FEDERAL LAW 200 - RESPA AND SAFE

Overview

In this course, we are going to cover RESPA and the SAFE Act. As with most laws, these laws are aimed at preventing industry behavior that negatively impacts consumers, such as fraud and the provision of information that is not uniform and comparable. Knowing these laws well will be critical for your business with regards to regulators, litigation and reputational challenges.

Outline

Course Introduction

In this course, we are going to cover RESPA and the SAFE Act. As with most legislation, these laws are aimed at preventing industry behavior that negatively impacts consumers such as fraud as well as giving consumers information that is uniform and comparable in order for them to make good financial decisions.

RESPA[i]

Real Estate Settlement Procedures Act (enacted in 1974, implemented by Reg. X). Establishes specific disclosure requirements in the real estate settlement process and prohibits specific practices such as kickbacks and the use of specific settlement service providers.

RESPA regulations are provided by the CFPB (Consumer Financial Protection Bureau) and codified under CFR 12§1024.1 to §1024.23. They can be found online at:
www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1024_main_02.tpl

SAFE Act[ii]

Law as passed
The "SAFE Act" (Secure and Fair Enforcement Act for Mortgage Licensing) sets forth requirements for the licensing and registration of all mortgage loan originators. This Act is a key component of the Housing and Economic Recovery Act of 2008 (Title V).

Law Codified:
The SAFE Act is codified in ***United States Code Title 12: Banks and Banking*, Chapter 51: *SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING (referred to as USC 12, Chapter 51)***.

This code is directly accessible through the following link:
www.gpo.gov/fdsys/pkg/USCODE-2010-title12/html/USCODE-2010-title12-chap51.htm

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 §1024
[ii] S.A.F.E. MORTGAGE LICENSING ACT--STATE COMPLIANCE AND BUREAU REGISTRATION SYSTEM (REGULATION H) CFR Part 12 §1008.1 to §1008.405

Regulations Codified:

The SAFE Act designates the CFPB[i] as the agency tasked with carrying out the provisions of the law. The associated regulations are codified in the *Code of Federal Regulations*, *Title 12: Banks and Banking* in two parts. These are available by direct link (see below) or on the CFPB website (http://www.consumerfinance.gov/regulations/)

PART 1007. S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (*Regulation G*). This regulation is Referenced as *12 CFR§1007)* and is available online at:
www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1007_main_02.tpl

PART 1008—S.A.F.E. Mortgage Licensing Act—State Compliance And Bureau Registration System (*Regulation H*). This regulation is Referenced as *12 CFR§1007)* and is available online at:
www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1008_main_02.tpl

[i] Technically, HUD (The Housing and Urban Development Agency) was originally designated, but this responsibility was passed onto the CFPB

I. RESPA Overview and Recent Changes

A. Overview

The Real Estate Settlement Procedures Act ("RESPA") was first passed in 1974. As compared to other laws that cover general consumer credits, RESPA focuses specifically on residential mortgage loans. The product coverage of RESPA has expanded many times over the years.

RESPA covers all types of federally-related residential mortgages. These include purchase loans, assumptions, refinances, property improvement loans, reverse mortgages and equity lines of credit. Real Estate used for commercial, agricultural (land over 25 acres) and business purposes is not covered. Land contracts that are not federally related would not be covered.
The Consumer Financial Protection Bureau recently updated the coverage of RESPA effective January 10, 2014 to include: *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,* which has a one-to-four family dwelling, or will have a dwelling after construction or is a manufactured home. [i]

The Consumer Financial Protection Bureau (CFPB) is responsible for enforcing RESPA and answering relevant questions. HUD was the original creator of Regulation X, the set of regulations detailing RESPA.

The purpose of RESPA is two-fold:

Clarify the Process for Borrowers. RESPA aims to help consumers become better shoppers for settlement services by requiring MLOs to provide accurate disclosures at various stages of the transaction process. Examples of disclosures include spelling out the costs associated with the settlement, outlining lender, broker, and mortgage-loan originators servicing practices, outlining escrow-account practices or describing business relationships between settlement service providers

A notable disclosure from RESPA is the Good Faith Estimate (GFE), which needs to be provided to the borrower within 3 business days of a completed mortgage application.

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 §1024.2 definitions

Eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services. Section 8 of RESPA prohibits a person from giving or accepting anything of value for referrals of settlement-service business. It also prohibits a person from giving or accepting any part of a charge for services that are unearned or not performed. Section 9 of RESPA prohibits home sellers from requiring that homebuyers purchase title insurance from a particular company.

A. Recent Changes

In 2010 the RESPA rules regarding yield spread premiums (YSP) were changed to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan-originator practices. These rules prohibit certain payments to mortgage originators and prohibit steering, thus protecting consumers from these negative practices. The expression 'Yield Spread Premium' no longer exists and has been replaced by the concept that any money paid by the lender for a certain interest rate is the borrower's money to use in the transaction. The YSP is currently being called 'lender credit' or 'rebate.'

The HUD definition of YSP was only that portion of the SRP (Service Release Premium) distributed to a mortgage broker. This definition was based on the erroneous notion that only brokers received these funds as an incentive to produce and that the abuses seen in the marketplace came primarily from the broker community. The significance of this revision becomes apparent when you consider how SRP and YSP have been used by the industry historically.

Since the creation of the mortgage secondary market in the late 1930s, lenders have been using these premiums as an income source, principally to offset losses incurred in the origination process. Beginning in the 1990s, lenders began sharing the premiums received from investors with originators and brokers as an incentive for them to produce higher-yield loans. These incentives became known in the industry as YSP – a term that applied to both in-house originators and brokers until HUD narrowed the definition. For traditional loans, the premiums were usually small. Borrowers seeking fixed-rate loans are usually rate sensitive, hence competitive pressures kept premiums at a minimum.

However, the creation of the ALT-A and Sub-Prime markets in the 1990s led to products targeted at borrowers who were less rate sensitive and more concerned with the availability of loans without traditional underwriting standards. This, when combined with rapidly appreciating property values during the real-estate boom, made it fairly easy to sell mortgages with significantly higher yields, which produced large YSPs.

A few enterprising lenders and brokers used these premiums to offset borrower-paid closing costs, resulting in what was called a "no fee" mortgage. This term was deceptive in that the costs were still incurred. Borrowers were just paying those costs in the form of higher interest rates. However, most originators and brokers simply retained the YSP as their own earnings, without disclosing that the borrower was paying an above-par rate or that the originator had received the premium. Both practices are abusive and result in the borrower paying a higher interest rate than they otherwise would qualify for.

The most heavily abused of these products was the Option ARM, an Alt-A product originally designed to provide short-term payment flexibility for the self-employed and others who experienced significant variations in monthly income. The complexity of this product made it very easy to manipulate the projected yield and generate huge SRPs and YSPs. Investors hungered for these high-yield products – largely ignoring the risks associated with a negatively amortizing loan – and lenders were more than happy to feed that hunger.

