



Florida International University College of Law
eCollections

Faculty Publications

Faculty Scholarship


2000

RESPA - Questioning its Effectiveness

Eloisa Rodriguez-Dod

Florida International University College of Law, elrodrig@fiu.edu

Follow this and additional works at: https://ecollections.law.fiu.edu/faculty_publications

 Part of the [Legislation Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Eloisa Rodriguez-Dod, *RESPA - Questioning its Effectiveness*, 24 Hamline L. Rev. 68 (2000).

Available at: https://ecollections.law.fiu.edu/faculty_publications/143

This Article is brought to you for free and open access by the Faculty Scholarship at eCollections. It has been accepted for inclusion in Faculty Publications by an authorized administrator of eCollections. For more information, please contact lisdavis@fiu.edu.

HEINONLINE

Citation: 24 Hamline L. Rev. 68 2000-2001



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Thu Jul 16 10:34:16 2015

-- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from
uncorrected OCR text.

-- To obtain permission to use this article beyond the scope
of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0198-7364](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0198-7364)

RESPA – QUESTIONING ITS EFFECTIVENESS

TABLE OF CONTENTS

I.	INTRODUCTION	69
II.	ADVANCED DISCLOSURE OF CLOSING COSTS TO BORROWERS	70
	A. <i>GOOD FAITH ESTIMATE</i>	70
	B. <i>SPECIAL INFORMATION BOOKLET</i>	72
	C. <i>HUD-1 SETTLEMENT STATEMENT</i>	74
III.	ELIMINATION OF CERTAIN KICKBACKS AND REFERRAL FEES	75
IV.	CURRENT RESPA REFORM PROPOSALS	80
V.	CONCLUSION	81
	APPENDICES	83

RESPA – QUESTIONING ITS EFFECTIVENESS

Eloisa C. Rodriguez-Dod¹

I. INTRODUCTION

The Real Estate Settlement Procedures Act, better known as RESPA, was enacted in 1974.² This legislation was passed “to insure that consumers...are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices.”³ Thereafter, the Department of Housing and Urban Development promulgated regulations pursuant to and in furtherance of RESPA, which regulations were termed “Regulation X.”⁴

RESPA applies to residential real estate closings⁵ that are financed by “federally related mortgage loans.”⁶ RESPA defines a “federally related mortgage loan” as a loan secured by a mortgage on a one to four family residence, including a condominium or a cooperative, and that is either (a) made by a lender insured or regulated by the federal government; (b) made, insured guaranteed or supplemented by an officer or agency of the federal government or connected to a housing program administered by an officer or agency of the federal government; or (c) made by a lender intending to sell it to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), or the Federal Home Loan Mortgage Corporation (FHLMC).⁷ However, Regulation X further expands the definition of a “federally related mortgage loan” to include (a) loans made by certain creditors; (b) loans originated by certain dealers or mortgage brokers; and (c) reverse mortgages.⁸

The goals of RESPA include the following: (1) to give more effective advance disclosures of closing costs to buyers and sellers; (2) to eliminate kickbacks and referral fees which may increase closing costs; (3) to reduce the amount of money borrowers are required to place in escrow at closing for payment of real estate taxes and insurance; and (4) to reform and modernize local record keeping of land title information.⁹ This article will analyze whether, 26 years after RESPA was enacted, it is meeting its intended goals of ensuring advance disclosure of costs to

¹ Eloisa C. Rodriguez-Dod, Professor, Nova Southeastern University Shepard Broad Law Center, Fort Lauderdale, Florida; Vice-Chair, The Florida Bar Real Property, Probate and Trust Law Section, Model and Uniform Acts Committee. My gratitude is extended to Rene Lopez, Esq. and Christopher Brown Esq. for their research assistance.

² Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601-2617 (1994 & Supp. II 1996, Supp. III 1997, Supp. IV 1998).

³ *Id.* at § 2601(a).

⁴ See Real Estate Settlement Procedures Act, 24 C.F.R. § 3500.1 (2000).

⁵ A closing or settlement is the “process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan.” *Id.* at § 3500.2(b). The terms “closing” and “settlement” will be used interchangeably throughout this article.

⁶ 12 U.S.C. § 2603(a); 24 C.F.R. § 3500.5(a).

⁷ See 12 U.S.C. § 2602(1); 24 C.F.R. § 3500.2(b).

⁸ See *id.* If the residential property securing the loan is not located in the United States, the District of Columbia, Puerto Rico, or a territory or possession of the United States, then “the loan is not a federally related mortgage loan.” *Id.* In addition, some residential loans are exempted from RESPA’s coverage, such as loans on property greater than 25 acres and temporary loans, such as construction loans. For a list of these exemptions, see 24 C.F.R. § 3500.5(b).

⁹ See 12 U.S.C. § 2601(b).

borrowers and eliminating unnecessary costs due to kickbacks and referral fees, and whether the residential purchase and loan closing process is as user-friendly as it was designed to be pursuant to RESPA's terms and that of Regulation X. Part II specifically will focus on the disclosures that are required to be provided to a borrower during the loan application and closing process.¹⁰ It will analyze whether such disclosures are truly meaningful to the average borrower of a federally related mortgage loan on a residential property. Part III will discuss the form of kickbacks and referral fees that RESPA was designed to eliminate, how the courts have interpreted and applied this section of the law, and the Department of Housing and Urban Development's (HUD) position on these fees.¹¹ The status of federal RESPA reform is addressed in Part IV of this article.¹² Finally, Part V concludes with comments recommending changes to RESPA.

II. ADVANCED DISCLOSURE OF CLOSING COSTS TO BORROWERS

In order to provide disclosure of settlement charges to federally related mortgage loan borrowers, Regulation X requires that lenders or mortgage brokers deliver to borrowers two documents: 1) a good faith estimate;¹³ and 2) a Special Information Booklet.¹⁴ In addition, the settlement agent must deliver to the borrower a HUD-1 Settlement Statement.¹⁵

A. Good Faith Estimate

Within three business days after receiving an application for a federally related mortgage loan, a mortgage broker or lender must deliver to the borrower a good faith estimate.¹⁶ This document is basically a disclosure, in dollar amounts, of an estimate of the charges a borrower will probably incur at closing.¹⁷ The estimate is based upon what is customarily charged in the locality of the mortgaged property.¹⁸ The good faith estimate must include those charges that will appear in section L of the HUD-1 Settlement Statement¹⁹ and any other costs the borrower is likely to pay based on standard practice in the community of the mortgaged property.²⁰

Appendix C to Regulation X gives a "suggested" form of the good faith estimate that a lender may use.²¹ This sample form requires the lender or mortgage broker to provide his or her name at the top.²² Two paragraphs of information follow explaining to the borrower that the good faith estimate includes only estimates of

¹⁰ See *infra* notes 13-69 and accompanying text.

¹¹ See *infra* notes 70-130 and accompanying text.

¹² See *infra* notes 131-51 and accompanying text.

¹³ See 24 C.F.R. § 3500.7(a). If a loan application is received by a mortgage broker, then the mortgage broker is required to provide the good faith estimate. See *id.* at § 3500.7(b).

¹⁴ See *id.* at § 3500.6(a).

¹⁵ See *id.* at § 3500.8(a).

¹⁶ See 24 C.F.R. § 3500.7(a), (b). If, within the three-day period, a lender rejects a borrower's application for a federally related mortgage loan, then the lender does not need to provide a good faith estimate. See *id.* at § 3500.7(a)(1).

