



SUFFOLK ACADEMY OF LAW
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RESPA

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Vincent G. Danzi is the senior vice president and senior counsel at First Nationwide Title Agency's Uniondale, Long Island office. A title industry veteran, with more than 13 years in the business, Mr. Danzi is in charge of FNTA's regulatory and compliance issues, as well as building out and growing the Agency's high-end, luxury residential practice.

Prior to joining FNTA, Mr. Danzi was senior vice president and general counsel at Manhattan-based One Title National Guaranty Company where his focus was to establish and operate the newly-formed title insurance underwriter from initial application through actual operation. He was responsible for drafting all operational forms, agreements and company policies for both the title insurer and its exclusive title agency.

Before his tenure at One Title, Mr. Danzi served as general counsel to Smithtown, Long Island-headquartered Equity Settlement Services, a national title and settlement agent, for nearly a decade. During this time, he also served in an Of-Counsel capacity to the multi-state law firm of Puleo Delisle, PLLC, a settlement agent in New York, Georgia, Massachusetts, New Jersey, and Delaware.

Mr. Danzi launched his career at Bohemia, Long Island-based-Nationwide Court Services, eventually ascending to the position of president and title officer of the company's main title subsidiary, where he was responsible for the firm's day-to-day activities.

A frequent contributor to various legal and title-related organizations and periodicals, Mr. Danzi's articles have appeared in such prestigious publications as the *New York State Bar Association Journal*, *The Legal Description*, & *RespaNews.com*. A frequent lecturer, he has multiple speaking engagements to his credit including this year for the Suffolk County Bar Association, and last year for the American Conference Institute's First National Forum on Residential Mortgage Litigation and Regulatory Enforcement. He is a member of the editorial advisory board for *The Legal Description* and he produces continuing legal education materials for local bar associations.

Mr. Danzi earned a BA degree from the University of Texas at Austin and a J.D from the University at Buffalo School of Law.

RESPA
The Real Estate Settlement
Procedures Act

Vincent G. Danzi

RESPA's Subject Matter

- Settlement, Servicing, and Solicitation of business in connection with “Federally Related Mortgage Loans”. Specifically...
 - Disclosures relating to origination and closing, and rules relating to the establishment of escrow accounts, in connection with, “Federally Related Mortgage Loans.”. (i.e. Mortgage “Settlement” Provisions)
 - Disclosures and communications relating to the Servicing of, “Federally Related Mortgage Loans,” and rules as to escrow account balances during the repayment of the mortgage loan.
 - Payments, referral arrangements, and provider business structures, relating to the Solicitation of settlement services business involving, “Federally Related Mortgage Loans.”

The Primordial Soup of the Regulation of Real Estate Transactions in the United States

- World War I and the scarcity of credit
 - April 5, 1918: War Finance Corporation
 - January 22, 1932: Reconstruction Finance Corporation
 - July 22, 1932: Federal Home Loan Bank Act

The Primordial Soup of the Regulation of Real Estate Transactions in the United States

- The Great Depression and the collapse of banks
 - June 27, 1934: National Housing Act establishes the Federal Housing Administration (the "FHA")
 - FHA creates federally-backed Mortgage Insurance that "modernizes" mortgage terms
 - 1937, FHA creates the Federal National Mortgage Association, or Fannie Mae, chartered as a subsidiary of the RFC, to establish a secondary market for home mortgages.
- Government provides the financing, but then expects to exert control over the costs.
 - The "Blue Book"

The Rise of the Regulators: HUD's Ancestors

- February 24, 1942, President Franklin D. Roosevelt issues Executive Order 9070, establishing the National Housing Agency to administer the FHA's non-farm housing programs.
- July 24, 1947: Reorganization Plan No. 3 (authorized by the Reorganization Act of 1945), establishes the Housing and Home Finance Agency to replace the National Housing Agency.
- September 9, 1965: The Department of Housing and Urban Development Act establishes the Department of Housing and Urban Development (HUD) to replace the Housing and Home Finance Agency.

RESPA is Born

- “Real Estate Settlement Procedures Act of 1974” Effective June 20, 1975
- 1990: National Affordable Housing Act amends RESPA to require detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing and to require disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the account by the servicer.
- 1992 – 1994: The Act and Regulation X extended to cover subordinate lien loans

RESPA History

- 1996:
 - Regulation X amended to:
 - clarify exemptions,
 - amend controlled/affiliated business requirements and definitions, and
 - address concerns raised to the 1994 rule changes
 - Policy Statement on Sham Controlled Business Arrangements
 - The Act is amended to
 - reduce mortgage servicing disclosures
 - amend certain definitions
- 2008: Regulation X's introduces changes to:
 - streamline mortgage servicing disclosures,
 - revise certain escrow account provisions,
 - provide for disclosure of, "average charges," and,
 - perhaps most importantly, provide for a standard, binding Good Faith Estimate
- 2010 and beyond: Dodd Frank Act:
 - Migration of RESPA enforcement to the CFPB (Consumer Financial Protection Bureau)
- 2015: Harmonizing the disclosures under RESPA and TILA