With average loan amounts in many markets topping $400,000 and premiums of 5% or more, these loans became a major revenue source for both lenders and originators. Soon, underwriting guidelines were loosened to make it easier to qualify for – and thus easier to originate – these lucrative products. Borrowers who could not possibly understand or effectively utilize the features of an Option ARM were being sold on their low minimum payments and easy qualifying standards. The Option ARM became the preferred tool of greedy real-estate speculators, predatory lenders, disreputable originators (both in-house and brokers), and fraud artists.

In response to these abuses, HUD approved a final RESPA rule which became a major overhaul of the regulation in November 2008. Since then, the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Final Rule of the Board of Governors of the Federal Reserve have added clarification regarding how lender credits are handled. The highlights of the reform included:

- Issuance of a revised three-page Good Faith Estimate (GFE) form (and a corresponding HUD form)
- Enhanced disclosure of loan originator compensation and restrictions on how lender credits may be used
- A New Mortgage Servicing Disclosure Agreement
- Additional regulation on title agents and professionals

The revised GFE further improves the disclosure of all closing costs in order to facilitate the ability of borrowers to understand their true costs. Also, it is designed to improve the disclosure of certain loan terms (such as prepayment penalties or possible balloon payments) in order to help protect unsuspecting borrowers.

Specifically, the MLO is required to disclose settlement costs accurately. However, when there is a variance at settlement, the GFE does identify allowable tolerances. These thresholds are separated into three classes.

- **Costs that cannot be changed.** Examples include transfer taxes and origination charges

- **Costs that may be adjusted by up to 10% by closing**. Examples include certain title fees and inspection fees
- **Costs that can be changed without restrictions.** Examples include other costs such as initial escrow deposits and homeowner's insurance

When RESPA was introduced, certain sections of TILA were updated to reflect disclosure requirements under RESPA.

Another recent change published on January 31, 2013 and effective on January 10, 2014 is a requirement for all applicants to receive a list of approved housing counseling agencies in their area. This list is given at the time of the initial disclosures, within three days of application and can be combined with TILA Regulation Z initial disclosures. Specifically section §1024.20 of RESPA says *"(a) Provision of list. (1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location."*[i] The list can be provided to the applicant in person, by mail or electronically. Furthermore, the list of homeownership counseling agencies must be obtained within 30 days of the time the list is provided. The list of homeownership counseling agencies can be obtained from the following:
HUD, www.hud.gov or,
CFPB, www.consumerfinance.gov

Exemptions to this requirement are reverse mortgage transactions and timeshare plans.
If the loan is denied before the end of the three-business-day period then the list does not have to be provided.

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 § 1024.20 List of homeownership counseling organizations

II.RESPA Required Disclosures and the GFE

The disclosures required under RESPA exist to protect potential borrowers and to allow borrowers to compare loans. There are several junctures during the loan process at which disclosures must be presented.

These include disclosures given at the time of the loan application, before settlement or closing occurs, at the time of settlement and after settlement.

When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers several important information disclosures.

A. A Special Information Booklet

This booklet contains consumer information regarding various real-estate settlement services. (Note: this booklet is required for first-lien purchase transactions only).

(See CFR12 §1024.6 for more details)

This booklet contains:

- A description and explanation of the nature and purpose of each cost incident to a real-estate settlement
- An explanation and sample of the standard real-estate settlement form (HUD-1) as developed and prescribed under RESPA
- A description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate
- An explanation of the choices available to residential real-estate buyers with regards to selecting agents who will provide necessary services as part of the real-estate settlement process
- An explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to the real-estate settlement

The booklets must take into consideration differences in real-estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

A. A Mortgage Servicing Disclosure Statement,

This document discloses to the borrower whether the lender, broker or MLO intends to service the loan or transfer it to another lender. It also provides information about complaint resolution.

If the borrowers do not receive these disclosures at the time of application, RESPA requires that the MLO must provide them within three business days of receiving a completed loan application. If the MLO turns down the loan within three business days, however, RESPA does not require the lender to provide these documents.

(See CFR12 § 1024.21(b) for more information)

B. A Good Faith Estimate (GFE)

This disclosure shows charges the buyer is likely to pay at settlement. While this is only an estimate and the actual charges may differ, mortgage loan originators (MLOs) are subject to specific tolerances for this variance. All fees required and charged by the MLO, broker, lender, and other third parties must be listed on the initial disclosure. There are a few 'changed circumstances' that allow revision from the initial GFE and, where allowable, this is to reflect only the revision to the terms affected by the change.

It is important to note that RESPA requires accurate disclosure of loan costs using the GFE. Certain states require disclosure of real-estate commission for the purchase of a property to be disclosed on the GFE along with the seller's portion of the title insurance. MLOs should verify with state-specific rules for additional guidance.

Overview

As discussed earlier, you must provide the GFE to the customer within three business days of the date of the completed application, along with the other RESPA-mandated disclosures. The GFE is a vital disclosure that MUST be provided to the borrower either by hand, by mail or, if the applicant agrees, by fax, e-mail, or other electronic means.

This disclosure cannot be altered to include a signature line. While some states may require the GFE itself or a separate document such as the "intent to proceed" form to be signed by the borrower acknowledging the receipt of the GFE (not its acceptance), additional lines, such as a signature line, cannot be added to the GFE disclosure directly. MLOs may verify with state rules to determine if this is applicable.

As mentioned before, if a loan is denied but the denial happens after the 3 business day time frame, the GFE is still required. In other words, even if the lender denies the loan, if the denial occurs 3 business days after the borrowers submitted their completed application, the Good Faith Estimate and a Truth in Lending disclosures must be provided to the borrower.

This means that the GFE and TILA disclosures need to be delivered within the required time after receiving the completed application.

According to RESPA, the definition of an application is the submission of a borrower's financial information in anticipation of a credit decision using the following six factors:

1) Borrower's name
2) Borrower's monthly income;
3) Borrower's social security number to obtain a credit report
4) Property address
5) Estimate of value of the property
6) Loan amount

While not all this information may be known and other information may be discovered or changed throughout the processing of that loan application, the MLOs must use their best effort to prepare a Good Faith Estimate of the approximate costs. Always be mindful of the required tolerances. Once the GFE is provided, it is presumed that these six factors were known.[i]

Purpose

The GFE aims to give the borrower a complete picture of the fees associated with both the loan and, more generally, the home purchase transaction. The costs are largely broken down into these categories:

1) Loan-Related Origination Charges – Items 1-3 in GFE

This section includes credits given for YSP as well as the disclosed settlement charges. These charges include discount points, lender charges, broker fees, loan origination

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 §1024.2 (b)

fees, in-house processing fees, admin fees and other related fees. In short, this section should contain ALL fees charged by the lender, broker, or MLO.

