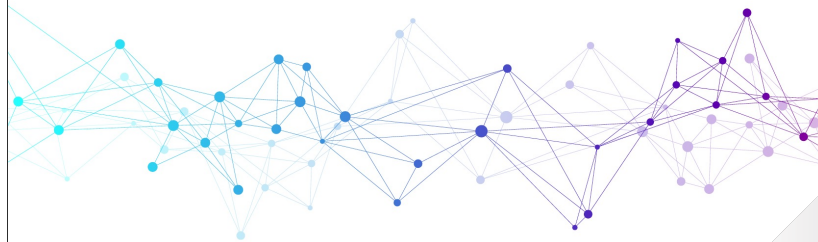


**Compliance
Essentials**

Real Estate Settlement
Procedures Act

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Coverage



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Coverage

Federally Related Mortgage Loan

A federally related mortgage loan is any loan (other than temporary financing, such as a construction loan) 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:
 - Located or, following settlement, will be constructed using proceeds of the loan, a one to four family dwelling
 - Located or, following settlement, will be placed using proceeds of the loan, a manufactured home

AND

- For which one of the following applies. The loan:
 - 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
 - Is another type of government guaranteed or government insured loan

Exceptions

RESPA applies to all Federally Related Mortgage Loans (FLMLs) except:

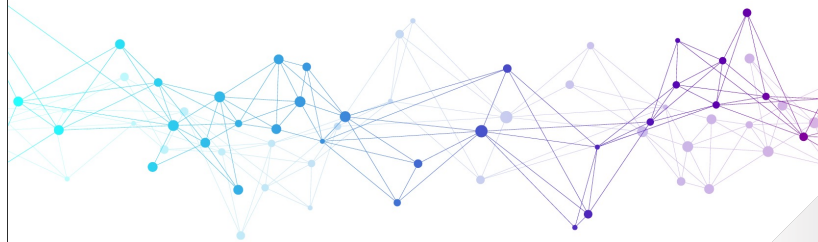
- Business purpose loans (use Reg Z definition)
- Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower.
- Any loan conversion to different terms as long as a new note is not required.
- Bona fide transfer of a loan obligation in the secondary market.

Exceptions

- ****Temporary financing, such as a construction loan, except the exemption does not apply to a loan made to finance construction of 1- to 4-family residential property if:**
 - The loan may be converted to permanent financing by the same lender
 - Is used to finance transfer of title to the first user
 - The lender issues a commitment for permanent financing, with or without conditions
 - The construction term is for two years or more
- ****A loan to purchase vacant land, 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.**

**** TRID still applies to these types of loans (bummer)**

Prohibition Against Kickbacks and Unearned Fees



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Prohibition Against Kickbacks and Unearned Fees

- Section 8 of RESPA prohibits the acceptance or payment of referral fees and unearned fees in relation to any federally related mortgage loan.
- Any portion, split, or percentage of any charge paid or received for providing a settlement service in connection with a RESPA covered loan must be for services actually performed.

Thing of Value

To violate Section 8, three elements must be present:

- There must be a payment or giving of a thing of value.
- It must be pursuant to an agreement to refer business.
- A referral must occur.

Thing of Value

- Money
- Things
- Discounts
- Salaries
- Commissions
- Fees
- Duplicate payment of a charge
- Stock
- Dividends
- Distribution of partnership profit
- Franchise royalty
- Credits representing monies that may be paid at a future date
- The opportunity to participate in a money making program
- Retained or increased earnings
- Increased equity in a parent or subsidiary entity
- Special bank deposits or accounts

Thing of Value

- Special or unusual banking terms
- Services of all types at special or free rates
- Sales or rentals at special prices or rates
- Lease or rental payments based in whole or in part on the amount of business referred
- Trips and payments of another person's expenses
- Reduction in credit against an existing obligation

Permitted Payments

Certain payments are excluded from the Section 8 prohibitions. The following payments in connection with a RESPA covered loan are permitted:

- Payment of a fee to an attorney for services actually rendered.
- Payment of a fee to a duly appointed agent of a title company by that company for services actually performed in issuing the title policy.
- Payment of a fee by a lender to a duly appointed agent of that lender for services actually performed in making the loan.
- Payment of a bona fide salary to any person for services actually performed.

Permitted Payments

- Payment of any compensation for goods or facilities actually furnished or services actually performed.
- Payments pursuant to a cooperative brokerage arrangement or arrangements between real estate agents and brokers.
- Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business.
- An employer's payment to its own employees for any referral activities.

