



# RESCINDED

#331

Office of Thrift Supervision  
Department of the Treasury

Montrice Godard Yakimov  
Managing Director, Compliance and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6173

December 15, 2009

**MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS**

**FROM:** Montrice Godard Yakimov *Montrice Godard Yakimov*  
Managing Director, Compliance and Consumer Protection

**SUBJECT:** Revised RESPA Examination Procedures

### **Background**

The Real Estate Settlement Procedures Act (RESPA) of 1974 requires lenders and mortgage brokers to provide borrowers with timely disclosures regarding the nature and costs of real estate settlement services for federally related mortgage loans. RESPA also prohibits certain practices such as the payment of fees in exchange for referrals of settlement service business. In 2008, the Department of Housing and Urban Development (HUD) issued both technical and substantive amendments to the rule that implements RESPA.<sup>1</sup> The technical changes took effect on January 16, 2009 and substantive changes will take effect on January 1, 2010.

The Office of Thrift Supervision (OTS) has revised its examination procedures in two stages to address these changes in the RESPA rule.<sup>2</sup> First, the procedures were revised to incorporate the technical changes that went into effect earlier this year.<sup>3</sup> Today, we are issuing procedures that incorporate the substantive changes that take effect on January 1, 2010. This memorandum provides an overview of the changes. Notably, OTS will begin examining for compliance with the new substantive provisions of the RESPA rule on January 1, 2010. All OTS-supervised institutions should comply with the new requirements as of that date.<sup>4</sup>

OTS-supervised institutions should also be aware that, under the new rule, lenders are responsible for the disclosures provided by mortgage brokers. Lenders should therefore take clear steps to ensure that the mortgage brokers with whom they do business comply with the new RESPA requirements. Consistent with this approach, OTS has long expected the institutions

<sup>1</sup> 73 Fed. Reg. 68204 (Nov. 17, 2008).

<sup>2</sup> All revisions were developed on an interagency basis. They reflect a risk focused approach to examinations.

<sup>3</sup> See CEO Letter # 318, available on the internet at: <http://files.ots.treas.gov/25318.pdf>

<sup>4</sup> Where an examination reveals that an association has failed to comply with the new requirements, the OTS will consider a number of factors before determining that enforcement action is warranted. These include: the seriousness of the problem; the association's supervisory history; the quality and cooperation of management, including whether management has demonstrated that it will take appropriate corrective action; and an assessment of the potential harm to the association if the association does not take corrective action. See OTS Examination Handbook Section 080 (Enforcement Actions), available at: <http://files.ots.treas.gov/422345.pdf>.

under its supervision to effectively manage risks arising from third-party arrangements, including risks arising from arrangements with mortgage brokers. Thrifts are encouraged to review Thrift Bulletin 82a<sup>5</sup>, which provides guidance on managing such risks.

### **Overview of Amended RESPA Rule**

- **Standardized Good Faith Estimate Form.** As of January 1, 2010, a loan originator (lender or mortgage broker) must provide a standard Good Faith Estimate (GFE) form to a borrower within three business days of receipt of an application for a mortgage loan. The standardized GFE is designed to allow borrowers to shop for a mortgage loan by comparing settlement costs and loan terms from various loan originators. The GFE includes:
  - a summary of loan terms and a summary of estimated settlement charges;
  - key dates, e.g., when the interest rate and settlement charges offered in the GFE expire;
  - settlement charges disclosed as subtotals for eleven categories of costs;
  - a table explaining which charges can change at settlement;
  - a trade-off table showing the relationship between the interest rate and the settlement charges; and
  - a shopping chart for borrowers to compare the costs and terms of loans offered by different originators.
- **Binding GFE.** With limited exceptions, the loan originator will be bound to the settlement charges and loan terms listed on the GFE. For the interest rate, the loan originator will be required to indicate on the GFE the period during which a rate is available. After that period, the interest rate and other rate related charges, the adjusted origination charges, and the per diem interest can change until the interest rate is locked. For settlement charges and all other loan terms, the loan originator will be required to honor the estimated settlement charges and loan terms for at least 10 business days from the date the GFE is provided. The charges and terms in the GFE will be binding unless a revised GFE is provided to the borrower prior to settlement based on “changed circumstances” as defined in the rule. This means that if a lender accepts a GFE issued by a mortgage broker, the lender is subject to the loan terms and settlement charges listed in the GFE, unless a revised GFE is issued prior to settlement.
- **Tolerances.** The final rule established “tolerances” or limits on the amount certain settlement charges can vary at closing from the amounts stated on the GFE. The rule established three categories of settlement charges:
  - The first category of charges is subject to a “zero tolerance” standard, meaning that the amounts estimated on the GFE cannot vary at settlement. Charges in this category are either under the lender’s control, or in the case of transfer taxes, are set by a government authority. These charges include: the origination charge; the credit or charge for the interest rate of the loan, once the interest rate is locked; the adjusted origination charge, once the interest rate is locked; and transfer taxes.

---

<sup>5</sup> Thrift Bulletin 82a is available on the internet at: <http://files.ots.treas.gov/84272.pdf>.

- The second category is subject to a ten percent tolerance standard, meaning that the *total* of those charges may not exceed a ten percent increase at settlement from the *total* of those charges stated on the GFE. As charges in this category are based on services provided by a party selected or identified by the lender, the lender is expected to be able to estimate them with reasonable certainty. Charges in this category include third-party required services, title services, lender's title insurance, owner's title insurance, and government recording charges. When a lender permits a borrower to shop for such services, the lender must identify providers who meet the estimated charges and provide the borrower with a written list of those service providers at the time the GFE is provided, on a separate sheet of paper.
- The third category of charges is subject to no tolerance restriction, meaning that the total can change at settlement and the amount of the change is not limited. Charges in this category are based on services provided by a party that the borrower has selected without input from the lender.

If a lender exceeds the tolerances at settlement, the lender may cure the violation by reimbursing the borrower for the amount of any overcharge within 30 days of the settlement date.

- **Disclosure of Origination Charges.** The new GFE requires the disclosure of all origination charges, including lender and mortgage broker charges. If a lender will pay a broker a fee on the loan, such as a yield spread premium, the fee is required to be disclosed as a "credit" and subtracted from the origination charge to arrive at the "adjusted origination charge." Conversely, discount points paid by the borrower to reduce the interest rate must be disclosed as a "charge" and added to the origination charge to arrive at the "adjusted origination charge." A loan cannot have both a credit (yield spread premium) and a charge (points).
- **Revised Settlement Statement.** The rule also includes a revised HUD-1/1A Settlement Statement form. To facilitate comparison between the HUD-1/1A and the GFE, each designated line on the HUD-1/1A includes a reference to the relevant line from the GFE. Inadvertent or technical errors on the HUD-1/1A will not be deemed to be a violation of RESPA if a revised HUD-1/1A is provided to the borrower within 30 days of settlement.

The revised Examination Handbook, Section 1320, is available through the link provided below. Please contact Rhonda L. Daniels, Senior Program Analyst, at (202) 906-7158 if you have questions.

[Link to Handbook Section 1320](#)