2) **Other Settlement Charges** – Items "4" to "8" in GFE. These include the following:
   a. Title service and insurance
   b. Government-related charges such as transfer taxes and recording charges
   c. Other services such as pest inspection or survey

3) **Prepaids** (Upfront Payment of Recurring Charges) – section 900 in HUD-1
   a. Daily interest, which is the interest charged from the day of settlement until the first day of the next regular mortgage payment period
   b. Expenses accrued from loan closing to the beginning of the next mortgage payment period. This tends to include items such as insurance and property taxes
   c. Expenses for the loan paid upfront, such as upfront mortgage insurance

4) **Reserve Payment of recurring charges** held by lenders (Reserve/Escrow Payment) - section 1000 in HUD-1

   This list includes recurring expenses such as insurance, property taxes etc. as shown in the list above. Some lenders require a deposit for some of these charges to make sure that these fees are paid on time to third parties. This protects the lenders' interest in the property. RESPA restricts the reserve amount to 1 month worth of recurring payments. See the RESPA section below for more information.

In sum, all of these fees need to be paid for at the settlement table. These fees are typically shared by borrowers and sellers. Obviously, the borrower also needs to make a down-payment on top of these fees. The large number of numerical terms here can really confuse home buyers.

The role of the GFE is to disclose these numbers in a way that makes sense to a layman. Once the borrower understands all the fees and charges involved in the process, he or she is then equipped to make a good decision about their home loan. This is the ultimate goal of the GFE: to help borrowers make good decisions for their families.

Since the majority of charges come from the first item, the loan-related origination charges, it is useful to highlight these charges to the borrower. Nonetheless, the borrower should shop around in order to compare all these charges.

C. Review of the Document

The loan terms are so important that the GFE displays these non-numerical loan terms upfront on the first page. Then the GFE shows the 2 charges: a) the loan origination charges and b) other charges. For additional clarification, the borrower can refer to the second page to examine the breakdown of the fees. So, let's start by reviewing the first page.

NOTE: The GFE below and the information it contains are for illustrative purposes.


OMB Approval No. 2502-0265

Good Faith Estimate (GFE)

Reminder to Borrowers to Shop for the Best Loan

Name of Originator	Max Loans Inc. (MLI)	Borrower	Betty Borrower
Originator Address	123 First Street Atlanta, GA 30337	Property Address	987 Home Ave. Atlanta, GA 30291
Originator Phone Number	555-777-1212		
Originator Email	Max@MLI.com	Date of GFE	Jan 1, 2010

Purpose This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

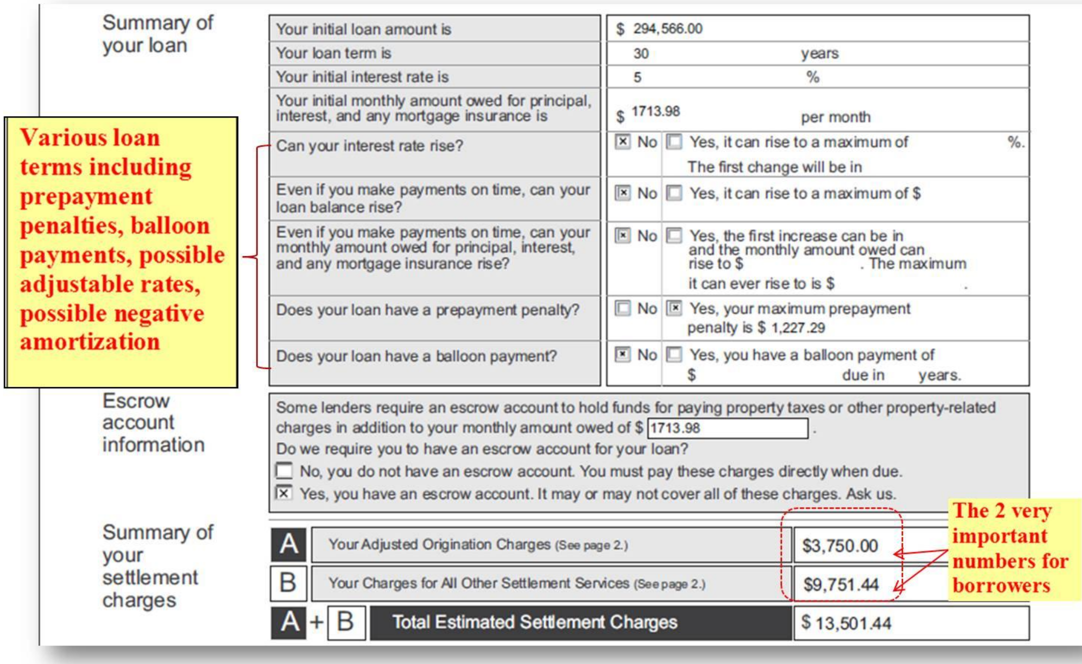
Shopping for your loan Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through 1/1/2010. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through 1/15/2010 (10 Business Days).
3. After you lock your interest rate, you must go to settlement within 30 days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least 15 days before settlement.

The GFE states outright that its purpose is to help a borrower shop for the best loan available. It also reminds the borrower to shop around.

Next, the GFE specifies important dates. This section aims to prevent a situation where a borrower is surprised to find much higher loan-closing costs at settlement than what was shown initially in the GFE. This section also discloses the extent to which the borrower can rely on the mortgage loan originator's estimate and whether there is a rate lock on the loan.



Summary of your loan

Your initial loan amount is	$ 294,566.00
Your loan term is	30 years
Your initial interest rate is	5 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ 1713.98 per month
Can your interest rate rise?	☒ No ☐ Yes, it can rise to a maximum of %. The first change will be in
Even if you make payments on time, can your loan balance rise?	☒ No ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☒ No ☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No ☒ Yes, your maximum prepayment penalty is $ 1,227.29
Does your loan have a balloon payment?	☒ No ☐ Yes, you have a balloon payment of $ due in years.

Various loan terms including prepayment penalties, balloon payments, possible adjustable rates, possible negative amortization

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ 1713.98 .
Do we require you to have an escrow account for your loan?
☐ No, you do not have an escrow account. You must pay these charges directly when due.
☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges (See page 2.)	$3,750.00
B	Your Charges for All Other Settlement Services (See page 2.)	$9,751.44
A + B	Total Estimated Settlement Charges	$ 13,501.44

The 2 very important numbers for borrowers

Then, in the next section, the GFE provides various disclosures of loan terms such as prepayment penalties, balloon payments, potential adjustable rates and potential negative amortization. This section probably reminds you a bit of the TILA disclosure. The form is rather self-explanatory even to a layman who knows very little about the mortgage industry.

Now, let’s look at the breakdown of the settlement charges in the next page.

