

**Final RESPA Rule: Changes Effective
January 16, 2009**

The U.S. Department of Housing and Urban Development (“HUD”) recently published its final RESPA rule which revises portions of Regulation X, the regulation which implements the Real Estate Settlement Procedures Act.

Most changes take effect on January 1, 2010 (for example the implementation of a new form of Good Faith Estimate of Settlement Charges and HUD-1 Settlement Statement). However, some provisions of the rule which are the subject of this memo are effective as of January 16, 2009. We will send out a follow-up advisory that will summarize the changes that take effect on January 1, 2010.

The following components of the final rule, each of which are discussed below, are effective as of January 16, 2009:

- I. The use of average charges; and
- II. The rule’s miscellaneous modifications regarding (a) servicing transfer notifications, (b) escrow accounts, (c) the applicability of ESIGN, and (d) severability provision.

It should be noted that a revised definition of “required use,” was to become effective as of January 16, 2009 but HUD has decided to delay implementation for 90 days.

I. The Use of Average Charges.

HUD revised Regulation X to specifically permit average charges. A settlement service provider may impose an “average charge” if it is able to calculate an average charge and satisfy the rule’s record-keeping requirements (i.e., retain for at least three years all documents it used to calculate the average charge). A settlement service provider may define a class of transactions based on the period of time, type of loan and geographic area. The total amounts received from borrowers for that service for a particular class of transactions must not exceed the total amount paid to the provider of that service for that class of transactions, recalculated at least every 6 months and not more often than every 30 days. If an average charge is used in any class of transactions, then the provider must use the same average charge for every transaction within that class. An average charge must not be based upon the loan amount or property value. The new

rule also states unless an average charge is used, the amount stated on the HUD-1 cannot exceed the amount received by the provider of the service.

II.a. Servicing Transfer Notification.

Many of you previously received our memo on this change, the contents of which are set forth below.

One of the technical amendments revised the mortgage servicing disclosure requirements. In that amendment, HUD modified the language on the model mortgage servicing disclosure and simplified the form. The amendment basically requires lenders to disclose to loan applicants at the time of application whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding and nothing further.

Among other things, the amendment eliminated the need to disclose statistical or historical information. It also eliminated the requirement to set forth the borrower's rights in connection with complaint resolution. It further eliminated the previously mandatory applicant's acknowledgment portion.

The revised rule further provides that the specific language of the new model servicing disclosure statement form is not required to be used and that the form may be annotated with additional information that clarifies or enhances the model language.

In addition, the revised rule requires delivery of the disclosure within three (3) business days of receipt of the application even in the case of face-to-face applications. Delivery can be accomplished by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, e-mail or other electronic means. However, in the event the applicant is denied credit within the three (3) business day period, no servicing disclosure statement is required to be delivered.

The revised rule also provides two clarifications with respect to co-applicant situations. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

Attached is the new model form.

II.b. Escrow Accounts.

HUD approved another technical amendment to Regulation X, eliminating outdated language regarding the phase-in period for aggregate accounting for escrow accounts. The phase-in ended October 27, 1997.

III.c. E-Sign Act and Electronic Disclosures.

Another technical amendment amends Regulation X to include a new section that makes clear that electronic disclosures permitted by the Electronic Signatures in Global and National Commerce Act (E-Sign Act) apply to all disclosures provided for in Regulation X.

III.d. Severability.

HUD also amended Regulation X to add a severability provision which basically provides that if any provision of Regulation X is held invalid, the other provisions shall remain in effect. It also provides that if the application of any provision of Regulation X to any person or circumstance is held invalid, the application to other persons or circumstances shall not be affected thereby.

If you have questions regarding the foregoing, please feel free to contact Kathleen L. Douglas at (516) 357-3734 or at Kdouglas@CullenandDykman.com.

[Sample language; use business stationery or similar heading]

[Date]

**SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN
MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR
MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED**

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 USC 2601 et seq.). RESPA gives you certain rights under federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]