 3500, and administered by the Department of Housing and Urban Development (HUD). Regulation Z referred to in the next paragraph is the regulation implementing the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* and codified as 12 CFR part 226.

HUD-1A is an optional form that may be used for refinancing and subordinate lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions set forth in Appendix A of Regulation X. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

#### Background

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction in which there is a transfer of title and a first lien is taken as security.

Refer to the "definitions" section of Regulation X for specific definitions of terms 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. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A.

The settlement agent shall complete the HUD-1A to itemize all charges imposed upon the borrower by the lender, whether to be paid at settlement or outside of settlement, and any other charges that the borrower will pay for at settlement. In the case of "no cost" or "no point" loans, these charges include any payments the lender will make to affiliated or independent settlement service providers relating to this settlement. These charges shall be included on the HUD-1A, but marked "P.O.C." for "paid outside of closing," and shall not be used in computing totals. Such charges also include indirect payments or back-funded payments to mortgage brokers that arise from the settlement transaction. When used, "P.O.C." should be placed in the appropriate lines next to the identified item, *not in the columns themselves*.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided in Section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in Section L and the names of the recipients of the loan proceeds in Section M should be set forth on the blank lines.

#### Line item instructions

The identification information at the top of the HUD-1A should be completed as follows:

The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with § 3500.2 of Regulation X, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

**Section L. Settlement Charges.** This section of the HUD-1A is similar to section L of the HUD-1, with the deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for filling out the HUD-1 as set forth in Appendix A of Regulation X provide additional information regarding Section L, if needed.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1602 as well. This total should include Section L amounts from additional pages, if any are attached to this HUD-1A.

**Section M. Disbursement to Others.** This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in Section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in Section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in Section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in Section M.

**Section M. Net Settlement.** Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that are both included in the totals for lines 1400 and 1602 and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. P.O.C. amounts should not be included in line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

form HUD-1A (2/94)  
rel. RESPA

14. Appendix B to part 3500 is amended by adding illustration 13 at the end of the appendix, to read as follows:

**Appendix B to Part 3500—Illustration of Requirements of RESPA**

\* \* \* \* \*

13. *Facts.* A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and, frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

*Comments.* The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a "creditor" under the definition of "federally

related mortgage loan" in § 3500.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD-1 or HUD-1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under § 3500.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

15. Appendix C to part 3500 is amended by revising the second paragraph and the last paragraph before the footnotes; by revising the heading in the second column of the chart to read "HUD-1 or HUD-1A"; and by removing the last sentence, beginning with "A lender will provide you", in footnote 1, to read as follows:

**Appendix C to Part 3500—Sample Form of Good Faith Estimate**

\* \* \* \* \*

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

\* \* \* \* \*

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, if your application is to purchase residential real property and the Lender will take a first lien on the property.

\* \* \* \* \*

Dated: February 4, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-3035 Filed 2-9-94; 8:45 am]

BILLING CODE 4210-27-P