Understanding your estimated settlement charges

Your Adjusted Origination Charges

1.	**Our origination charge** This charge is for getting this loan for you.	$6,750.00
2.	**Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of ____ % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ 3,000.00 for this interest rate of 5 %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ ____ for this interest rate of ____ %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	$3,000.00
A	Your Adjusted Origination Charges	$ 3,750.00

The tradeoff table from P.3

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges,** then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate,** then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	$ 294,566.00	$ 294,566.00	$ 294,566.00
Your initial interest rate[1]	5.0 %	6.0 %	4.5 %
Your initial monthly amount owed	$ 1,713.98	$ 1,898.66	$ 1,652.11
Change in the monthly amount owed from this GFE	No change	You will pay $ 184.78 **more** every month	You will pay $ 88.77 **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $ 1,500.00	Your settlement charges will **increase** by $ 1,500.00
How much your total estimated settlement charges will be	$ 13,501.44	$ 12,051.44	$ 15,051.44

[1]For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

This section on page 2 concerns loan-origination costs. The GFE helps shed light on the tradeoffs between the loan-origination costs paid upfront versus on-going note rates. On the form, the mortgage-loan originator displays different options for borrowers, such as a rate of 6%, 5% and 4.5% and their corresponding upfront loan-origination charges. On page 3, there is a supplemental section that allows the mortgage-loan originator to further breakdown these options into more detail to facilitate the borrower's understanding.

Now, look at the next section on page 2. It displays a host of fees and escrow amounts that need to be paid upfront at settlement. Note that the nature of the fees are described in plain English.

Another notable feature of this section is that it aims to explain to borrowers which of these services they can choose or shop around for. This prevents mortgage-loan originators from taking advantage of the borrowers' ignorance and bundling the loan with expensive settlement services. This also prevents kickbacks, which we will talk about in more detail in the next RESPA section.

Your Charges for All Other Settlement Services

Some of these charges can change at settlement. See the top of page 3 for more information.

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* / *Charge* Appraisal/Credit Report: 400.00/15.00 Tax Service/Flood Certification: 54.00/12.00 Upfront Mortgage Insurance Premium: 4911.25	$5,392.25
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	$925.00
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.	$725.00
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* / *Charge* Survey: 250.00 Pest Inspection: 45.00	$295.00
7. Government recording charges These charges are for state and local fees to record your loan and title documents.	$50.00
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.	$1,368.00
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes ☒ all property taxes, ☒ all insurance, and ☐ other ______.	$306.60
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $ 39.59 per day for 1 days (if your settlement is 1/31/2010).	$39.59
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* / *Charge* Hazard Insurance Premium: 650.00	$650.00
B Your Charges for All Other Settlement Services	$ 9,751.44
A + B Total Estimated Settlement Charges	$ 13,501.44

To provide more surety regarding the estimate and its relationship to the final closing costs, there is a supplemental table on page 3 that breaks down which fees should not change substantially from the date of the GFE disclosure to the settlement date, which fees might change within a narrow range, and which fees can change substantially. This way, unscrupulous mortgage-loan originators should not be able to bump up the upfront charges at the last minute.

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges **cannot increase** at settlement:	The total of these charges **can increase up to 10%** at settlement:	These charges **can change** at settlement:
▪ Our origination charge ▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* ▪ Your adjusted origination charges *(after you lock in your interest rate)* ▪ Transfer taxes	▪ Required services that we select ▪ Title services and lender's title insurance *(if we select them or you use companies we identify)* ▪ Owner's title insurance *(if you use companies we identify)* ▪ Required services that you can shop for *(if you use companies we identify)* ▪ Government recording charges	▪ Required services that you can shop for *(if you do not use companies we identify)* ▪ Title services and lender's title insurance *(if you do not use companies we identify)* ▪ Owner's title insurance *(if you do not use companies we identify)* ▪ Initial deposit for your escrow account ▪ Daily interest charges ▪ Homeowner's insurance

P.3 of GFE helps borrowers understand which fees might change quite substantially from GFE to closing

Finally, in the last section of page 3, there is a section that helps borrowers to compare different loans. Notice that the GFE specifically puts all sorts of loan terms next to each other, so that the borrowers are not just comparing note rates.

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	MLI			
Initial loan amount	$294,566.00			
Loan term	30 years			
Initial interest rate	5.0			
Initial monthly amount owed	$1,713.98			
Rate lock period	30 days			
Can interest rate rise?	no			
Can loan balance rise?	no			
Can monthly amount owed rise?	no			
Prepayment penalty?	yes			
Balloon payment?	no			
Total Estimated Settlement Charges	$13,501.44			

Last Section of Page 3 of GFE helps borrowers compare loans by different lenders

Changed Circumstances

Changed circumstances are defined in 12 USC § 1024.2 as any of the following:

- Acts of God, war, disaster, or other emergency
- Information particular to the borrower or transaction that was relied upon when providing the GFE and that has changed or that was found to be inaccurate after the GFE had been provided. This information may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used when the GFE was issued
- New information particular to the borrower or transaction that was not known at the time the GFE was issued
- Other circumstances particular to the borrower or transaction, including boundary disputes, the need for flood insurance or environmental problems. [i]

None of the information collected by the loan originator prior to issuing the GFE may, at a later stage, become the basis for a changed circumstance upon which a loan originator may offer a revised GFE, unless the loan originator can demonstrate that

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 §1024.2(1)

there was a change in the particular information or that it was inaccurate, or that the loan originator did not rely on that particular information when issuing the GFE.

In addition, the loan originator is presumed to have relied on specific financial information before providing the GFE. The loan originator cannot base a revision of the GFE on this information unless it changed or was later found to be inaccurate. The information includes:

- Borrower's name
- Borrower's monthly income
- Property address
- Estimate of the value of the property
- Loan amount sought
- Any information contained in any credit report obtained by the loan originator prior to providing the GFE
- Market price fluctuations by themselves[i]

If there is a changed circumstance, then the MLO must issue a revised GFE within 3 business days of receiving information which is sufficient to establish changed circumstances

This revised GFE should reflect only the increased charges resulting from the 'changed circumstance.' For example:

- Unreleased liens impacting the recording fees
- Property address not legal or inaccurate
- Adding or removing an applicant from the loan
- Occupancy status
- Change in credit score or a need for upgraded services, such as a more comprehensive appraisal or a pest inspection

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 §1024.2(2)

III. Other RESPA Required Disclosures

A. Disclosures before settlement / closing occurs

An Affiliated Business Arrangement (AfBA) Disclosure is required whenever a settlement service provider involved in a RESPA-covered transaction refers the consumer to a provider with whom the referring party has an ownership interest or another beneficial interest. *NOTE: This may be due at application if applicable.* The referring party must give the AfBA disclosure to the consumer at or prior to the time of referral. The only exception is that, if the referral is made by phone, the disclosure can be sent to the borrower within 3 business days. This disclosure must describe the business arrangement that exists between the two providers and give the borrower an estimate of the second provider's charges.

In general, the referring party may not require the consumer to use the particular provider being referred. The only exceptions to this rule are referrals to an attorney, credit reporting agency or real-estate appraiser who will represent the lender's interest in the transaction.