Federally Related Mortgage Loan

12 USCA 2602(1)

the term “federally related mortgage loan” includes any loan (other than temporary financing such as a construction loan) which--

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)

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

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

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

(iv) is made in whole or in part by any “creditor”, as defined in section 1602(f) of Title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year, except that for the purpose of this chapter, the term “creditor” does not include any agency or instrumentality of any State;

Current Developments

- **Servicing**
 - Substantial amendments and revisions in the form of new procedures and regulations.
 - The term “Qualified Written Request” has been expanded and split up into new, specific terms.
- **Settlement**
 - Proposed Changes to TRID
- **Solicitation**
 - HUD/CFPB has suffered two successful, significant legal defeats in regards to their interpretation and approach to portions of RESPA’s business solicitation rules.
 - Freeman v. Quicken Loans: Split as a requirement for Section 8 violation overruled.
 - Carter v. Welles-Bowen Realty, Inc.: HUD’s 1996 Policy Statement on AfBA criticized and not followed.
 - PHH v. CFPB

Proposed Amendments to TRID

- Tolerances for the “total of payments”
- Housing assistance lending
- Cooperatives
- Privacy and sharing of information

Statutes versus Regulations, versus Everything Else

RESPA

- The Real Estate Settlement Procedures Act aka the “Act” is a Statute.
- First passed by Congress in 1974.
- The Act itself is a set of *statutes* codified from 12 USC §2601 to 12 USC §2617.

REGULATION X

- Regulation X is a set of implementing regulations established to effect the purposes of the Act.
- Promulgated by CFPB as a means of interpreting the Act.
- It is found in the Federal Register at 24 CFR 1024.

The CFPB's eRegulations website: <http://www.consumerfinance.gov/eregulations/>

eRegulations 12 CFR Part 1024 (Regulation X) Regulations About CFPB

Effective Date: 10/3/2015

SECTION-BY-SECTION ANALYSIS

Most Recent Analysis (What's This?)

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§ 1024.7 Good faith estimate.

§ 1024.8 Use of HUD-1 or HUD-1A

Range of RESPA.

Apply to federally related mortgage loans, except as § 5(b) and (d) of this section.

§ 5

§ 5(a)

§ 5(b)(1)

§ 5(d)

HELP

§ 1024.5 COVERAGE OF RESPA. This section applies to a business, commercial, or agricultural loan primarily for a business, commercial, or agricultural purpose by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may refer to this section in determining whether the exemption applies.

§ 1024.6 SPECIAL INFORMATION BOOKLET. This section applies to a construction loan. The exemption for this section does not apply to a loan made to finance construction of residential property if the loan is used as, or may be used as, financing by the same lender or is used to finance the first user. If a lender issues a commitment for a loan, with or without conditions, the loan is covered by this section if the loan is for new or rehabilitated 1- to 4-family residential property.

The RESPA Statute

(Title 12, Chapter 27 – Real Estate Settlement Procedures)

- § 2601. Congressional Findings and Purpose
- § 2602. Definitions
- § 2603. Uniform Settlement Statement
- § 2604. Home Buying Information Booklets
- § 2605. Servicing of Mortgage Loans and Administration of Escrow Accounts
- § 2606. Exempted Transactions
- § 2607. Prohibition Against Kickbacks and Unearned Fees
- § 2608. Title Companies; Liability of Seller
- § 2609. Limitation on Requirement of Advance Deposits in Escrow Accounts
- § 2610. Prohibition of Fees for Preparation of Truth-in-Lending, Uniform Settlement, and Escrow Account Statements
- § 2614. Jurisdiction of Courts; Limitations
- § 2615. Contracts and Liens; Validity
- § 2616. State Laws Unaffected; Inconsistent Federal and State Provisions
- § 2617. Authority of Bureau

The RESPA Statute
(Title 12, Chapter 27 – Real Estate Settlement Procedures)

Regulation X
(Title 12, Part 1024 Real Estate Settlement Procedures Act)

- § 2601. Congressional Findings and Purpose
 - § 2602. Definitions
 - § 2603. Uniform Settlement Statement
 - § 2604. Home Buying Information Booklets
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 - § 1024.41 Loss Mitigation Procedures.