Does this Violate Section 8?

- A credit union has a product referral program for members. Member can receive \$50 for each membership referral, \$50 for each auto loan referral and \$100 for each mortgage loan referral that results in an account being opened or a loan being originated.
- Same scenario, but the referral fees are provided to any credit union employee for successful referrals.
- The credit union does not offer 30-year mortgages. The credit union receives \$250 for each 30-year mortgage loan application it refers to a lender that does make these types of loans.

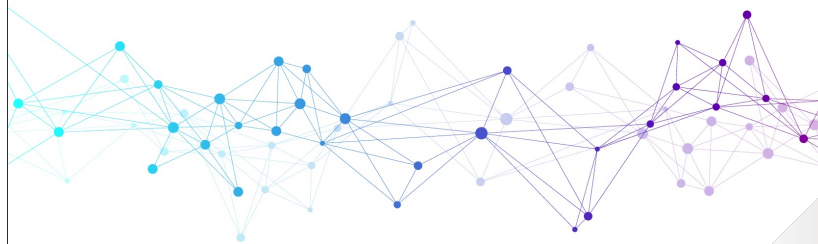
Does this Violate Section 8?

- The credit union does not offer 30-year mortgages. The credit union is paid a percentage of each loan it refers to a lender that does makes these types of loans. The credit union takes the application, pulls credit, collects needed documentation, communicates with the borrower and arranges closings for the other lender.
- A credit union loan officer has a GREAT IDEA! They want to give local Realtors who refer borrowers to the credit union tickets to attend a professional sporting events as a thank you.
- Ok, ok. How about inviting Realtors to an open house at the credit union to learn more about credit union products and services. The credit union will pay for the catering.
- We hold these lunches or educational opportunities every week for the Realtors
- FINE! They are held quarterly. They are truly educational and we invite the general public as well as local settlement service providers whether they refer to us or not.

Does this Violate Section 8?

- Holiday gift baskets from the title companies we use?
PLEASE??? I need my peppermint bark!

Affiliated Business Arrangements



Definition

- A situation where a person or firm is in a position to refer purchasers of settlement services to a settlement service provider that is owned in whole or in part by the referring party.
- Although the referring party receives no direct payment for the referral, it benefits through the ownership interest in the service provider.

Disclosure Requirement

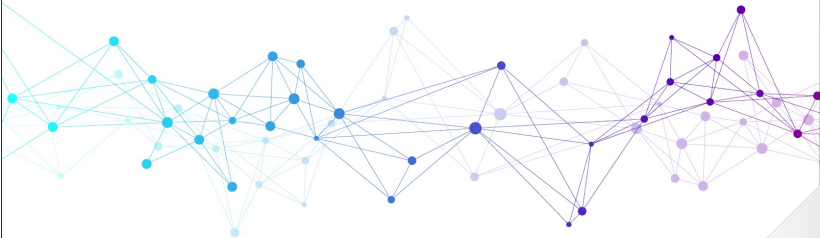
If an affiliated business arrangement exists, the person making the referral must meet the following three conditions to be protected from liability under Section 8:

- The person making the referral gives an appropriate Affiliated Business Arrangement (ABA) Disclosure Statement to each person to whom a referral is made.
- With certain exceptions, the person to whom the referral is made is not required to use the referred settlement service.
- The only thing of value received from the arrangement is a return on an ownership interest or franchise relationship.

Disclosure Requirement

- [Appendix D of Regulation X](#) contains sample language and content for the affiliated business arrangement disclosure.
- An ABA Disclosure must generally conform to the sample disclosure.
- The disclosure must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, at the time of loan application or with the Loan Estimate.

Homeownership Counseling Notice



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Homeownership Counseling Notice

General

Creditors must give all applicants for mortgages loans a written list of homeownership counseling organizations within three business days of receiving an application.

Coverage

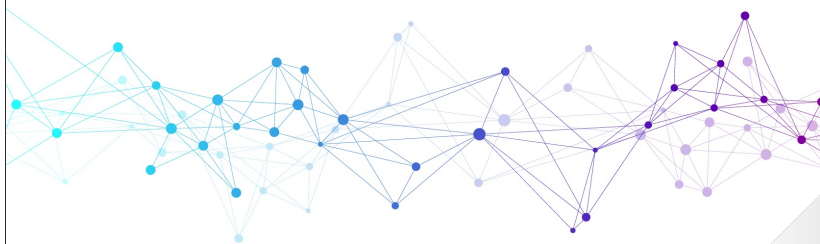
- Includes all consumer loans secured by a dwelling except reverse mortgages and loans for time-shares.