***See § 1024.15 Affiliated business arrangements* for more information.**

Appendix D to Part 1024—Affiliated Business Arrangement Disclosure Statement Format Notice

To:
From:
(Entity Making Statement)
Property:
Date:

This is to give you notice that [*referring party*] has a business relationship with [*settlement services provider(s)*]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [*referring party*] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[*provider and settlement service*]

[*charge or range of charges*]

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real-estate appraiser that we, as your lender, will require you to use as a condition of your loan on this property, to represent our interests in the transaction.

[*provider and settlement service*]

[*charge or range of charges*]

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that *referring party* is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

B. Disclosures At Settlement

1) **The HUD-1 Settlement Statement** is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with the settlement. RESPA allows the borrower to request to see the HUD-1 Settlement Statement one business day before the actual settlement. The settlement agent must then provide the borrower with a completed HUD-1 Settlement Statement based on information known to the agent at that time. At settlement, separate forms of a HUD-1 Settlement Statement may be prepared for the borrower and the seller. If the borrower or the seller does not attend the settlement, the HUD-1 should be mailed or delivered as soon as practicable after settlement.[i]

Below we show an example of the comparison used at settlement to documents changes in loan fees from the early disclosure of the GFE to the final costs as detailed on the HUD-1 settlement statement.

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801	$6,750.00	$6,750.00
Your credit or charge (points) for the specific interest rate chosen	# 802	-$3,000.00	-$3,000.00
Your adjusted origination charges	# 803	$3,750.00	$3,750.00
Transfer taxes	# 1203	$1,368.00	$1,368.00
Charges That in Total Cannot Increase More Than 10%		**Good Faith Estimate**	**HUD-1**
Government recording charges	# 1201	$50.00	$50.00
Appraisal	# 804	$275.00	$325.00
Credit report	# 805	$40.00	$40.00
Tax service fee	# 806	$56.00	$76.00
Flood certfication	# 807	$12.00	$12.00
Title services and lender's title insurance	# 1101	$1,275.00	$1,275.00
Owner's title insurance	# 1103	$175.00	$175.00
	#		
	Total	$1,883.00	$1,953.00
	Increase between GFE and HUD-1 Charges	$ 70 or	4 %

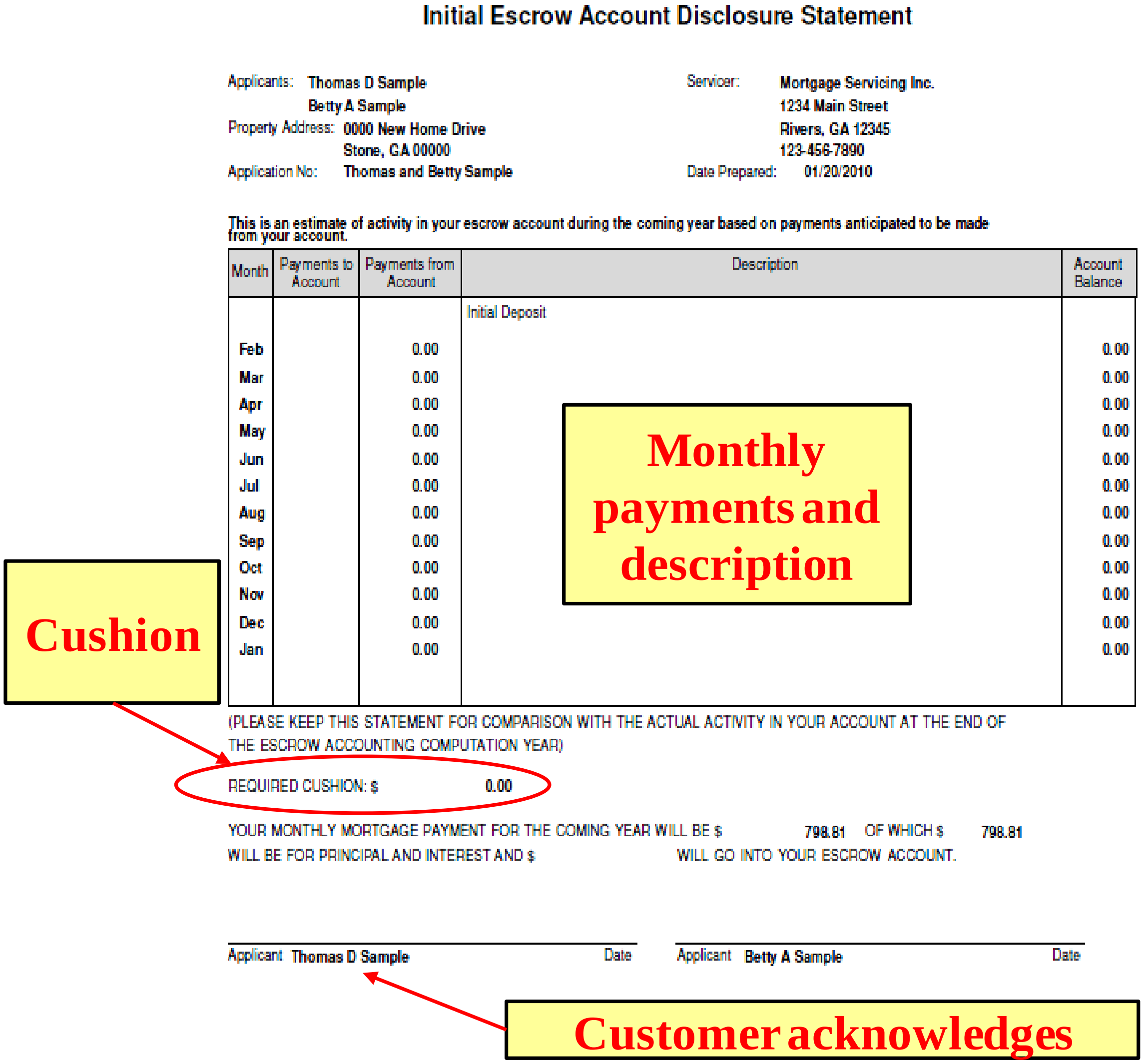
[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 § 1024.8 Use of HUD-1 or HUD-1A settlement statements.

Loan Terms

Loan Terms	
Your initial loan amount is	$ 200,000.00
Your loan term is	30 years
Your initial interest rate is	5.0 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ 1,173.00 includes [X] Principal [X] Interest [X] Mortgage Insurance
Can your interest rate rise?	[ ] No [X] Yes, it can rise to a maximum of 10.0 %. The first change will be on 6/1/2010 and can change again every 6 months after 6/1/2010. Every change date, your interest rate can increase or decrease by 1.0 %. Over the life of the loan, your interest rate is guaranteed to never be lower than 5.0 % or higher than 10.0 %.
Even if you make payments on time, can your loan balance rise?	[X] No [ ] Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	[ ] No [X] Yes, the first increase can be on 6/1/2010 and the monthly amount owed can rise to $ 1,290.00. The maximum it can ever rise to is $ 1,842.00.
Does your loan have a prepayment penalty?	[X] No [ ] Yes, your maximum prepayment penalty is $
Does your loan have a balloon payment?	[X] No [ ] Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	[ ] You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. [X] You have an additional monthly escrow payment of $ 350.00 that results in a total initial monthly amount owed of $ 1,523.00. This includes principal, interest, any mortgage insurance and any items checked below: [X] Property taxes [X] Homeowner's insurance [ ] Flood insurance [ ] [ ] [ ]

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

The Initial Escrow Statement itemizes the estimated taxes, insurance premiums and other charges anticipated to be paid from the Escrow Account during the first twelve months of the loan. It lists the Escrow payment amount and any required cushion by the lender. Although the statement is usually given at settlement, the lender has 45 days from the settlement date to deliver it.