¹⁷ See *id.* at § 3500.7(a), (c).

¹⁸ See *id.* at § 3500.7(c)(2).

¹⁹ For a discussion of the HUD-1 Settlement Statement, see *infra* Part II.C.

²⁰ See 24 C.F.R. § 3500.7(c).

²¹ See 24 C.F.R. app. C at 297-98. For a reproduction of these pages, see *infra* Appendix A.

²² See *id.* at 298 n.1.

charges likely to be incurred at closing and that actual charges may be greater or lesser than the amount listed.²³ In addition, it explains that each charge has a line number by it corresponding to the line number where that same charge will be located on the HUD-1 Settlement Statement the borrower will receive at the closing of the loan transaction.²⁴ After those charges are listed, the sample form advises the borrower that additional information is located in the Special Information Booklet²⁵ to be provided by the lender or mortgage broker.²⁶

The question, then, is whether 24 C.F.R. § 3500.7 and its accompanying Appendix C help accomplish RESPA's goal of truly giving advance disclosure of settlement charges to a borrower. Is the borrower given sufficient notice of charges to allow the borrower to negotiate the costs of some of those charges and better prepare for the full cost of the closing?²⁷ The answer seems to be negative.

First, the good faith estimate is only an estimate.²⁸ It does not really include other possible charges and hidden costs, such as settlement agent courier charges and other miscellaneous charges. Thus, for instance, a borrower's good faith estimate may reflect \$175.00 as the estimated costs of the settlement fee payable to the title insurer; however, the title insurer that actually conducts the closing charges \$300.00 for that particular item.²⁹ The borrower may not be aware of the cost differences between title insurers and unwittingly end up paying the higher charge for the same service.³⁰

The good faith estimate itself does not explain the costs. The document only identifies the charges by name and amount, e.g., "appraisal fee" - \$275.00.³¹ So, for instance, a good faith estimate may reflect an amount for funds that will be collected at closing to be held in escrow for the payment of hazard insurance on the property. The amount collected depends on the amount the borrower ultimately pays prior to closing for one-year current insurance on the property, then prorated on a monthly basis. Most borrowers do not understand that, although they have already paid for this insurance, the reserve is taken as a prepayment for the following year's insurance coverage;³² the good faith estimate itself does not explain this to the borrower.

In addition, the employees of the mortgage brokers and lenders do not always explain the costs properly. The lender or mortgage broker's interest is in

²³ See *id.* at 297-98.

²⁴ See *id.*

²⁵ For a discussion of the Special Information Booklet, see *infra* Part II.B.

²⁶ See 24 C.F.R. § 3500.7(a) app. C.

²⁷ See Ann vom Eigen, *Proposed RESPA/TILA Changes - The Lawyer's Role in Residential Real Estate Closings*, PROBATE & PROPERTY, Jan.-Feb. 1999, at 34. "The creditor community has contended that consumers are often surprised at closing by the amount of funds that they are required to bring to the closing table." *Id.*

²⁸ See *id.* at 36. "Some creditors are more accurate than others." *Id.*

²⁹ See, e.g., U.S. Dep't of Housing & Urban Dev. & Fed. Reserve Bd., *J. Rep. to Cong. Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act*, at 31 n.54 (1998)(hereinafter Report). This report can be found at <http://www.bog.frb.fed.us/boarddocs/RptCongress/tila.pdf>.

³⁰ See vom Eigen, *supra* note 24, at 36. "[E]stimates can significantly differ from actual settlement costs." *Id.*

³¹ See, e.g., Appendix B *infra*.

³² "The issue of escrow reserves is one of the most complicated for borrowers to understand. Many times there is also a discrepancy between the estimated escrow amount listed on the good faith estimate and the actual reserve amounts charged at closing." Interview with Carmen Ferreira, Esq., President, York Title Co. (Nov. 19, 1999).

processing the loan; he or she does not necessarily represent the borrower³³ and thus does not focus on the borrower's interest in understanding the process – still leaving the borrower confused and dissatisfied.

B. Special Information Booklet

A solution to the insufficiency of full disclosure in the good faith estimate is found in Regulation X's requirement that mortgage brokers or lenders deliver to a borrower a Special Information Booklet.³⁴ This booklet must likewise be delivered within three days after receipt of a loan application.³⁵

The booklet, entitled "Buying Your Home: Settlement Costs & Helpful Information" and the form of which is published in the Federal Register,³⁶ is designed to "help persons . . . better . . . understand the nature and costs of settlement services."³⁷ RESPA requires that the booklet include information concerning:

- (1) a description and explanation of the nature and purpose of . . . cost[s] incident to a real estate settlement;
- (2) an explanation and sample of the [HUD-1 Settlement Statement];
- (3) a description and explanation of the nature and purposes of escrow accounts...;
- (4) an explanation of the choices available to buyers . . . in selecting persons to provide necessary services incident to [the closing]; and
- (5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the [borrower] with respect to [the closing].³⁸

In fact, it is a fairly good booklet that seems to meet the aforementioned goals. The current version of the special information booklet is quite thorough. It includes a Table of Contents outlining all topics covered in the booklet.³⁹ Part I of the booklet is an "Introduction" briefly describing RESPA.⁴⁰ Part II, "Buying & Financing a Home," describes the process a borrower endures when purchasing a home, applying for a loan and subsequently closing on the transaction. It includes advice on such things as "role of the real estate broker," "selecting an attorney," "terms of the agreement of sale," and "shopping for a loan."⁴¹ It also addresses home buyer's rights while the loan application is processed. The booklet discusses, among

³³ See Michael P. Schiff, *Mortgage Brokers and Yield Spread Premiums: Legitimate Fees or Illegal Kickbacks?*, 72 FLA. BAR J. 55 (1988). "[M]any borrowers don't seek independent legal advice . . . incorrectly assuming that the mortgage broker or title company's attorney represents them." *Id.*

³⁴ See 24 C.F.R. § 3500.6. See also 12 U.S.C. § 2604(d).

³⁵ See *id.* If, within the three-day period, a lender rejects a borrower's application for a federally related mortgage loan, then the lender does not need to provide the Special Information Booklet. See *id.*

³⁶ See Real Estate Settlement Procedures Act; Notice of Revision of Special Information Booklet, 62 Fed. Reg. 31982-32011 (June 11, 1997).

³⁷ 12 U.S.C. § 2604(a).

³⁸ *Id.* at § 2604(b).

³⁹ See 62 Fed. Reg. at 31985.

⁴⁰ See *id.* at 31986.

⁴¹ *Id.* at 31987-93.

other things, "RESPA disclosures,"⁴² "RESPA protection against illegal referral fees,"⁴³ and "[the] right to file complaints."⁴⁴ Part III of the booklet focuses on "settlement costs."⁴⁵ This part includes a copy of the HUD-1 Settlement Statement and an explanation of all the items listed on the HUD-1 Settlement Statement.⁴⁶ That section of the booklet should take some of the mystery out of the good faith estimate because it describes charges that are listed⁴⁷ without any explanation in the good faith estimate given by the lender or mortgage broker.⁴⁸ However, even though the Special Information Booklet provides much more information than the good faith estimate, there are some problems associated with the booklet.