Providing the Disclosure

- Generate a list of homeownership counseling organizations through the Bureau's website (<http://www.consumerfinance.gov/find-a-housing-counselor/>) or use the data provided by the Bureau or HUD.
- The list must be specific to the consumer's location and be current within the last 30 days (hint – you'll be printing a new list out for each transaction)



Escrow Accounts



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Escrow Accounts

RESPA sets very particular limits on the amount that can be required to be paid into an escrow account, and requires specific disclosures with regard to escrow accounts, both at settlement and for the life of the escrow account.

Escrow Accounts

RESPA sets very particular limits on the amount that can be required to be paid into an escrow account, and requires specific disclosures with regard to escrow accounts, both at settlement and for the life of the escrow account.

Permitted Escrow Amounts

The initial amount a servicer is allowed to collect for an escrow account is calculated by computing the amount that would normally have been paid into escrow from the date the charge or charges were last paid until the first escrow payment is due, plus a cushion equivalent to two months payment.



Escrow Account Analysis

- At the outset of the servicing of a mortgage with an escrow account, a servicer must perform an escrow account analysis.
- The outcome of analysis is the determination of the “target balance,” which is the amount that is enough to pay the necessary disbursements throughout the course of the coming year, plus any allowed cushion.

Aggregate Accounting

All initial escrow account balances must be calculated using aggregate accounting. The escrow account analysis must follow a prescribed process:

Step 1: Create an initial trial balance:

1. Create a 12-month calendar beginning with the month the first payment is due
2. List disbursements in the months they are to be made
3. Add 1/12 of the total amount of disbursements to each month
4. Calculate an end balance for each month (some months will have a negative balance)

Aggregate Accounting

Step 2: Create an adjusted trial balance:

1. Find the lowest monthly balance.
2. Add to the first month an amount that will bring the lowest monthly balance to zero.
3. Re-calculate all of the monthly balances.
 - All of the monthly balances are then calculated taking into account this added first month payment.
 - This newly calculated running balance is called the Adjusted Trial Balance.
 - Note that this results in the escrow account balance falling to zero at the end of one month during the period.

Step 3: Create a balance with a cushion

1. Add to the first month the permissible cushion
2. Adjust the monthly balances

Listing Escrow Amounts on the Closing Disclosure

Although servicers are required to calculate an initial escrow account balance using aggregate accounting, the different items that make up the escrow payment are required to be listed separately on the Closing Disclosure.

Listing Escrow Amounts on the Closing Disclosure

To calculate line item amounts for each fee, follow these procedures:

1. Perform an escrow account analysis to determine the total initial escrow payment.
2. Using the same three-step method as the aggregate analysis, conduct a separate line-item analysis for each individual charge.
3. The beginning balances calculated from the individual line-item analyses should be entered on lines 1-7 of section G.
4. Total the beginning balances of all the separate line-item analyses.
5. Subtract the sum of the beginning balances from the line item analyses from the beginning balance amount of the aggregate analysis.
6. The difference will be the aggregate adjustment that should be entered on line 8 of section G. (Note: the aggregate adjustment must always be a negative number or zero)

Initial Escrow Account Disclosure Statement

- An Initial Escrow Account Statement must be presented to the borrower at settlement or within 45 days following settlement.
- The initial statement must list the results of the aggregate analysis and contain the following information:
 1. The amount of the borrower's monthly mortgage payment
 2. The portion of the monthly payment going into the escrow account
 3. Itemization of the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges.
 4. The amount that the servicer selects as a cushion.
 5. A trial running balance for the account.

Annual Escrow Account Analysis

- An escrow account must be reanalyzed at least once every 12 months.
- The information resulting from the annual escrow account analysis must be disclosed to the member/borrower within thirty calendar days of the close of the escrow account computation year.
- The servicer is permitted to reanalyze the escrow account prior to the normal end of the escrow account computation year to allow it to change the effective date of the member/borrower's annual escrow computation year.

Annual Escrow Account Analysis: Required Components

- An account history reflecting the activity in the escrow account during the escrow account computation year.
- A projection of the activity in the account for the next year.
- The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account.
- The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account.
- The total amount paid into the escrow account during the past computation year.
- The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified).
- The balance in the escrow account at the end of the period.
- An explanation of how any surplus is being handled by the servicer.
- An explanation of how any shortage or deficiency is to be paid by the borrower.
- If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection.