The RESPA Statute (Title 12, Chapter 27 – Real Estate Settlement Procedures)	Regulation X (Title 12, Part 1024 Real Estate Settlement Procedures Act)	Regulation X §1024.5(d) Partial Exemption for certain mortgage loans: Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a) do not apply to a federally related mortgage loan: (1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or (2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).
§ 2601. Congressional Findings and Purpose	§ 1024.1 Designation.	
§ 2602. Definitions	§ 1024.2 Definitions. § 1024.3 E-Sign Applicability.	
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§ 2615. Contracts and Liens; Validity	§ 1024.37 Force-Placed Insurance.	f. Mortgage loans secured by real property—final disclosures.
§ 2616. State Laws Unaffected; Inconsistent Federal and State Provisions	§ 1024.38 General Servicing Policies, Procedures, and Requirements. § 1024.39 Early Intervention Requirements for Certain Borrowers. § 1024.40 Continuity of Contact.	g. Special information booklet at time of application.
§ 2617. Authority of Bureau	§ 1024.41 Loss Mitigation Procedures.	

Our RESPA Topics

1. Settlement
 1. At Application
 1. Information Booklets
 2. Loan Estimate or Good Faith Estimate
 3. Written List of Providers
 4. List of Home Ownership Counselors
 5. Affiliated Business Disclosure
 2. At Closing: Closing Disclosure or HUD 1
2. Servicing
 1. Servicing Transfers
 2. Escrow Accounts
 3. Borrower Inquiries
 4. Loss Mitigation
3. Solicitation
 1. Choice of Title Providers
 2. Affiliated Business
 3. Kickbacks and Unearned Fees

Settlement

Settlement Disclosures:

Application time and Closing-Time Disclosures...

- TRID Disclosures Effective October 3, 2015
- Most, *but not all*, Settlement Cost Disclosures for federally-related mortgage loans were redirected to Regulation Z
 - Reverse Mortgages, HELOCs, or mortgage loans secured by mobile homes, are not affected by the form and deadline changes.
- Form changes
 - Early TIL and GFE replaced by a single “Loan Estimate”
 - Final TIL and HUD-1 replaced by a single “Closing Disclosure”
- Major Deadline changes
 - Closing Disclosure under Regulation Z to be provided three business days prior to consummation, rather than one day advance inspection for the Settlement Statement presently under Regulation X.
- Implementing Regulations
 - Regulation Z chosen over Regulation X to host new forms and regulations.
 - New rules in Regulation Z for Affiliated Business Arrangements limit the usefulness of present AfBA exceptions under Regulation X.

The Loan Estimate and GFE

- 12 U.S.C.A. § 2604(d) requires a lender to provide a loan applicant with an information booklet designed by the CFPB, and which includes a “good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur.”
- Most transactions now use the integrated “Loan Estimate”, while some still use a combination of RESPA’s “GFE” and TILA’s “Early TIL”
- The Loan Estimate Replaces:
 - The Good Faith Estimate, designed by the Department of Housing and Urban Development (HUD) under RESPA .
 - The “early” Truth-In-Lending disclosure designed by the Board of Governors of the Federal Reserve System (Board) under TILA
- Also addresses other disclosures required under the Dodd-Frank Act

Regulation Z: 12 CFR 1026.19(e), (f), and (g)

§ 1026.19 Certain mortgage and variable-rate transactions.

- e. Mortgage loans secured by real property—early disclosures.
- f. Mortgage loans secured by real property—final disclosures.
- g. Special information booklet at time of application.

How Does it Apply?

In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

[Regulation Z 1026.19(e)(1)(i)]

What transactions are governed by TRID?

- Most residential transactions which are related to “federally related mortgage loans”, i.e. RESPA-covered transactions
- Not all of these transactions are affected in all respects however. The following transaction will continue to use all or some of the disclosures which are currently required.
 - Reverse Mortgages
 - Home Equity Lines of Credit
 - Manufactured (Mobile) Homes
 - Timeshares

Business Days: Two Definitions

- Under TRID, there are two ways that Business Days are measured:
 - For purposes of providing the Loan Estimate From Application: a business day is a day on which the lender's offices are open to the public for carrying out **substantially all of its business functions**. (Is the lender open on Saturdays?)
 - For all other purposes: business day means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103(a) such as, New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

“Providing” the Loan Estimate

- Must deliver or place in the mail not later than:
 - the third business day after the creditor receives the consumer’s application [§1026.19(e)(1)(iii)(A)]; and
 - the seventh business day before consummation of the transaction [§1026.19(e)(1)(iii)(A)]. (the waiting period)
- GFE for exempt transactions also has to be provided within three days of application.
- Either the creditor (lender) or the mortgage broker can provide the disclosure, but the creditor is ultimately responsible for making sure that it was delivered. [§1026.19(e)(1)(ii)]
 - The consumer can waive the waiting period for a bona fide personal emergency [§1026.19(e)(1)(v)]
 - “Closing Cost Worksheets” and other pre-application information can still be provided to the consumer, but they must include the statement, “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.” [§1026.19(e)(2)(ii)]