First, even though it describes charges related to a closing, it only fully explains those that are pre-printed on the HUD-1 Settlement Statement.⁴⁹ For instance, in Appendix C - Sample Form of Good Faith Estimate, there is an item listed as a "tax related service fee."⁵⁰ Appendix C notes that if this fee is to be charged then it would be added to a "blank line in [the] 800 Section [of the HUD-1 Settlement Statement]."⁵¹ Thus, because it is not a cost that is found on the pre-printed HUD-1 Settlement Statement, it is not an item explicitly addressed in the special information booklet.⁵²

Regulation X does recognize that some charges assessed against a borrower may be regional, "based upon common practice in the locality of the mortgaged property."⁵³ For instance, the "tax related service fee" may be a cost customarily assessed in Miami-Dade County, Florida, but not in another area of the country and thus is not necessarily a charge incidental to all closings. Nevertheless, the booklet can be improved upon to be more comprehensive and include such regional costs, at least those most commonly charged throughout the nation.

Second, Regulation X says that the "booklet may be reproduced in any form," including in any size or type of print, "so long as the book is legible."⁵⁴ So, technically, a lender or mortgage broker could reproduce the Special Information Booklet in a manner that does not conduce the average borrower to realize the importance of the information contained in the booklet and consequently to read it.

⁴² *Id.* at 31995-96.

⁴³ *See* 62 Fed. Reg. at 31998-99.

⁴⁴ *Id.* at 31999.

⁴⁵ *See id.* at 32000.

⁴⁶ *See id.* at 32008-09.

⁴⁷ Indeed, in 1997, HUD revised the Special Information Booklet and made it more user friendly, particularly in the explanation of the charges listed on the HUD-1 Settlement Statement. *See* 52 Fed. Reg. 13566 (Apr. 23, 1987). For instance, in the prior version of the booklet, the term "loan discount" was defined as follows: "[A] one-time charge used to adjust the yield on the loan to what market conditions demand. It is used to offset constraints placed on the yield by state or federal regulations." Real Estate Settlement Procedures Act; Special Information Booklet and Revised HUD-1 Settlement Statement, 52 Fed. Reg. at 13566, 13576. Yield? Market conditions? In the author's opinion, it would seem as if a borrower would have had to study economics or finance to understand the concept of loan discount as written in that version of the booklet. Now, the booklet defines the term "loan discount" in plain English as "a one-time charge imposed by the lender or broker to lower that rate at which the lender or broker would otherwise offer the loan to [a borrower]." 62 Fed. Reg. at 32000. The new booklet defines the term in a manner that the average borrower will more readily understand.

⁴⁸ *See infra* Part II.A.

⁴⁹ *See* 62 Fed. Reg. at 32000.

⁵⁰ *See* 24 C.F.R. § 3500.7 app. C at 297-98.

⁵¹ *Id.* *See also infra* Part II.C for a discussion of the HUD-1 Settlement Statement.

⁵² *See* 62 Fed. Reg. at 32000.

⁵³ 24 C.F.R. § 3500.7(c)(2).

⁵⁴ *Id.* at § 3500.6(c).

Therefore, Regulation X should be amended to require, at least, a minimum font size to avoid the "boilerplate" effect.

Third, even though RESPA and Regulation X require that a "lender or mortgage broker provide the special information booklet" to a potential borrower,⁵⁵ that, in fact, does not always happen.⁵⁶ In addition, the average borrowers may not, and probably do not, know that the booklet is available and that lenders are required to provide them with a copy of it.⁵⁷

One solution to this particular problem may be found in Regulation X itself. As previously discussed, Appendix C of Regulation X has a suggested form for the good faith estimate.⁵⁸ In that sample form of a good faith estimate, there is language informing the borrower about the booklet.⁵⁹ Hence, borrowers have been notified that such a booklet is available. However, this "solution" has some holes. For one thing, when borrowers receive the good faith estimates, they are so overwhelmed and preoccupied with the purchase and loan process and with costs listed on the good faith estimates that they may fail to read the additional print on that document. Furthermore, a greater problem exists in that Regulation X does not require that information about the special information booklet be included in the good faith estimate. Once again, Appendix C is only a "suggested" form.⁶⁰ Thus, if a lender produces its own form for providing good estimates, that form may not include any informational language notifying borrowers that the booklet is available for their perusal.⁶¹

A simple and feasible solution is to require that good faith estimates include language about the special information booklet in bold prominent lettering. In addition, a borrower should be required to sign and date a receipt acknowledging that they have received the booklet. In that way, borrowers are made aware of the informational booklets and auditors can ensure that the special information booklets are properly being delivered to borrowers pursuant to RESPA and Regulation X.

C. HUD-1 Settlement Statement

The last document that borrowers of federally related mortgage loans must receive is the HUD-1 Settlement Statement.⁶² The HUD-1 Settlement Statement is generally given to the borrower at the time of closing.⁶³ There is no true requirement that it be delivered earlier unless requested by the borrower.⁶⁴

⁵⁵ 12 U.S.C. § 2604(d); 24 C.F.R. § 3500.6(a).

⁵⁶ The author personally knows of one case where neither the mortgage broker nor the lender provided a booklet to an applicant for a "federally related mortgage loan."

⁵⁷ In the situation described above, the borrower was not aware that the lender was required to deliver to her a booklet nor did she know of its availability.

⁵⁸ See 24 C.F.R. § 3500.7(a) app. C. at 297-98.

⁵⁹ See *id.*

⁶⁰ See *id.* at § 3500.7(d).

⁶¹ See *supra* note 56 and accompanying text. The lender gave the borrower a good faith estimate and an application checklist, neither of which mentioned the Special Information Booklet. See *infra* Appendix B for a reproduction of the good faith estimate and checklist the lender provided the borrower.

⁶² See 24 C.F.R. § 3500.10(b). See also 12 U.S.C. § 2603.

⁶³ See 12 U.S.C. § 2603(b); 24 C.F.R. § 3500(b). The HUD-1 Settlement Statement must be delivered to the borrower "at or before settlement." *Id.* However, many times, unless a borrower is represented by an attorney, the borrower does not see the HUD-1 Settlement Statement until the closing itself. See Report, *supra* note 26, at 44.

⁶⁴ See 24 C.F.R. § 3500.10(a). This section, entitled "Inspection one day prior to settlement upon request by the borrower," states that "the settlement agent shall permit the borrower to inspect the HUD-1

The HUD-1 Settlement Statement sets out all the final costs to be paid by the borrower plus some costs that have already been prepaid by the borrower, such as the credit report or hazard insurance. Those items are designated as P.O.C. items (Paid Outside of Closing).⁶⁵ Nevertheless, there are also some problems encountered here.

First, because the settlement agent is not required to deliver the HUD-1 Settlement Statement until the closing, the borrower is under stress while reviewing and learning of these costs at the last minute at the closing table.⁶⁶ Note that many borrowers are not represented by attorneys because they either cannot afford one, do not realize what problems may occur during closing, or mistakenly think that the lender's settlement agent represents them.⁶⁷ If the information booklet has not been delivered, then the charges listed on the HUD-1 Settlement Statement are still incomprehensible to the borrower who, if not represented by an attorney, may not realize that many of these charges could have been avoided or negotiated at a better cost. As stated before, even though there is a settlement agent processing the closing, that agent does not necessarily represent the borrower.⁶⁸ If the settlement agent is not the borrower's attorney, then the agent just relies on the charge amounts provided by the lender and incorporates such figures into the HUD-1 Settlement Statement.⁶⁹ Thus, no one is truly looking out for the borrower, unless the settlement agent is also the borrower's attorney.