Initial Escrow Account Disclosure Statement

Applicants: Thomas D Sample
Betty A Sample
Property Address: 0000 New Home Drive
Stone, GA 00000
Application No: Thomas and Betty Sample

Servicer: Mortgage Servicing Inc.
1234 Main Street
Rivers, GA 12345
123-456-7890
Date Prepared: 01/20/2010

This is an estimate of activity in your escrow account during the coming year based on payments anticipated to be made from your account.

Month	Payments to Account	Payments from Account	Description	Account Balance
			Initial Deposit	
Feb		0.00		0.00
Mar		0.00		0.00
Apr		0.00		0.00
May		0.00		0.00
Jun		0.00		0.00
Jul		0.00		0.00
Aug		0.00		0.00
Sep		0.00		0.00
Oct		0.00		0.00
Nov		0.00		0.00
Dec		0.00		0.00
Jan		0.00		0.00

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR)

REQUIRED CUSHION: $ 0.00

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 798.81 OF WHICH $ 798.81 WILL BE FOR PRINCIPAL AND INTEREST AND $ WILL GO INTO YOUR ESCROW ACCOUNT.

Applicant Thomas D Sample Date

Applicant Betty A Sample Date

C. Disclosures After Settlement

- **Annual Escrow Statement**. Once a year, loan servicers must deliver to borrowers an Annual Escrow Statement. The annual escrow account statement summarizes all escrow account deposits and payments in and out of the account during the twelve month computation year. It also notifies the borrower of any shortages or surpluses in the account and advises the borrower about the course of action being taken.

- **Servicing Transfer Statement.** If the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer, the loan servicer is required to deliver a Servicing Transfer Statement to the borrower. Generally, the loan servicer must notify the borrower 15 days before the effective date of the loan transfer. As long as the borrower makes a timely payment to the old servicer within 60 days of the loan transfer, the borrower cannot be penalized. The notice must include the name and address of the new servicer, any toll-free telephone numbers, and the date the new loan servicer will begin accepting payments.

IV. RESPA Consumer Protections and Prohibited Practices

A. Section 8 (CFR12 USC §1204.14): Kickbacks, Fee-splitting, Unearned fees

REGULATIONS

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback or any item of value in exchange for referrals of settlement service business. In addition, RESPA prohibits fee splitting and receiving unearned fees for services not actually performed.

If RESPA prohibits giving or receiving anything of value in exchange for referrals, it helps to know the definition of a "thing of value". RESPA section § 1024.14 Prohibition against kickbacks and unearned fees defines a thing of value as:

"Thing of value. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term "payment" is used throughout §§ 1024.14 and 1024.15 as synonymous with the giving or receiving of any "thing of value" and does not require transfer of money".[i]

Settlement services include any service provided in connection with a real estate settlement including, but not limited to, the following:

[i] Real Estate Settlement Procedures Act (RESPA) Regulation X CFR 12 § 1024.14(d) Prohibition against kickbacks and unearned fees.

- Title searches
- Title examinations
- The provision of title certificates
- Title insurance
- Services rendered by an attorney
- The preparation of documents
- Property surveys
- The rendering of credit reports or appraisals
- Pest and fungus inspections
- Services rendered by a real-estate agent or broker
- The 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 loans)
- The handling of the processing, closing or settlement of a loan

One should be mindful of a potential violation in the law in any referrals or any fee-splitting arrangements. Even if compensable loan origination services have been actually performed by an agent, that fact does not, by itself, make the contemplated payment legal. If the payment is high relative to the market value of similar services provided, then the excess is not considered to be for services actually performed.

Many of the themes of RESPA may conflict with the instincts of real-estate brokers who are used to receiving referral fees for referring their clients to other brokers (specifically permitted under a RESPA exception). RESPA did clarify that it is legitimate for attorneys, title-insurance agents, servicers, real-estate agents to get paid for their service. If different services are provided for by affiliated business arrangements, then charges are legitimate if there is a disclosure to the borrowers.

ENFORCEMENT

The government is more stringent than ever in enforcing RESPA kickback and fee-splitting practices. In a real-estate transaction, many parties are involved. These parties include realtors, lenders, construction companies, mortgage-insurance companies, attorneys, title-insurance companies, and appraisers. Examples of recent government crackdowns involve each of these parties.

Some of these parties formed sham joint ventures for the purpose of evading this section of RESPA. This is a venture where parties have an ownership, partnership or participant's interest in the arrangement. Many of the complaints allege that the new entity performs few real settlement services or that such an entity is a subterfuge for passing referral fees back to the referring party. A good discussion on these entities can be found at Appendix B to Part 1024: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=eee63117e149d4b839b9af68d330ad18&rgn=div5&view=text&node=12:8.0.2.10.17&idno=12#12:8.0.2.10.17.2.1.9. Some examples of recent enforcements include:

- 1. *Facts:* Tara, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to Sam, a builder, in connection with a subdivision being developed by Sam. Sam agrees to refer purchasers of the completed homes in the subdivision to Tara for the purchase of settlement services in connection with the sale of individual lots by Sam. *Comments:* The rendering of services by Tara to Sam at little or no charge constitutes a thing of value given by Tara to Sam in return for the referral of settlement services business, and both Tara and Sam are in violation of section 8 of RESPA.
- 2. *Facts:* Bill, a lender, encourages persons who receive federally-related mortgage loans from it to employ Eric, an attorney, to perform title searches and related settlement services in connection with their transaction. Eric and Bill have an understanding that, in return for the referral of this business, Bill provides legal services to Eric or Eric's officers or employees at abnormally low rates or for no charge. *Comments:* Both Bill and Eric are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real-estate broker or any other provider of settlement services who had referred prospective clients to the attorney, section 8 would be violated by both persons.

Violations of § 1024.14 Prohibition against kickbacks and unearned fees anti-kickback, referral fees and unearned fees provisions of RESPA are subject to criminal and civil penalties. In a criminal case a person who violates Section 8 may be fined up to $10,000 and imprisoned for up to one year. In addition, failure to comply with RESPA may be grounds for administrative action by HUD. In a private lawsuit, a person who violates Section 8 may be liable to the person charged for the settlement service for up to three times the amount of the charge paid for the service.