Loan Estimate Delivery Requirements

- The Initial Loan Estimate must be delivered:
 - Not later than the third business day (subjective) after mortgage application [1026.19(e)(1)(iii)(A)]
 - Not later than the seventh business day (objective) before consummation [1026.19(e)(1)(iii)(B)]
- A Revised Loan Estimate must be delivered:
 - Within three business days (subjective) of receiving information sufficient to establish one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) [1026.19(e)(4)(i)]
 - Not later than four business days (objective) prior to consummation. [1026.19(e)(4)(ii)]
 - Not after providing the Closing Disclosure. [1026.19(e)(4)(ii)]
- If any disclosures are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. [1026.19(e)(1)(iv) & 1026.19(e)(4)(ii)]

Loan Estimate and Choice of Settlement Services Providers

- Similar to the GFE of today, if the creditor permits a consumer to shop for a settlement service, the creditor must accompany the Loan Estimate with a “written list of providers”. [§1026.19(e)(1)(vi)(C)]
- The creditor is still prohibited from charging more than the cost of a credit report prior to the consumer receiving the Loan Estimate and indicating an intention to move forward with the transaction. [§1026.19(e)(2)(i)]

“Good Faith Estimates” and Tolerances

- An estimated closing cost disclosed is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided in this section. [§ 1026.19(e)(3)(i)]
- The aggregate amount of charges (i) for recording fees and (ii) to third-party service providers which are not affiliated with the creditor, and for which the consumer was permitted to shop, may not exceed the aggregate amount of such charges disclosed on the latest Loan Estimate by more than 10 percent. [§ 1026.19(e)(3)(ii)]
- Certain charges can change without regard to a tolerance limitation
 - Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account. [§ 1026.19(e)(3)(iii)(A)-(C)]
 - services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor’s written list of service providers. [§ 1026.19(e)(3)(iii)(D)]
 - Any charges for services not required by the lender [§ 1026.19(e)(3)(iii)(E)]

Tolerances for Unaffiliated 3rd Party Services

- Third Party Charges shown on the Loan Estimate are in “good faith” if they do not increase [§1026.19(e)] or if:
 - The aggregate amount of charges for 3rd parties and recording fees is not exceeded by more than 10%. [§1026.19(e)(3)(ii)(A)]; and
 - “The charge for the third-party service is not paid to the creditor or an affiliate of the creditor”. [§1026.19(e)(3)(ii)(B)] (AfBAs!); and
 - “The creditor permits the consumer to shop for the third-party service.” [§1026.19(e)(3)(ii)(C)]
- If the charges above are exceeded at closing, the creditor has 60 days after the closing to both refund the excess to the consumer and to place a corrected Closing Disclosure reflecting the refund in the mail to the consumer. [§1026.19(f)(2)(v)]

When can you revise the Loan Estimate?

- Changed circumstances that:
 - cause settlement charges to increase; or (§ 1026.19(e)(3)(iv)(A))
 - affect borrower eligibility (§ 1026.19(e)(3)(iv)(B))
- Borrower-requested changes to credit terms (§ 1026.19(e)(3)(iv)(C))
- Interest rate changed and was not locked (§ 1026.19(e)(3)(iv)(D))
- Expiration: More than 10 business days elapse between Loan Estimate and Borrower indicating intention to proceed (§ 1026.19(e)(3)(iv)(E))
- New Construction loans where settlement is delayed by more than 60 calendar days (§1026.19(e)(3)(iv)(F))

Changed Circumstances affecting Settlement Charges

- Changed Circumstances affecting Settlement Charges are:
 1. An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
 2. Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or
 3. New information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate.
§1026.19(e)(3)(iv)(A)(1) through (3)
- **Delivery:** If the creditor has not yet provided a Closing Disclosure, then a revised Loan Estimate:
 - **Must be provided** within 3 business days of receiving notice of the change circumstance. [§1026.19(e)(4)(i)]; and
 - **Must be received** by the consumer at least 4 business days prior to closing. [§1026.19(e)(4)(ii)]

Closing Disclosure Delivery Requirements

- Initial Closing Disclosure:
 - The Closing Disclosure must be received by the consumer no later than three business days before consummation. [1026.19(f)(1)(ii)(A)]
 - Considered received by the consumer the discloses three business days after they are delivered or placed in the mail. [1026.19(f)(1)(iii)]
- Revised Closing Disclosure:
 - three business days before consummation, (Closing Delayed!) For changes to [1026.19(f)(2)(ii)]:
 - The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.
 - The loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate.
 - A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.
 - at or before consummation for all other disclosures [1026.19(f)(2)(i)]
 - within 30 days of receiving information of post-consummation events that occur within 30 days of consummation [1026.19(f)(2)(iii)]
 - Within 60 days of consummation for corrections to non-numerical, clerical errors, and for corrections arising from tolerance refunds. [1026.19(f)(2)(iv)] [1026.19(f)(2)(v)]