Once again, the best and most cost-feasible solution to this dilemma is to include on the good faith estimate a notification to the borrower, in bold print, about the availability of the special information booklet and the right to inspect the HUD-1 Settlement Statement prior to closing. Because the booklet explains the HUD-1 Settlement Statement and includes a copy of it, borrowers will have an opportunity to prepare for and understand the closing process.

III. ELIMINATION OF CERTAIN KICKBACKS AND REFERRAL FEES

As mentioned above, one of the purposes of RESPA is to prevent kickbacks and referrals, which theoretically increase costs to borrowers.⁷⁰ Payments of fees related to closing transactions can occur under many circumstances: attorney referrals to other attorneys, attorney referrals to title companies, mortgage broker referrals to mortgage lenders, real estate broker referrals to attorneys, real estate broker referrals to lenders, and so on and so forth.⁷¹

Generally, fees may only be paid to a firm or person for services actually

... during the business day immediately proceeding settlement." *Id.* (emphasis added.) However, few borrowers know that this right exists. See Report, *supra* note 26, at 43.

⁶⁵ See 24 C.F.R. § 3500.7 app. A. at 285-87. See *infra* Appendix C for a reproduction of the HUD-1 Settlement Statement.

⁶⁶ See Schiff, *supra* note 33, at 55.

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ "Often times figures are received too late to substantially modify them; sometimes lenders do not give the settlement agent any figures until the day of closing. The borrower is then pressured to close." Interview with Carmen Ferreira, Esq., President, York Title Co. (Nov. 19, 1999).

⁷⁰ See 12 U.S.C. § 2601(b)(2); See also Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers (Retail Lenders), and Notice of Consideration of Negotiated Rulemaking, 60 Fed. Reg. 47650, 47650 (Sept. 13, 1995); Real Estate Settlement Procedures Act (RESPA) Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, 64 Fed. Reg. 10080, 10081 n.2 (Mar. 1, 1999).

⁷¹ See, e.g., 24 C.F.R. pt. 3500 app. B. at 294-97.

rendered by that firm or person.⁷² For example, if an attorney routinely reviews his client's title commitments, but the examination and clearance of title objections is handled by another title agent or title company, the attorney cannot receive a percentage of the premium charged for the title policy.⁷³ In order to receive a part of the premium, the attorney must perform "core" title agent services for which he assumes liability.⁷⁴ Otherwise, a payment of the premium would be illegal under Regulation X.⁷⁵

The most recent controversy related to kickbacks and referrals concerns "yield spread premiums" between mortgage brokers and lenders.⁷⁶ Typically, a lender has a "par rate," which is the lowest interest rate at which it will loan money without charging discount points.⁷⁷ If a mortgage broker brings in a borrower at a rate above par, then the lender compensates the broker a portion of the increased interest the lender will receive for the higher rate loan. This compensation is considered a "yield spread premium."⁷⁸

Even though the "yield spread premium" must be disclosed in the HUD-1 Settlement Statement,⁷⁹ much litigation has been instituted regarding whether that payment of the premium constitutes a violation of § 8 of RESPA, which prohibits agent kickbacks and referrals.⁸⁰ The basis for the suits has been that brokers are "pushing" higher rate loans rather than finding the lowest rate possible for the borrower, thereby increasing costs to borrowers, which goes against the intent of RESPA.⁸¹

Federal district courts ruling on this issue have conflicting views regarding whether these payments are illegal under the RESPA.⁸² In *Mentecki v. Saxon Mortgage, Inc.*, the district court concluded that "yield spread premiums" contravened RESPA's prohibition against kickbacks and referrals.⁸³ The court stated:

[T]he payment of a yield spread premium is a referral prohibited by 12 U.S.C. § 2607(a). By their very nature, yield spread premiums are not compensation given for services actually performed by the broker. The reality of the transaction is that the

⁷² See 12 U.S.C. § 2607 (b). See also 24 C.F.R. § 3500.14(c).

⁷³ See 24 C.F.R. § 3500.14(g)(3). See also 24 C.F.R. pt. 3500 app. B, illus. 4; Lawyers Title Ins. Corp., Florida Underwriting/Legal Bulletin No. 92-23 (1992); RESPA Statement of Policy, 64 Fed. Reg. at 10082 n.3.

⁷⁴ See 24 C.F.R. § 3500 app. B, illus. 4.

⁷⁵ See *id.*

⁷⁶ See 64 Fed. Reg. at 10080-81. At least one-half of residential loans today are obtained through mortgage brokers. See *id.* at 10080.

⁷⁷ See, e.g., *Barbosa v. Target Mortgage Corp.*, 968 F. Supp. 1548, 1552 (S.D. Fla. 1997); *Culpepper v. Inland Mortgage Corp.*, 132 F.3d 692, 694 (11th Cir. 1998).

⁷⁸ See, e.g., *Barbosa*, 968 F. Supp. at 1552.

⁷⁹ See 24 C.F.R. Part 3500 app. B, illus. 12.

⁸⁰ See 64 Fed. Reg. at 10080; Real Estate Settlement Procedures Act (RESPA) Disclosure of Fees Paid to Mortgage Brokers; Proposed Rule and Notice of Proposed Information Collection Requirements, 62 Fed. Reg. 53912, 53913 (to be codified at 24 C.F.R. pt. 3500) (proposed Oct. 16, 1997). See also Kenneth Harney, *HUD Drafting Policy on Charges by Loan Brokers*, MIAMI HERALD, Feb. 28, 1999, at 9H; Alan S. Kaplinsky, *Residential Mortgage Litigation: Overview of Loan Broker Compensation Litigation*, 989 CORP. L. & PRACTICE HANDBOOK SERIES (PLI) 411, 453 (Apr. 1997).

⁸¹ See 64 Fed. Reg. at 10081.

⁸² See 62 Fed. Reg. at 53913.

⁸³ See *Mentecki v. Saxon Mortgage, Inc.*, 1997 WL 45088 at *4 (E.D. Va. Jan. 10, 1997) (hereinafter *Mentecki I*).

broker benefits by payment of the premium, the lender benefits by obtaining a higher than par loan, and the borrower pays. Quite simply, the premium rewards the broker for referring the above-par loan.⁸⁴

Yet, in *Culpepper v. Inland Mortgage Corp.*, decided the same month as *Mentecki*, and in *Barbosa v. Target Mortgage Corp.*, the court ruled otherwise. In *Culpepper*, two borrowers had employed the services of a mortgage broker to obtain a federally related mortgage loan.⁸⁵ The mortgage broker informed the borrowers that they could obtain the loan from a certain lender at a 7.5% interest rate.⁸⁶ The borrowers were unaware that, in fact, the “par rate” at which that lender would have given that same loan to them was 7.25%.⁸⁷ At closing, the borrowers paid the mortgage broker a fee for helping them with the loan.⁸⁸ The lender, however, also paid the broker a “yield spread premium” in the amount of \$1,263.61 for bringing in a loan to the lender at the higher interest rate.⁸⁹ The borrowers then sued, challenging the legality of the yield spread premium under RESPA’s prohibition against kickbacks and referral fees.⁹⁰ The *Culpepper* court stated that the yield spread premium was the fair market value paid by the lender to the mortgage broker for creating a loan and then selling it to the lender. Thus, the “yield spread premium” was a payment for goods as permitted under 12 U.S.C. § 2607(c)(2).⁹¹