Escrow Surpluses

- If an escrow account analysis discloses a surplus, the servicer must refund the surplus to the borrower within 30 days from the date of the analysis if the surplus is greater than \$50.
- If the surplus is less than \$50, the servicer may refund the amount to the borrower, or credit it against the next year's escrow payments.
- If the borrower is not current (payments received within 30 days of the payment due date) at the time of the analysis, the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

Shortages

An escrow account shortage is the amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis. This means that there will be a deficiency in the escrow account sometime during the escrow accounting year.

Shortages

Less Than One Month

If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

- The servicer may allow a shortage to exist and do nothing to change it.
- The servicer may require the borrower to repay the shortage amount within 30 days.
- The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

Shortages

Greater Than One Month

If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

- The servicer may allow a shortage to exist and do nothing to change it.
- The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

Deficiencies

- An escrow account deficiency is the amount of a negative balance in an escrow account.
- The servicer must perform an escrow account analysis before seeking repayment of the deficiency.
- If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

Deficiencies

Less Than One Month

If the deficiency is less than one month's escrow account payment, then the servicer may:

- Allow the deficiency to exist and do nothing to change it.
- Require the borrower to repay the deficiency within 30 days.
- May require the borrower to repay the deficiency in two or more equal monthly payments.

Deficiencies

Greater Than One Month

If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may:

- Allow the deficiency to exist and do nothing to change it.
- May require the borrower to repay the deficiency in two or more equal monthly payments.

Deficiencies

Delinquent Accounts

If the borrower is delinquent at the time of the escrow account analysis, the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

Deficiencies

Notice of Shortage or Deficiency

- The servicer must notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account.
- The notice may be part of the annual escrow account statement or it may be a separate document.

Escrow Closing Notice

Escrow Closing Notice

The Escrow Closing Notice must be provided prior to cancelling an escrow account to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages.

Timing

- When the consumer requests cancellation: The creditor or servicer must ensure that the consumer receives the Escrow Closing Notice no later than three business days** before the consumer's escrow account is closed.
- Cancellation for any other reason: The creditor or servicer must ensure that the consumer receives the Escrow Closing Notice no later than 30 business days before consumer's escrow account is closed.

**3 business day "mailbox rule" applies



Loan Servicing Rules



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Loan Servicing Rules

- Big exemptions for small servicers!
- You are a small servicer if:
 - You service 5,000 or fewer mortgage loans (only consider closed-end loans secured by a dwelling) and
 - You are the creditor or assignee of all of them

Loan Servicing Rules

Small servicers are exempt from:

- [General servicing policies, procedures and requirements](#)
- [Early intervention requirements for certain borrowers](#)
- [Continuity of Contact](#)
- [Loss Mitigation Procedures](#)

Loan Servicing Rules

Small servicers must comply with the following rules:

- [Mortgage Servicing Transfers](#)
- [Timely escrow payments and treatment of escrow account balances](#)
- Error resolution procedures
- Requests for information
- Force-placed insurance

Error Resolution Procedures

A servicer shall comply with error resolution procedures for any **written notice** from the borrower that asserts an error and includes:

- The name of the borrower
- Information that enables the servicer to identify the borrower's mortgage loan account
- The error the borrower believes has occurred.
- [Specific response required](#)

Requests for Information

- A servicer shall comply with request for information procedures for any **written request** for information from a borrower that includes:
 - The name of the borrower
 - Information that enables the servicer to identify the borrower's mortgage loan account
 - States the information the borrower is requesting with respect to the borrower's mortgage loan.
- [Specific response required](#)

Force Placed Insurance

Force Placed Hazard Insurance

- You must have a reasonable basis to believe that a consumer has failed to maintain required hazard insurance before charging for force-placed insurance.
- You must send 2 notices to the consumer and not have received in response to these notices evidence that the consumer has had in place, continuously, required hazard insurance before you charge for force-placed insurance. (45 days, 15 days)
- You must notify the consumer and not have received in response to this notice evidence that the consumer has purchased required hazard insurance before you charge the consumer for renewing force-placed insurance.
- You must cancel force-placed insurance within 15 days of receiving evidence that the consumer has required hazard insurance in place and refund to the consumer any fees or charges for periods of overlapping coverage.
- Force-placed insurance charges imposed by a servicer on a borrower, beyond those subject to state regulation as insurance charges, must be bona fide and reasonable.
- [Use sample notices](#)

Questions?

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