B. Section § 1024.16 Title companies.: Seller-Required Title Insurance (Section 9)

Section 12 USC §2608 of RESPA prohibits a seller from requiring the home buyer to use a particular title-insurance company, either directly or indirectly, as a condition of sale.

Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

C. Section § 1024.17 Escrow accounts: Limits on Escrow Accounts

Section 12 USC §2609 of RESPA sets limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

During the course of the loan, RESPA prohibits a lender from charging excessive amounts for the escrow account. Each month, the lender may not require a borrower to pay into the escrow account more than the sum of (1) a monthly payment average, or specifically, 1/12th of the total of all disbursements payable during the year and (2) an amount necessary to pay for any shortage in the account.

In addition, the lender may require a cushion in the account, not to exceed an amount equal to 1/6 of the total disbursements for the year. The servicer must submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year after conducting an escrow account analysis. If it turns out that there is an excess of $50 or more in the account and the borrower is current on payments, the amount must be returned to the borrower. If the borrower is late on payment, the excess does not need to be returned.

D. Section 10 of RESPA (12 U.S.C. 2609): Prohibition of Fees for Preparation of Truth-in-Lending, Uniform Settlements, and Escrow-Account Statements.

For any federally-related mortgage loan, neither the mortgage-loan originator nor servicer can impose charges for the preparation of truth-in-lending, uniform settlement and escrow-account statements.

Loan Servicing Complaints

§ 1024.21(e) Mortgage servicing transfers provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 12 USC

§2605 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow-account questions) should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement to explain the current position.

Until the complaint is resolved, borrowers should continue to make the servicer's required payments. Borrowers may bring a private law suit or a class-action suit against a servicer for up to three years after the initial complaint.

D. RESPA Enforcement

Individuals. Individuals have one year from the date of an occurrence to bring a private law suit to enforce violations of Section 12 USC §2607 or 12 USC §2608. A person may bring an action for violations of Section §2605 within three years. Lawsuits for violations of Section 12 USC §2605, 12 USC §2607, or 12 USC §2608 may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred.

Examples of common retroactive enforcement violations include:

- A lender, broker, or MLO charged a borrower more than the allowable tolerances and failed to reimburse the client at settlement or within 30 calendar days after settlement
- Required use of an affiliate of the RE Agent, Builder or MLO

Government Offices. The CFPB, a State Attorney General or State Insurance Commissioner may bring an injunctive action to enforce violations of Section 12 USC §2605, 12 USC §2607 or 12 USC §2608 of RESPA within *three years.*

SECURE AND FAIR FORCEMENT FOR MORTGAGE LICENSING ACT (SAFE ACT)

V. Overview and Covered Persons

The Secure and Fair Enforcement for Mortgage Licensing Act ("SAFE Act") of 2008 is a key component of the Housing and Economic Recovery Act of 2008. The SAFE Act sets forth requirements for the licensing and registration of all mortgage loan originators.

The SAFE Act is codified in *United States Code Title 12: Banks and Banking*, Chapter 51:

CHAPTER 51—SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING. The Act is referenced online at*:*
www.gpo.gov/fdsys/pkg/USCODE-2010-title12/html/USCODE-2010-title12-chap51.htm

The associated regulations are codified in the *Code of Federal Regulations*, *Title 12: Banks and Banking* in:

PART 1007. S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (*Regulation G*)**.** This regulation is Referenced as *12 CFR§1007)* and can be found online at:
www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1007_main_02.tpl

PART 1008—S.A.F.E. Mortgage Licensing Act—State Compliance And Bureau Registration System (*Regulation H*). This regulation is Referenced as *12 CFR§1007)* and can be found online at:
www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr1008_main_02.tpl

A. An Industry Transformation

The reason why the implementation of the SAFE act was such a radical change in the way that mortgage loan originators had been regulated is that, previously, States had been the sole regulators for licensing and registration. Under this practice, regulators across the 50 states found it challenging to share and/or find information on 'bad actors' when complaints were filed.

For example, a broker whose license was revoked in one state could move states and start over again without having to worry about previous complaints. The Nationwide Licensing System (NMLS) provides an avenue for the sharing of such information. Furthermore, it reduces the regulatory burden both for the states as well as for mortgage loan originators who work in multiple states.

B. State Adoption and The NMLS

To aid and facilitate states' compliance with the requirements of the SAFE Act, the SAFE Act directs the establishment of a centralized nationwide mortgage licensing system by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR).[i]

This licensing system created is called the Nationwide Mortgage Licensing System and Registry (generally referred to as "NMLS"). It is essentially a database and software system that enables the registration and tracking of mortgage loan originators.

PROVIDES A "FLOOR" FOR MORTGAGE LOAN ORIGINATOR REQUIREMENTS

It is important to know that SAFE provides a floor but not a "ceiling" to mortgage loan originator licensing. States can, and many will, have additional requirements. For example, states may add educational, licensing or testing requirements that are additions beyond the SAFE Act minimum requirements.

Key duties of the NMLS include[ii]

- The Nationwide Mortgage Licensing System and Registry (NMLS) must
- Establish protocols for the issuance of Unique Identifiers (essentially a license number)
- Receive and process fingerprints for national and state criminal history background checks for all loan originators
- Review and approve pre-licensure and continuing education courses
- Develop a qualified written test and approve test providers
- Provide certain reporting
- Provide public access to certain licensing information

[i] S.A.F.E. MORTGAGE LICENSING ACT—STATE COMPLIANCE AND BUREAU REGISTRATION SYSTEM (REGULATION H) CFR 12 § 1008

[ii] § 1007.104

C. Definition of "Mortgage Loan Originator"

The most important definition within the SAFE Act that all mortgage professionals should understand is the definition of "mortgage loan originator," since the SAFE Act applies to people who fall under this definition.

The SAFE Act specifies that people who need to be registered with NMLS include: an individual who (a) takes a residential mortgage loan application and (b) offers or negotiates terms of a residential mortgage loan for compensation or gain.[i]

NOTE: Many states have worded the above as an 'or' statement rather than an 'and' statement, meaning most people will fall into the MLO category if they do either (a) or (b) in the paragraph above.

Not surprisingly, this includes residential mortgage loan originators and mortgage brokers. The definition also includes two other categories that differ from a number of standard state laws:

1. Any real-estate brokers compensated by a mortgage-loan originator
2. Processors or underwriters who act as independent contractors

Exemptions. Industry professionals who are exempt include the below:

- Real-Estate brokers who perform only real-estate brokerage activities and are licensed or registered in accordance with state law. Note: this exemption does not apply if the broker is compensated by a loan originator or agent of a loan originator.