Closing Disclosure: Deadlines

- 12 U.S.C.A. § 2603(a) requires the CFPB to produce single, integrated disclosures that satisfies the disclosure requirements of both RESPA and TILA.
- Reverse Mortgages still use the old HUD-1 form of settlement statement, along with the separate TILA disclosures.
- The Closing Disclosure must be received no later than 3 business days prior to consummation. [§1026.19(f)(1)(ii)] It is assumed that the consumer has received the disclosure 3 business days after being placed in the mail. [§1026.19(f)(1)(iii)] The consumer can waive the waiting period for a bona fide personal emergency. [§1026.19(f)(1)(iv)]
- The settlement agent can provide it, but the creditor is ultimately responsible for it. [§1026.19(f)(1)(v)]

Closing Disclosure: New Waiting Period

- Combining the disclosures required overlaying RESPA's Settlement Statement deadlines with the Late TIL's deadlines and APR accuracy rules under the Mortgage Disclosure Improvement Act ("MDIA").
- A new waiting period is required if:
 - The APR disclosed becomes inaccurate under Regulation Z §1026.22. [§1026.19(f)(2)(ii)(A)]
 - The loan product itself has changed. [§1026.19(f)(2)(ii)(B)]
 - A previously undisclosed prepayment penalty is added. [§1026.19(f)(2)(ii)(C)]

Sample Mortgage Lifespan Under TRID

October 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 Application received by Creditor. Creditor can only collect the cost of a credit report.	6	7	8 Loan Estimate delivered or placed in the mail. Creditor may request verifying information.	9	10
11	12 Columbus Day	13 Consumer receives Loan Estimate	14	15 Consumer indicates an intention to proceed with Application.	16 Copy of Contract received by Creditor.	17 End of 7 day waiting period for consummation after delivery of Loan Estimate. Earliest when consummation can occur.
18	19 Appraisal ordered by Creditor.	20	21 Title Insurance ordered by Real Estate Agent.	22	23	24
25	26	27	28	29	30 Receipt of Addendum to Contract modifying allocation of transfer taxes between Consumer and Seller. Revised Loan Estimate permitted.	31

November 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Last day for creditor to issue revised Loan Estimate for allocation of transfer taxes on Addendum to Contract.	5	6 Appraisal received by creditor. LTV now exceeds 80%. Revised Loan Estimate permitted.	7
8	9	10	11 <i>Veteran's Day</i>	12 Last day for creditor to issue revised Loan Estimate to add mortgage insurance coverage, etc. due to changed circumstance of LTV exceeding 80%.	13 Revised Loan Estimate permitted.	14
15	16	17	18	19	20	21
22	23	24 Updated credit report obtained showing a changed credit score. LIPA triggered. Revised Loan Estimate permitted.	25	26 <i>Thanksgiving Day</i>	27	28
29	30 Last day for creditor to issue revised Loan Estimate for addition of any charge or change in loan terms due to change in credit score.					

December 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4 Inspection contingency of contract is removed by the consumer.	5
6	7 Rate lock is requested by consumer.	8 Rate Lock agreement executed by the creditor.	9	10	11 Last day for creditor to deliver or place in the mail the revised Loan Estimate reflecting the rate lock executed on Tuesday in response to the consumer's request.	12
13	14	15	16	17	18	19
20	21 Consumer informs creditor of intent to purchase an enhanced owner's title insurance policy.	22 If delivering the Closing Disclosure by mail, Creditor must place Closing Disclosure in mail on this date. Closing Disclosure must reflect information provided by Consumer 12/21.	23 Creditor sends Closing Disclosure by overnight delivery.	24 Consumer receives and signs for the overnight delivery of the CD. Earliest closing date is 12/29.	25 Christmas Day	26 Consumer must receive Closing Disclosure.
27	28 Walkthrough shows that dishwasher is broken. Seller credit for broken dishwasher provided in Addendum to Contract.	29 Creditor required to permit inspection of CD by consumer on this day.	30 Closing Date Revised Closing Disclosure reflecting seller credit for broken dishwasher provided to Consumer and Seller.	31		