Likewise, in *Barbosa*, the court found that a “yield spread premium” was legal. In that case, the borrowers had approached the mortgage broker, but decided to look for another broker or lender after discussing the broker’s fees.⁹² After being denied by another lender, the borrowers returned to the original mortgage broker.⁹³ The borrowers applied for a loan at an 8.75% rate, but closed at 9.5%.⁹⁴ At the closing, the HUD-1 Settlement Statement reflected fees paid by the borrower to the mortgage broker plus a “yield spread premium” paid by the lender to the broker.⁹⁵ The borrowers sued stating that the “yield spread premium” was a referral fee and a split fee between the lender and broker, both of which are prohibited by RESPA.⁹⁶

The court first applied *Culpepper* and determined that the payment was not an illegal referral fee under RESPA.⁹⁷ The court then held that since the borrowers

⁸⁴ *Id.* In deciding a later Motion for Reconsideration, the *Mentecki* court stated that it had not reached a final decision on whether yield spread premiums are prohibited under RESPA. See *Mentecki v. Saxon Mortgage, Inc.*, 1997 WL 1403831 at *1 (E.D. Va. Feb. 7, 1997) (hereinafter *Mentecki II*). The court noted that “whether the payment by a lender to a broker of a yield spread premium violates 12 U.S.C. § 2607 involves a controlling question of law as to which there is substantial ground for difference of opinion.” *Id.*

⁸⁵ See *Culpepper v. Inland Mortgage Corp.*, 953 F. Supp. 367, 370 (N.D. Ala. 1997) (hereinafter *Culpepper I*).

⁸⁶ See *Culpepper v. Inland Mortgage Corp.*, 132 F.3d 692, 694 (11th Cir. 1998) (hereinafter *Culpepper II*).

⁸⁷ See *id.*

⁸⁸ See *Culpepper I*, 953 F. Supp. at 370.

⁸⁹ See *id.* Had the mortgage broker quoted the borrowers the rate of 7.25%, the lender would still have paid the mortgage broker a yield spread premium, but in the much lesser amount of \$97.20. See *Culpepper II*, 132 F.3d at 694.

⁹⁰ See *Culpepper I*, 953 F. Supp. at 368.

⁹¹ See *id.* at 372.

⁹² See *Barbosa*, 968 F. Supp. at 1551.

⁹³ See *id.*

⁹⁴ See *id.* at 1551-52.

⁹⁵ See *id.*

⁹⁶ See *Barbosa*, 968 F. Supp. at 1552.

⁹⁷ See *id.* at 1556-57.

had an opportunity to shop around for another broker/lender and agreed to the broker's fees for service in originating the loan the payment was not an illegal split fee because it was a reasonable payment under RESPA, arrived at through arms' length bargaining between the parties.⁹⁸

In view of these problems, in late 1997, HUD proposed a new rule which would require mortgage brokers to provide borrowers with a "mortgage broker contract."⁹⁹ This contract would inform borrowers of the total fees the broker will likely receive, including any "yield spread premiums," and indicate the nature of the relationship between the borrower and broker; for example, whether or not the mortgage broker represents the borrower.¹⁰⁰ In addition, the contract includes a list of borrowers' rights informing the borrower that, among other things, the borrower may "shop for the best loan," request a good faith estimate, and receive a special information booklet.¹⁰¹ Those brokers that use the mortgage broker contract would have a "safe harbor" from attacks concerning their fees, so long as the mortgage broker met certain requirements. HUD would then presume that the charges were legal.¹⁰²

To fall within the safe harbor provisions, the mortgage broker and borrower first have to execute a mortgage broker contract for each loan.¹⁰³ Next, the broker is required to perform services in accordance with the terms of that contract.¹⁰⁴ Then, the broker has to disclose closing fees on the good faith estimate and HUD, pursuant to the provisions of Regulation X.¹⁰⁵ Lastly, brokers must abide by any applicable State licensing or registration requirements.¹⁰⁶

The presumption of legality, however, can be rebutted if the fees paid to the broker do not pass a reasonableness test as yet to be developed by HUD.¹⁰⁷ The test would presumably allow borrowers, lenders, and brokers to determine whether the compensation paid to the broker in fact does pass muster.¹⁰⁸ Nevertheless, this rule has not yet been promulgated and is still pending.

Thereafter, in January 1998, in the first federal appellate case to address the issue, the Eleventh Circuit held in *Culpepper* that a "yield spread premium" was illegal.¹⁰⁹ The *Culpepper* court inquired as to whether the "yield spread premium" was a prohibited referral under 12 U.S.C. § 2607(a). The court noted that the payment was in fact a referral fee because the mortgage broker and lender had an arrangement whereby the mortgage broker would place loans with the lender. Hence, when the mortgage broker accepted the yield spread premium, it received a referral fee for doing so. The court then considered whether the payment to the mortgage broker fell under the exemption under 12 U.S.C. § 2607(c) which permits such payments for goods or services provided. The court determined that it was not

⁹⁸ See *id.* at 1558-59.

⁹⁹ See 62 Fed. Reg. at 53913. For a copy of the proposed "Mortgage Broker Contract," see *id.* at 53927-28.

¹⁰⁰ See *id.* at 53927.

¹⁰¹ See *id.* at 53928.

¹⁰² See 62 Fed. Reg. at 53921.

¹⁰³ See *id.* at 53921-22.

¹⁰⁴ See *id.* at 53922.

¹⁰⁵ See *id.* at 53922.

¹⁰⁶ See 62 Fed. Reg. at 53923.

¹⁰⁷ See *id.* at 53913.

¹⁰⁸ See *id.*

¹⁰⁹ See *Culpepper II*, 132 F.3d at 697. There are no reported federal appellate court cases dealing directly with this issue other than *Culpepper II*. See *id.* at 695.

for a payment of goods because the mortgage broker did not own the loan at any time.¹¹⁰ The loan was a “table funded loan” wherein the lender advanced funds to the mortgage broker and the mortgage broker contemporaneously assigned the loan to the lender.¹¹¹ Thus, the court reached its decision based on the facts of this particular case.¹¹² Because the court found that the mortgage broker and lender had an ongoing relationship and because the loan was a “table funded” loan, the payment of this particular “yield spread premium” was illegal under RESPA.¹¹³

The Eleventh Circuit later clarified its decision in *Culpepper*. On a petition for rehearing, which was denied, the court stated that a “yield spread premium” may be lawful in certain circumstances.¹¹⁴ It reiterated, however, that it decided *Culpepper* on its particular facts involving a “table funded” loan.¹¹⁵

Nevertheless, in 1998, an appropriations bill was passed requiring HUD to clarify its position concerning payments by lenders to mortgage brokers, including “yield spread premiums.”¹¹⁶ Consequently, HUD issued its “Statement of Policy . . . Regarding Lender Payments to Mortgage Brokers” in 1999.¹¹⁷ In its policy statement, HUD stated that “yield spread premiums” are not *per se* illegal.¹¹⁸ The policy statement also enunciated a two-step individualized inquiry to determine whether any such payment is in fact a legal payment under § 8 of RESPA. First, a determination must be made as to “whether goods or facilities were actually furnished or services were actually performed” by the mortgage broker.¹¹⁹ If so, the second inquiry is “whether the payments are reasonably related” to those goods or services.¹²⁰ In making this two-step analysis, HUD directed that, whether paid by the borrower or the lender, the broker’s total compensation should be examined.¹²¹ HUD referred to a letter it sent to the Independent Bankers Association of America as a guidepost in identifying services that mortgagors may perform and thus be compensated for. Some of those services include such things as completing a borrower’s loan application, ordering verifications of employment and appraisals, providing good faith estimates, and maintaining regular contact with the borrower.¹²² The reasonableness of the compensation depends on the number and types of goods and services performed and the standard charged in the locality of the mortgage property.¹²³ In addition, the policy statement directed that all such fees must be clearly explained, without any code-like abbreviations.¹²⁴

One month after HUD issued its Policy Statement, the court in *Schmitz v. Aegis Mortgage Corp.* explained the application of the Policy Statement in view of the earlier *Culpepper* holdings.¹²⁵ The *Aegis* court stated that the Policy Statement’s

¹¹⁰ See *id.* at 696.