- Purely administrative/clerical personnel (see below)

- Professionals solely involved in extending credit relating to timeshare plans as defined in section 101(53D) of title 11, United States Code)

- Registered loan originators, or employees of institutions regulated by Federal banking agencies (e.g. - FDIC, Federal Reserve, etc...) or the Farm Credit Administration, who also maintain a unique identifier through the NMLS
    - This also applies to subsidiaries that are owned and controlled by a Federal banking agency

<u>Note on Purely Administrative / Clerical Personnel</u>
As long as the job duties are purely an administrative or a clerical function (in other words, they do not negotiate, offer or counsel about terms), and that the individual is

[i] 12 USC 5102

supervised by a licensed mortgage-loan originator, that individual will not need to be licensed.

Generally, a way to think about this exemption is that the employee must be limited to information gathering and communicating with the consumer only for processing or underwriting purposes. For example, the individual cannot provide business cards, brochures and rate lists suggesting that they will perform any of the activities of a loan originator.

IMPORTANT NOTE: This exemption does not apply to independent contractors.

VI. Licensing and Enforcement

Licensing Requirements can be split into four aspects: registration, education, testing, reporting.

A. Registration[i]

- Provide fingerprints for an FBI criminal history background check to the NMLS
- Provide authorization for NMLS to obtain a credit report
- Never had a mortgage-loan originator license revoked
- Has had no felonies in the past seven years (either convicted of, plead guilty to or plead nolo contendere to in any domestic, foreign or military court)
- Never had a felony involving fraud, dishonesty, breach of trust or money laundering (either convicted of, plead guilty to or plead nolo contendere to in any domestic, foreign or military court)
- Demonstrate financial responsibility
- Has met any state-required net worth or surety bond requirement

B. Education[ii]

Prior to obtaining a license, all mortgage-loan originators must complete a minimum of 20 hours of NMLS-approved pre-licensing education. The 20 hours of education must consist of, at a minimum:

- 3 hours of Federal Law and Regulation
- 3 hours of Ethics, including fraud, consumer protection and fair lending
- 2 hours of standards for non-traditional mortgage lending
- 12 hours of electives

Note that States may add further requirements and may mandate the use of the elective hours. For example, a state could ask that 4 hours of the 20 required hours consist of state law or that a total of 24 hours are required.

[i] 12 USC 5104
[ii] 12 USC 5104

C. Test[i]

Mortgage loan originator applicants and former MLOs who have let their license lapse for 5 years have to pass a required national exam. Exam requirements include the below:[ii]

- The exam is pass or fail
- Score of 75% or more needed to pass
- If a test is failed on the first or second attempt, an applicant can retake the test 30 days later
- After a third failed test, an applicant must wait for at least 6 months before taking the test again
- The retest cycle begins again at the fourth test

The NMLS is responsible for writing the test.[iii] As mentioned previously, this is a minimum requirement and states have the flexibility to add state exams. States doing so have utilized the NMLS to develop the exams.

NMLS Current Guidelines

NMLS current guidelines are that the national exam will have 125 questions and that state exams will have, 45, 50 or 55 questions.

The 125 national questions are comprised of the below, while state exams each have their own content:[iv]

- 24-25% Federal Law
- 19-20% General Knowledge
- 19-20% Loan Origination Activities
- 14-15% Ethics
- 20-22% Uniform state content (***see more details below)***

15 of the questions are not graded, but are used by the NMLS to determine whether they should be considered as part of future graded exams.

The Uniform State Test (UST)[i]

[i] 12 USC 5104
[ii] 12 CFR §1008.105(e)
[iii] 12 CFR §1008.105(e)(1)
[iv] NMLS Website: National Test Content Outline

The National Exam guidelines changed to the above on April 1st, 2013 with the addition of the 20-22% Uniform state content component of the exam. Formerly, the test consisted of a total of 100 questions.[ii] This content component includes questions which cover law common to all state SAFE Act legislation and can be taken as a separate 25-question test, called the Uniform State Test (UST), by currently licensed MLOs.[iii]

With the addition of this content, states have the option to legislate that passing the new national exam satisfies the state's exam requirement. Choosing this option is also called "adopting the UST." On the date of the initial transition to the new National Exam (April 1st, 2013), 24 States adopted the UST and no longer offer unique state exams. Other states continue to announce adoption.[iv] The intent is that all states will adopt the UST and that passing a separate state exam will no longer be required by MLO applicants.

D. Requirements for License Renewals[v]

In order to renew a license, all state-licensed mortgage-loan originators must continue to meet the states' standard for issuance of a license and take eight hours of continuing education annually. The education must include:

- 3 hours of federal law and regulations;
- 2 hours of ethics, including instruction on fraud, consumer protection, and fair lending; and
- 2 hours of standards on non-traditional mortgage lending
- 1 hour of electives

A state may add or increase CE requirements to include specific state-mandated course hours.

E. Enforcement

[i] NMLS Website: http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/UniformStateTest.aspx
[ii] Though the new 125 question test is the National Exam, during the transition phase it is also called the "National Test Component with Uniform State Content"
[iii] The UST will only be available until April 1st, 2014
[iv] http://mortgage.nationwidelicensingsystem.org/profreq/testing/Documents/UST%20Adoption%20Table.pdf
[v] 12 USC 5105

Consumer Financial Protection Bureau (CFPB):

The CFPB must determine if a state is in compliance with the SAFE Act. If the CFPB determines that the state is not satisfying the Act or at least making a good-faith effort to do so. THE CFPB must implement a system for all state-licensed mortgage loan originators in that state. In other words, licensees would have to follow requirements for both the state law and the SAFE Act until the state laws change.[i]

Federal Banking Agencies[ii]

The SAFE Act also requires Loan Officers who work for "Any national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or federally insured credit union as any such term is defined in § 1007.101(c)(1). Covered financial institution also includes a non-federally insured credit union that registers subject to the conditions of § 1007.101(c)(3)" [iii] to be registered and receive an NMLS ID number.

§ 1007.104 Policies and procedures specifically states:

A covered financial institution that employs one or more mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the covered financial institution, and apply only to those employees acting within the scope of their employment at the covered financial institution. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the covered financial institution are required to be registered mortgage loan originators;

(b) Require that all employees of the covered financial institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 1007.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

[i] 12 USC 5107
[ii] 12 CFR §1007.101 to §1007.105
[iii] 12 CFR §1007 .102

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this part to be conducted at least annually by covered financial institution personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this part, or the covered financial institution's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions;

(h) Establish a process for reviewing employee criminal history background reports received pursuant to this part, taking appropriate action consistent with applicable Federal law, including section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), section 206 of the Federal Credit Union Act (12 U.S.C. 1786(i)), and section 5.65(d) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2277a-14(d)), and implementing regulations with respect to these reports, and maintaining records of these reports and actions taken with respect to applicable employees; and

(i) Establish procedures designed to ensure that any third party with which the covered financial institution has arrangements related to mortgage loan origination has policies and procedures to comply with the S.A.F.E. Act, including appropriate licensing and/or registration of individuals acting as mortgage loan originators.[i]

[i] 12 CFR § 1007.104