January 2016

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 New Year's Day	2
3	4 Recording office indicates transfer taxes paid by consumer overpaid by \$100 and refunds amount to consumer	5	6	7	8	9
10	11	12	13	14	15	16
17	18 ML King Day	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2016						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3 Last day for Creditor to deliver or place in the mail corrected Closing Disclosure showing decrease in transfer taxes paid by Consumer.	4	5	6
7	8	9	10	11	12	13
14 Valentine's Day	15 Washington's Birthday	16	17	18	19	20
21	22	23 Last day for creditor to mail refund of any tolerance cure. (NOTE: other delivery methods can be used so long as the refund is received no later than the 60 th day after consummation).	24	25	26 Last day for Creditor to provide refund to Consumer and to deliver or place in the mail a corrected Closing Disclosure reflecting this refund.	27
28	29					

10% Cumulative Tolerance Category

- The creditor may charge the consumer more than the amount disclosed on the Loan Estimate for any of these charges so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10%. (§ 1026.19(e)(3)(ii))
 - Recording fees (Comment 19(e)(3)(ii)-4);
 - Charges for third-party services where:
 - The charge is not paid to the creditor or the creditor's affiliate (§ 1026.19(e)(3)(ii)(B)); and
 - The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers. (§ 1026.19(e)(3)(ii)(C); § 1026.19(e)(3)(iii)(D); § 1026.19(e)(1)(vi); Comment 19(e)(1)(vi)-1 through 7)

Zero Tolerance Charges [§1026.19(e)(3)]

- The zero tolerance charges are:
 - Required Fees paid to the creditor, mortgage broker, or an affiliate of either (§ 1026.19(e)(3)(ii)(B));
 - Required Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service (§ 1026.19(e)(3)(ii)(C)); or
 - Transfer taxes.

[See Also Comments 19(e)(3)(i)-1 and -4]

How Owner's Title Premiums are Disclosed

[§ 1026.37(g)]

- First of all, did you know that Owner's title insurance is "optional"?
- "The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage." [commentary for §1026.37(g)(4).2(ii)]
- Example, \$500,000 Fee Policy with simultaneous \$400,000 Loan Policy:

	<u>New York</u>	<u>TRID</u>
Fee Policy	\$2,139.92	\$917.80
Loan Policy	\$523.88	\$1,746.00
Total:	\$2,663.80	\$2,663.80

Consummation versus Closing

- “*Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.” 1026.2(a)(13)
- “1. State law governs. When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination.” Reg Z Comment 2(a)(13) Consummation
- Caselaw suggests “Consummation” in New York State occurs when mortgage commitment letters are signed, not when the closing happens:
 - *Murphy v. Empire of Am.*, FSA, 746 F.2d 931 (2d Cir. 1984);
 - *Zelazny v. Pilgrim Funding Corp.*, 41 Misc. 2d 176, 244 N.Y.S.2d 810 (Dist. Ct. 1963)
- Why not the “Consummation Disclosure” instead of the “Closing Disclosure”?

Events After Consummation

- If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) [Closing Disclosure] of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) [Closing Disclosure] of this section, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

§1026.19(f)(2)(iii) {information in brackets added.}

Post-Consummation, Charges Exceeded: What now? (§1026.19(f)(2)(v))

- “If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the creditor must refund the excess to the consumer no later than 60 calendar days after consummation.”
 - For charges subject to zero tolerance, any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer. (§1026.19(e)(3)(i))
 - For charges subject to a 10% cumulative tolerance, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10%, the difference must be refunded to the consumer. (§1026.19(e)(3)(ii))

What is an “application”?

- An application consists of the submission of the following six pieces of information:
 - The consumer’s name;
 - The consumer’s income;
 - The consumer’s social security number to obtain a credit report;
 - The property address;
 - An estimate of the value of the property; and
 - The mortgage loan amount sought.

[1026.2(a)(3)]

Application Charges

- Except for the cost of a credit report, no charges may be imposed upon the consumer prior to:
 - The consumer receiving the Loan Estimate; and
 - Indicating an intent to proceed with the transaction.
- Even requiring a consumer to merely provide a method of payment for fees after indicating an intent to proceed is the imposition of a fee.

Average Charges

- A creditor or settlement service provider may charge an average charge for a settlement service if:
 - The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;
 - The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;
 - The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and
 - The creditor or settlement service provider does not use an average charge: (1) For any type of insurance; (2) For any charge based on the loan amount or property value; or (3) If doing so is otherwise prohibited by law.

§1026.19(f)(3)(ii)

Solicitation

RESPA Solicitation of Business Provisions

- prohibit kickbacks and unearned fees. (12 USC §2607)
- provide for safe harbor rules for
 - Employees; and
 - Affiliated Business Arrangements. (Regulation X §1024.15)
- prohibit and limit the extent to which parties can require the use of particular providers. (12 USC §2608)

Kickbacks and Unearned Fees

RESPA Section 8:

- (a) No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.
- (b) No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

Freeman v. Quicken Loans, Inc.