¹¹¹ See *id.* at 695.

¹¹² See *Culpepper II*, 132 F.3d at 697.

¹¹³ See *id.*

¹¹⁴ See *Culpepper v. Inland Mortgage Corp.*, 144 F.3d 717, 718 (11th Cir. 1998) (hereinafter *Culpepper III*).

¹¹⁵ See *id.*

¹¹⁶ See 64 Fed. Reg. at 10080.

¹¹⁷ *Id.*

¹¹⁸ See *id.* at 10084.

¹¹⁹ *Id.*

¹²⁰ 64 Fed. Reg. at 10084.

¹²¹ See *id.*

¹²² See *id.* at 10085.

¹²³ See *id.*

¹²⁴ See 64 Fed. Reg. at 10086.

¹²⁵ See *Schmitz v. Aegis Mortgage Corp.*, 48 F. Supp.2d 877 (D. Minn. 1999).

two-part test was less stringent than that expounded in *Culpepper*. The court noted that the first step in *Culpepper* is to determine whether the payment of a "yield spread premium" is directly linked to a particular good or service provided by a mortgage broker. The *Aegis* court found this step to be a burden so onerous that defendants would not ordinarily be able to proceed to the second step.¹²⁶ Instead, the court stated that HUD's test only requires evidence that a mortgage broker has actually provided goods or services connected to the loan.¹²⁷

In *Levine v. North America Mortgage*, the Federal District Court for Minnesota applied *Aegis* and further noted that deference must be given to HUD's Policy Statement, as it is not an "irrational, arbitrary, or manifestly contrary" interpretation of RESPA.¹²⁸ Other courts have followed this line of reasoning.¹²⁹ However, the Eleventh Circuit continues to adhere to the *Culpepper* test.¹³⁰

IV. CURRENT RESPA REFORM PROPOSALS

Pursuant to a Congressional directive,¹³¹ HUD and the Federal Reserve Board issued a joint report recommending certain changes to RESPA.¹³² Both entities recognized that consumers need to be better informed of the costs related to their mortgage loans.¹³³ Thus, they recommended that lenders and mortgage brokers give mortgage consumers either (a) a guarantee of the closing costs of the loan, or (b) a more accurate good faith estimate.

Under the guaranteed cost approach, a lender or mortgage broker could package the services associated and charge one fee for all such services. The expectation is that costs may be lowered because the creditors could arrange for volume discounts for such services.¹³⁴ In addition, the report recommended providing an exemption under § 8 of RESPA for fees paid pursuant to arrangements made for a guaranteed cost package.¹³⁵ The prohibition against payment of purely referral fees, however, would continue.¹³⁶

Under the second approach, a creditor would more accurately reflect closing costs on the good faith estimate. If the final costs exceeded the estimated costs by a certain margin, "based on a percentage of the total estimated closing

¹²⁶ See *id.* at 881.

¹²⁷ See *id.* at 882.

¹²⁸ *Levine v. North America Mortgage*, 188 F.R.D. 320, 328 (D. Minn. 1999).

¹²⁹ See, e.g., *In re Old Kent Mortgage Co. Yield Spread Premium Litigation*, 191 F.R.D. 155, 160 (D. Minn. 2000); *Potchin v. Prudential Home Mortgage Co., Inc.*, 1999 WL 1814612, at *6 (E.D.N.Y. 1999); *Golon v. Ohio Sav. Bank*, 1999 WL 965593, at *6 (N.D. Ill. 1999); *Hamilton v. North American Mortgage Co.*, 1999 WL 33117170, at *6-7 (D. Me. 1999).

¹³⁰ See *Heimmerrmann v. First Union Mortgage Corp.*, 188 F.R.D. 403, 406 (N.D. Ala. 1999); *Briggs v. Countrywide Funding Corp.*, 188 F.R.D. 645, 649 n.5 (M.D. Ala. 1999); *Culpepper v. Inland Mortgage Corp.*, 1999 WL 1135127, at *1 (N.D. Ala. July 20, 1999) (hereinafter *Culpepper IV*).

¹³¹ Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009.

¹³² See generally Report, *supra* note 26. The Report also proposed changes to the Truth in Lending Act found in 15 U.S.C. § 1601. See *id.*

¹³³ See *id.* at 20.

¹³⁴ See *id.* at 21. For instance, a lender could contract with an appraiser to charge a certain amount for each appraisal completed within the contractual period. See Report, *supra* note 26, at 23. Nevertheless, HUD and the Board realize that smaller mortgage firms may not be able to negotiate such volume discount arrangements and thus not be as competitive. See *id.* at 22.

¹³⁵ See *id.* at 33.

¹³⁶ See *id.* "For example, a realtor could not receive a fee for referring a consumer to a packager." Report, *supra* note 26.

costs," the creditor would then be penalized.¹³⁷ However, a lender would not be penalized if the costs increased due to a consumer's choice of a service provider or because of necessary changes to the loan.¹³⁸ Under this method, consumers would receive a more reliable good faith estimate¹³⁹ and the concern whether smaller lenders and mortgage brokers could otherwise provide competitive loan packages would be eliminated.¹⁴⁰

In addition, HUD and the Federal Reserve Board recommended that mortgage consumers receive loan closing information earlier than currently required under RESPA.¹⁴¹ The report suggested providing the special information booklet upon application for the loan, rather than within the three-day period.¹⁴² In addition, those providing a guaranteed cost package would disclose the cost during the initial contact with the loan consumer,¹⁴³ or at least as early as the creditor's technology would permit.¹⁴⁴ Lastly, consumers would receive an accurate copy of the HUD-1 Settlement Statement three days prior to closing, rather than on the closing date.¹⁴⁵ If any changes occur thereafter, redisclosure is required with an additional three-day waiting period for the loan to close.¹⁴⁶

Nevertheless, no legislation has as yet been enacted pursuant to the joint report. However, on April 6, 2000, a bill was introduced into the House of Representatives providing protection for "especially vulnerable consumers."¹⁴⁷ Entitled "Consumer Mortgage Protection Act of 2000," the act would, *inter alia*, effect some minor changes to RESPA.¹⁴⁸ The act, if enacted, would require the special information booklet to contain an explanation of compensation payable to a mortgage broker, whether payable by the borrower or lender.¹⁴⁹ It further requires that the good faith estimate include costs "likely to be imposed directly upon the borrower" rather than only those the "borrower is likely to incur."¹⁵⁰ It also clarifies that the HUD-1 Settlement Statement must include charges directly imposed upon a borrower, whether paid outside of closing or otherwise.¹⁵¹ But the bill goes no further to advance the recommendations set forth in the joint report issued by HUD and the Federal Reserve Board.