132 S. Ct. 2034 (2012)

- A Supreme Court case which overturned HUD / CFPB's position that a violation under Section 8(b) did not require a split of an unearned fee.
- Court found the wording of the statute itself to be clear and found that HUD's position did not help to clarify an ambiguity in the statute.

Kickbacks and Unearned Fees

- Exceptions to RESPA's Section 8 are found at Section 8(c) of the Act and also at Regulation X 1024.14(g):
- Nothing in this section shall be construed as prohibiting:
 - (c)(1) the payment of a fee
 - (A) to attorneys at law for services actually rendered or
 - (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or
 - (C) by a lender to its duly appointed agent for services actually performed in the making of a loan,
 - (c)(2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed,
 - (c)(3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers,

Affiliated Business Arrangements

- AfBA (formerly CBAs: Controlled Business Arrangements), key elements:
 - (1) The consumer receives a written disclosure of the nature of the relationship and an estimate of the affiliate's charges;
 - (2) the consumer is not required to use the controlled entity; and
 - (3) the only thing of value received from the arrangement, other than payments for services rendered, is a return on ownership interest

Regulation X § 1024.15(b)

Affiliated Business Arrangements

- Sham AfBAs: Does it qualify as a “*bona fide provider*” of settlement services?

Regulation X § 1024.15(b)

Affiliated Business Arrangements

- A return on an ownership interest does not include:
 - (A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;
 - (B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or
 - (C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

Regulation X § 1024.15(b)(3)(ii)

Affiliated Business Arrangements
HUD's 1996-2 policy statement's on AfBA

- HUD's 1996-2 policy statement's AfBA 10 point test for a bona fide settlement services provider:.
 - (1) Does the new entity have sufficient initial capital and net worth, typical in the industry, to conduct the settlement service business for which it was created? Or is it undercapitalized to do the work it purports to provide?
 - (2) Is the new entity staffed with its own employees to perform the services it provides? Or does the new entity have "loaned" employees of one of the parent providers?
 - (3) Does the new entity manage its own business affairs? Or is an entity that helped create the new entity running the new entity for the parent provider making the referrals?
 - (4) Does the new entity have an office for business which is separate from one of the parent providers? If the new entity is located at the same business address as one of the parent providers, does the new entity pay a general market value rent for the facilities actually furnished?

Affiliated Business Arrangements
HUD's 1996-2 policy statement's on AfBA

- HUD's 1996-2 policy statement's AfBA 10 point test for a bona fide settlement services provider (continued).
 - (5) Is the new entity providing substantial services, i.e., the essential functions of the real estate settlement service, for which the entity receives a fee? Does it incur the risks and receive the rewards of any comparable enterprise operating in the market place?
 - (6) Does the new entity perform all of the substantial services itself? Or does it contract out part of the work? If so, how much of the work is contracted out?
 - (7) If the new entity contracts out some of its essential functions, does it contract services from an independent third party? Or are the services contracted from a parent, affiliated provider or an entity that helped create the controlled entity? If the new entity contracts out work to a parent, affiliated provider or an entity that helped create it, does the new entity provide any functions that are of value to the settlement process?
 - (8) If the new entity contracts out work to another party, is the party performing any contracted services receiving a payment for services or facilities provided that bears a reasonable relationship to the value of the services or goods re-ceived? Or is the contractor providing services or goods at a charge such that the new entity is receiving a "thing of value" for referring settlement service business to the party performing the service?

Affiliated Business Arrangements
HUD's 1996-2 policy statement's on AfBA

- HUD's 1996-2 policy statement's AfBA 10 point test for a bona fide settlement services provider (continued).
 - (9) Is the new entity actively competing in the market place for business? Does the new entity receive or attempt to obtain business from settlement service providers other than one of the settlement service providers that created the new entity?
 - (10) Is the new entity sending business exclusively to one of the settlement service providers that created it (such as the title application for a title policy to a title insurance underwriter or a loan package to a lender)? Or does the new entity send business to a number of entities, which may include one of the providers that created it?

Carter v. Welles Bowen Realty

736 F.3d 722 (2013)

- A Court of Appeals case that roundly rejected the 10 factor test advance by HUD.
- The court found that HUD was essentially adding to the statute itself rather than clarifying ambiguity and was therefore beyond the scope of its powers and mandate.

New York
Affiliated Business Nuances

Title Insurance Agents:

- **New York Insurance Law § 6409(d)**
- **Title Agency Ancillary to Law Office**

Required Use

- RESPA Section 9(a): No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.
- RESPA Section 8: The exception for Affiliated Business Arrangements specifies that a consumer must not be required to use the affiliated provider.

PHH v. the CFPB

- CFPB Loses and PHH “wins”
 - Single-Director Independent Executive Agencies and Regulatory Capture
- Messages to the CFPB:
 - The CFPB Director is now accountable and removable by the President.
 - The CFPB cannot interpret RESPA’s safe harbors out of existence.