V. CONCLUSION

As a real estate practitioner with several years experience explaining settlement closing costs to borrowers, I realize that RESPA has somewhat failed in its attempt to provide consumers with information concerning the nature of settlements. The average borrower, some of who include practicing attorneys, do not fully comprehend the closing procedure. The information provided to the borrower

¹³⁷ *Id.* at 31.

¹³⁸ *See id.*

¹³⁹ *See id.*

¹⁴⁰ *See Report, supra note 29, at 32.*

¹⁴¹ *See generally, id.* at 39-44.

¹⁴² *See id.* at 39.

¹⁴³ *See id.* at 40-41.

¹⁴⁴ *See Report, supra note 29, at 41.*

¹⁴⁵ *See id.* at 44.

¹⁴⁶ *See id.*

¹⁴⁷ *See H.R. 4213, 106th Cong. (2nd session 2000).*

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*

¹⁵¹ *See H.R. 4213.*

is still written in an incomprehensible code-like manner. Thus, the average borrower does not usually fully understand all the costs assessed on the HUD-1 Settlement Statement. Therefore, it appears that RESPA needs to be improved upon to take the "mystery" out of a closing for these borrowers.

In its policy statement, HUD notes that RESPA reform in line with the recommendations in its joint report with the Federal Reserve Board "is the most effective way to resolve" certain difficulties with RESPA.¹⁵² The author agrees with HUD. In addition, the special information booklet should contain an explanation of those charges that, although regional, are most common throughout the nation. In the alternative, lenders or mortgage brokers should be required to provide an explanation of charges that do not appear in the special information booklet but are listed on the good faith estimate as a charge within that particular region. Additionally, the lenders and mortgage brokers should obtain the consumer's signature verifying that the special information booklet and good faith estimates have been received on a timely basis and that all costs have been explained. These safeguards would help ensure that consumers are receiving proper disclosures pursuant to RESPA.

¹⁵²

64 Fed. Reg. at 10080.

Appendix A

Appendix C - Sample Form of Good Faith Estimate

[Name of Lender] [FN1]

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates - the actual charges may be more or less. Your transaction may not involve a fee for every item listed.

The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 or HUD-1A settlement statement that you will be receiving at settlement. The HUD-1 or HUD-1A settlement statement will show you the actual cost for items paid at settlement.

Item [FN2]	HUD-1 or HUD-1A	Amount or range
Loan origination fee	801.....	\$ _____
Loan discount fee	802	\$ _____
Appraisal fee	803	\$ _____
Credit report	804	\$ _____
Inspection fee	805	\$ _____
Mortgage broker fee	[Use blank line in 800 Section]	\$ _____
CLO access fee	[Use blank line in 800 Section]	\$ _____
Tax related service fee ...	[Use blank line in 800 Section] ...	\$ _____
Interest for [X]		
days at \$____ per day ...	901	\$ _____
Mortgage insurance premium	902	\$ _____
Hazard insurance premiums	903	\$ _____
Reserves [FN3]	1000-1005	\$ _____
Settlement fee	1101	\$ _____
Abstract or title search ..	1102	\$ _____
Title examination	1103	\$ _____
Document preparation fee ..	1105	\$ _____
Attorney's fee	1107	\$ _____
Title insurance	1108	\$ _____
Recording fees	1201	\$ _____
City/County tax stamps	1202	\$ _____
State tax	1203	\$ _____
Survey	1301	\$ _____
Pest inspection	1302	\$ _____
[Other fees--list here]	\$ _____

Applicant

Date

Authorized Official

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender, if your application is to purchase residential real property and the Lender will take a first lien on the property.

Footnotes

[FN1] The name of the lender shall be placed at the top of the form. Additional information identifying the loan application and property may appear at the bottom of the form or on a separate page. Exception: If the disclosure is being made by a mortgage broker who is not an exclusive agent of the lender, the lender's name will not appear at the top of the form, but the following legend must appear:

[FN2] Items for which there is estimated to be no charge to the borrower are not required to be listed. Any additional items for which there is estimated to be a charge to the borrower shall be listed if required on the HUD-1.

[FN3] As an alternative to using aggregate accounting with no more than a two-month cushion, the estimate may be obtained by using single-item accounting with no more than a one-month cushion.

GOOD FAITH ESTIMATE OF MORTGAGE SETTLEMENT CHARGES

BORROWER: [REDACTED] PROGRAM Fixed - Based on 60 day Lock
 SALE PRICE \$ 225,000 MORTGAGE AMOUNT: \$ 125,000 INTEREST RATE: 6.25% TERM: 30 YRS.

GOOD FAITH ESTIMATES OF SETTLEMENT CHARGES BUYER IS LIKELY TO PAY:				
801. Loan Origination Fee	%	0	1106. Notary Fees	
802. Loan Discount	%	0	1107. Attorney's Fees	
803. Appraisal Fee		(275)	1108. Owners Title Insurance	
804. Credit Report(s)		(55)	1109. Title Insurance/Lender's Coverage	Title Co. (1,200)
805. Inspection Fees		0	1110. Endorsements	Title Co. (120)
806. Underwriting Fee		200	Recording Fees:	
809. Tax Service Fee		100	Deed	29
810. Escrow Waiver Fee	N/A	0	Mortgage	6
811. Flood Zone Certification Fee		29	Releases/Assignments	
			1203. State Tax/Stamps	
902. PMU/Premium		0	Stamps on Mortgage	647.50
			Stamps on Deed	
			Intangible Tax	370.00
904.			1301. Survey	Title Co.
905.			1302. Pest Inspection	IF 50
1101.			1303. Roof Inspection	Required 50
1102. Abstract or Title Search	(125) Title Co.		1304. Courier Charge	50
1103. Title Examination	(125) Title Co.		1305. Builder Closing Fee	0
1104. Settlement Fee	(125) Title Co.		1306.	
1105. Document Preparation	150			

ESTIMATED PREPAYMENTS:
 Prepaid interest for 30 days (max) Per diem \$ 38.64 \$ 1159.20 SUB-TOTAL: \$ 1681.50
 Taxes: Estimated 4 months @ \$ 400 Mo. = \$ 1600 Title Charges: (4760) DEST
 Hazard Insurance: Estimated 4 months @ \$ 150 Mo. = \$ 2100 / year pd. prior to closing
 Flood Insurance: Estimated 14 months @ \$ 50 Mo. = \$ 700 / year pd. prior to closing
 PMI: 2 months @ \$ 0 Mo. = \$ 0 SUB-TOTAL: \$ 5559.50
 Includes in Prepaid
TOTAL ESTIMATED SETTLEMENT CHARGES: \$ 1229.50

THIS IS A GOOD FAITH ESTIMATE AND ACTUAL CHARGES AT SETTLEMENT MAY BE HIGHER OR LOWER.
 THIS FORM MAY NOT COVER ALL ITEMS YOU WILL BE REQUIRED TO PAY IN CASH AT CLOSING; HOWEVER, THIS IS THE BEST ESTIMATE AVAILABLE TO US AT THIS TIME.
 YOU MAY WISH TO INQUIRE AS TO THE AMOUNTS OF SUCH OTHER ITEMS.

ESTIMATED MONTHLY PAYMENTS ON THIS MORTGAGE:
 *Principal & Interest \$ 1,309.43 / 177.03
 2 Mortgage (if applicable) \$
 Taxes (estimated) \$ 400.00
 Hazard & Flood Insurance (Est.) \$ 200.00
 PMI / MIP \$ 0
 HOA or Maintenance Fee \$
 TOTAL \$ 1,469.43 / 177.03
 *FIRST YEAR ONLY ON ADJUSTABLE LOANS.

We have collected a NON-REFUNDABLE application fee in the amount of \$ 220. However, if loan application is approved and the loan closes, the non-refundable application fee will appear as a P.D.C. item at Closing.

By: [REDACTED]
 Date: 9-16-97
 Mailed or Facsimile Given to agent

APPLICATION CHECKLIST

Borrower Name: [Redacted]
Date: 9-16-97
Originator: [Redacted]

Signed Documents

Table with columns 'Requested' and 'Received' for signed documents including Completed Application (1003), Good Faith Estimate, Lock Letter, Disclosure Notices, Source of Funds Statement, Program Disclosure, Information Disclosure Authorization, Timesaver Certification, Verification of Employment, Verification of Deposit, Verification of Mortgage/Rent, Verification of Securities, and Verification of Loans.

Other

Table with columns 'Requested' and 'Received' for other documents, consisting of multiple empty rows.

Additional Documents

Table with columns 'Requested' and 'Received' for additional documents including Signed Contract, Application Fee \$ 330, W-2 Statements for past 2 years, Current pay stubs FOR 7/93-7/94, 2 years complete personal income tax returns, 2 years complete business income tax returns JV Applicable, Y-T-D Profit and Loss statement prepared by Accountant through 6/30/97, Last 3 bank statements (Checkbook/Savings) accounts ALL AC: 5/20/97, Last 12 cancelled (Front & Back) Mortgage/Rental checks, Verification of Gift, Contract or Listing agreement on property to be sold, Deed on property at, Lease on property at Present Home, Divorce decree & complete property settlement, Notes Receivable, Social Security/Pension awards letter, Green Card, Name, address & telephone number for landlord, Diploma or student transcripts, Car Title, and Cancelled check(s) for initial deposit on property being purchased when available or copy of cashier's check.

Comments:

If you have any questions please do not hesitate to call me.

Please send requested items to Mortgage Team

A. SETTLEMENT STATEMENT

Appendix C
U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

OMB NO. 2502-0265

B. TYPE OF LOAN			6. FILE NUMBER	7. LOAN NUMBER	8. MORTGAGE INS CASE NUMBER
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FAMA	3. <input checked="" type="checkbox"/> Conv. Unis.	2000		
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.	C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME AND ADDRESS OF BORROWER		E. NAME AND ADDRESS OF SELLER		F. NAME AND ADDRESS OF LENDER	
G. PROPERTY LOCATION		H. SETTLEMENT AGENT		I. SETTLEMENT DATE	
Dade County, Florida		PLACE OF SETTLEMENT			
J. SUMMARY OF BORROWER'S TRANSACTION			K. SUMMARY OF SELLER'S TRANSACTION		
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER			
101. Contract Sales Price		401. Contract Sales Price			
102. Personal Property		402. Personal Property			
103. Settlement Charges to Borrower (line 1400)		403.			
104. to esc		404.			
105.		405.			
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance			
106. City/town taxes to		406. City/town taxes to			
107. County taxes to		407. County taxes to			
108. Assessments to		408. Assessments to			
109.		409.			
110.		410.			
111.		411.			
112.		412.			
120. GROSS AMOUNT DUE FROM BORROWER	0.00	420. GROSS AMOUNT DUE TO SELLER			0.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER			
201. Rebate of earnest money		501. Excess Proceeds (see instructions)			
202. Principal Amount of New Loan(s)		502. Settlement Charges to Seller (line 1400)			
203. Existing Loan(s) Taken Subject to		503. Existing Loans Taken Subject to			
204.		504. Payoff of first mortgage loan			
205.		505. Payoff of second mortgage loan			
206.		506.			
207.		507.			
208.		508.			
209.		509.			
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller			
210. City/town taxes to		510. City/town taxes to			
211. County taxes to 01-07-00		511. County taxes to 01-07-00			
212. Assessments to		512. Assessments to			
213.		513.			
214.		514.			
215.		515.			
216.		516.			
217.		517.			
218.		518.			
219.		519.			
220. TOTAL PAID BY/FOR BORROWER	0.00	520. TOTAL REDUCTION AMOUNT DUE SELLER			0.00
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER			
301. Gross Amt Due from Borrower (line 120)	0.00	601. Gross Amount Due to Seller (line 420)			0.00
302. Less Amt Paid by/for Borrower (line 220)	(0.00)	602. Less Reductions Due Seller (line 520)			(0.00)
303. CASH <input type="checkbox"/> FROM <input type="checkbox"/> TO BORROWER	0.00	603. CASH <input type="checkbox"/> TO <input type="checkbox"/> FROM SELLER			0.00

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

BORROWER _____ SELLER _____
BORROWER _____ SELLER _____

SETTLEMENT STATEMENT PAGE 2

I. SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. Total Sales/Receivers Commissions Based on Price \$			
Division of Commission (line 700) as follows:			
701 \$	to		
702 \$	to		
703. Commission Paid at Settlement			
704.			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee	1,000.00	to	
802. Loan Placement		to	
803. Appraisal Fee		to	
804. Credit Report		to	CSI
805. Lender's Inspection Fee		to	
806. Mortgage Ins. App. Fee		to	
807. Assumption Fee		to	
808. Rate Buy-down fee			
809. Security Instrument Prep fee			
810. Tax Service Fee		Trans America	
811. Flood Cert. Fee		Trans America	
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest from 01-01-00 to 02-01-00 at		/day(days)	
902. NIP Points for Life/Loan for		months to	
903. Hazard Insurance Premium for		1 years to	
904. Flood Insurance Premium		1 years to	
905.			
1000. RESERVES DEPOSITED WITH LENDER			
1001. Hazard Insurance	\$	per	
1002. Mortgage Insurance	\$	per	
1003. City/own taxes	\$	per	
1004. County taxes	\$	per	
1005. Assessments	\$	per	
1006. Flood Insurance Premium	\$	per	
1007.	\$	per	
1008.			
1100. TITLE CHARGES			
1101. Settlement or Closing fee		to	
1102. Abstract or Title Search		to	Title
1103. Title Examination		to	
1104. Title Insurance Binder		to	
1105. Document Preparation		to	
1106. Notary fees		to	
1107. Attorney's Fees		to	
(includes above item numbers)			
1108. Title Insurance		to	
(includes above item numbers)			
1109. Lender's Coverage	\$		
1110. Owner's Coverage	\$		
1111. Lien searches		A-1 Title Support Svcs	
1112.			
1113. Courier/Copies/Fax		York Title Company	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording fees: Deed \$		Mortgage \$	Release \$
1202. City/County Tax/Stamp	Deed \$	Mortgage \$	
1203. State Tax/Stamp	Deed \$	Mortgage \$	
1204.			
1205.			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey		to	
1302. Pest Inspection		to	
1303. Roof Inspection			
1304.			
1305.			
1400. TOTAL SETTLEMENT CHARGES (Enter On Lines 703, Section J and 502, Section K)		0.00	0.00

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this 2 page statement.

(6/2000)
 Tax proration on current information
 Either party may request reparation

 Title Agent