Servicing

Servicing Disclosures & Communications

“The Creditors are a superstitious sect, great observers of set days and times.”

Benjamin Franklin,
Poor Richard’s Almanac

- 1) Disclosing changes and transfers in the servicing of the mortgage loan,
- 2) disclosing adjustments to, and replenishment of, existing escrow accounts, and
- 3) responding to borrower inquiries and complaints during the servicing of the mortgage loan

Servicing

- What is servicing?
- The term “servicing” means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan. [12 U.S.C.A. § 2605(i)(3)]
- Statutory Disclosures
 - Servicing Transferability Disclosure [12 U.S.C.A. § 2605(a)]
 - Servicing Transfer Disclosure [12 U.S.C.A. § 2605(b)]
 - Escrow Account Statements [12 U.S.C.A. § 2609(c)]

Servicing Disclosure Statement (Reg X Form MS-1)

(TRID Transactions Exempt from this RESPA form MS-1 b/c the servicing disclosure as is now incorporated into the Loan Estimate form)

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 U.S.C. 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.]

Servicing Transfers (Reg X Form MS-2)

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

Send all payments due on or after [Date] to [Name of new servicer] at this address: [New servicer address].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:

[Name of present servicer]

[Individual or Department]

[Telephone Number]

[Address]

New Servicer:

[Name of new servicer]

[Individual or Department]

[Telephone Number]

[Address]

Initial Escrow Account Statement

- Submission at settlement, or within 45 calendar days of settlement. As noted in §1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.
- Regulation X §1024.17(g)(1)

Subsequent Escrow Account Statements

- Escrow Accounts are reanalyzed each year to make sure that the correct amounts are taken into escrow.
- The escrow account starts with the borrower's first payment, but by using a "short year" the servicer can readjust the start date for more subsequent 12-only escrow account computation years.

Borrower Inquiries

- RESPA 12 U.S.C.A. § 2605(e) provides a framework for responding to borrower inquiries.
- Regulation X has expanded upon this framework extensively.
 - Notices of Error [Regulation X §1024.35(a)]
 - Requests for Information [Regulation X §1024.36]
 - Force-place insurance [Regulation X §1024.37]
 - Loss Mitigation Procedures [Regulation X §1024.41]

Notice of Error [Regulation X §1024.35]

- A “Notice of Error” is a type of “Qualified Written Request”
- Attributes:
 - a, “written notice from the borrower that asserts an error and that includes;
 - the name of the borrower,
 - information that enables the servicer to identify the borrower’s mortgage account, and
 - the error the borrower believes has occurred.
- Servicer must respond within 5 days of receipt, after which a series of response-time requirements come into play for the ensuing correspondence.

Requests for Information [Regulation X §1024.36]

- Another type of “Qualified Written Request”
- Attributes:
 - Includes the name of the borrower,
 - information that enables the servicer to identify the borrower's mortgage loan account, and
 - states the information the borrower is requesting with respect to the borrower's mortgage loan.
- The Servicer must acknowledge receipt of a, “request for information,” within five days, excluding legal public holidays, Saturdays, and Sundays, with a written acknowledgement of receipt.

[Regulation X §1024.36(c)]

Force-placed Hazard Insurance [Regulation X §1024.37]

- “Hazard Insurance” obtained by the Servicer, paid for by Consumer
- [1024.37(c)(1)] Before Servicer can assess a charge for this insurance:
 - Servicer must provide initial written notice (Form MS-3(A)) at least 45 days in advance of assessment
 - Servicer must provide Reminder Notice [Form MS-3B or Form MS-3C] at least 15 days in advance of assessment but not until at least 30 days have elapsed since providing the initial notice above.
 - Servicer must not receive proof of coverage from consumer within 15-day period beginning on date when Reminder notice was sent.

Foreclosure Loss mitigation procedures [Regulation X § 1024.41]

- “Loss Mitigation Application”: “application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower” [Regulation X §1024.41(b)(1)]
- Loss Mitigation Application Arrives at Servicer: If received 45 days or more prior to foreclosure, Servicer must:
 - Promptly Review Application
 - Acknowledge receipt within 5 days, indicating whether application is complete or not
- If Complete, then provide any applicable options
- If Incomplete, then advise of items necessary to complete.

Early Intervention Requirements for Certain Borrowers [Regulation X § 1024.39]

- **Live Contact:** “A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower’s delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.”
- **Written Notice:** A servicer shall provide to a delinquent borrower a written notice not later than the 45th day of the borrower’s delinquency containing:
 - (i) A statement encouraging the borrower to contact the servicer;
 - (ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer’s mailing address;
 - (iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;
 - (iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and
 - (v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.