

**CONSUMER FINANCIAL PROTECTION BUREAU
REQUEST FOR EMERGENCY PROCESSING AND APPROVAL
REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X) 12
CFR 1024**

EMERGENCY JUSTIFICATION

The Bureau of Consumer Financial Protection (CFPB) respectfully requests emergency processing and approval of the collection of information discussed below because the use of normal clearance procedures is reasonably likely to prevent and disrupt an existing collection of information.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments, transferred from the Department of Housing and Urban Development (HUD) to the CFPB on July 21, 2011. In addition to the transfer of rulemaking authority under the Dodd-Frank Act, the CFPB received certain enforcement authorities with respect to RESPA. The CFPB is in the process of publishing for public comment an interim final rule establishing a new regulation in 12 CFR Part 1024 (Regulation X). This interim final rule substantially replicates HUD's RESPA rule, and will not impose any new substantive obligations on regulated entities or any new information collection requirements.

As the CFPB now has enforcement authority over certain populations that have been under the jurisdiction of other agencies, the CFPB is requesting approval of a new OMB control number for its collection activities under Regulation X. To prevent disruptions of approved information collections, the CFPB is requesting emergency processing and approval of the following information collection request. In an effort to minimize industry burden, the CFPB has reached an agreement with the Office of Management and Budget and HUD to permit regulated industries to use either the existing HUD control number or the CFPB control number until the CFPB issues a final rule revising or replacing the existing HUD-1/1A and GFE forms. Upon receipt of emergency approval from the Office of Management and Budget, the CFPB will begin a standard approval process for this collection and will seek public input at that time.

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X) 12
CFR 1024
(OMB CONTROL NUMBER: 3170-XXXX)**

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for and certain enforcement authorities with respect to the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments, transferred from the Department of Housing and Urban Development (HUD) to the CFPB on July 21, 2011. The Dodd-Frank Act also directed the CFPB to integrate certain disclosures required by the Truth in Lending Act (TILA) with certain disclosures required by the Real Estate Settlement Procedures Act (RESPA) of 1974. The CFPB expects the content and format of information collection forms under this clearance, HUD’s existing HUD-1/1A and GFE forms, to be significantly revised or replaced by such a rulemaking.

Historically, in order to satisfy information collection requirements under the Paperwork Reduction Act (PRA), the HUD-1/1A and GFE listed HUD’s Office of Management and Budget (OMB) control number, 2502-0265, in order to satisfy information collection requirements of the Paperwork Reduction Act. While the CFPB will be, upon OMB approval of this information collection request, the “owner” of this information collection, the CFPB believes that requiring covered persons to modify existing forms solely to replace HUD’s OMB control number with the Bureau’s OMB control number would impose substantial burden on covered persons with limited or no net benefit to consumers. Accordingly, the CFPB has reached an agreement with OMB and HUD whereby covered persons may continue to list HUD’s OMB control number on the HUD-1/1A and GFE forms until a final rule to the contrary takes effect. Covered persons also have the option of replacing HUD’s OMB control number with the Bureau’s OMB control number on the HUD-1/1A and GFE forms until a final rule to the contrary takes effect. Once the CFPB’s final rule takes effect, regulated industry will no longer be able to use the HUD control number.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

Certain disclosures are required by the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments. The statute is found at 12 U.S.C. 2601 *et seq.* The implementing regulations have been published by the Department of Housing and Urban Development (HUD) at 24 CFR 3500. In light of the transfer of HUD’s rulemaking authority for RESPA to the Bureau of Consumer Financial Protection (CFPB), the CFPB is adopting an interim final rule (Interim Final Rule) recodifying HUD’s Regulation X at 12 CFR 1024 to reflect the transfer of authority and to help facilitate compliance with RESPA and its implementing regulations to help

prevent confusion regarding regulatory and supervisory authority. Required disclosures include: the Good Faith Estimate (GFE), the Special Information Booklet, the HUD-1/HUD-1A Settlement Statements, the Servicing Disclosure Statement, and, as applicable, the Servicing Transfer Disclosure. Other disclosures may be required under certain circumstances and include: the Initial Escrow Account Statement, the Annual Escrow Account Statement, the Affiliated Business Disclosure, and the Consumer Disclosure for Voluntary Escrow Account Payments. This collection helps to protect consumers in several respects. The Special Information Booklet helps to protect consumers from unnecessarily high settlement costs by providing information about the nature and cost of real estate settlement services. The GFE and HUD-1/HUD-1A Settlement Statements enable consumers to compare estimated settlement costs with actual settlement costs. The Affiliated Business Disclosure helps to protect borrowers from unnecessarily high settlement service charges due to the settlement service provider's use of an affiliated provider. Disclosures related to the servicing of the mortgage loan help to protect consumers if the servicing of the loan could be or is transferred. Disclosures related to consumers' escrow accounts help to protect them from unnecessarily high escrow charges.

2. Use of the Information

The third party disclosures in this collection are required by statute and regulations. The CFPB expects to make further explanations of RESPA through its website, <http://www.consumerfinance.gov>. Real estate settlement service providers make these disclosures to homebuyers/borrowers, and in some cases, sellers, pursuant to transactions involving federally related mortgage loans. Disclosures are not submitted to the federal government.

- Good Faith Estimate (GFE). Lenders must give borrowers an estimate of the settlement costs that the borrower is likely to incur in connection with settlement (see Section 5(c) of RESPA).
- Special Information Booklet. Homebuyers receive this disclosure regarding the nature and costs of real estate settlement services (see Section 5(d) of RESPA).
- HUD-1/HUD-1A Uniform Settlement Statements. Borrowers and sellers receive a statement of actual charges and disbursements pursuant to the settlement (see Section 4(a) of RESPA). The information required to be set forth in the HUD-1/1A settlement statements include a comparison between the charges listed on the GFE and the charges listed on the HUD-1/1A and a summary of the final loan terms of the borrower's loan.

- **Escrow Disclosures.** An initial escrow account statement is provided to borrowers at or within forty-five calendar days of the loan closing, and an annual statement is provided to borrowers showing the previous year's activities in the escrow account. The lender may ask the borrower to voluntarily contribute additional funds if the charge will substantially rise in the second year. Sections 941 and 942 of the Cranston- Gonzalez Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1990), amended Section 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA, U.S.C. 2609(c)). HUD published regulations allowing voluntary collection of additional funds. *See* 63 FR 3214 (January 21, 1998).
- **Affiliated Business Arrangement Disclosure.** This disclosure is required when a settlement service provider refers a borrower to an affiliated provider. Section 461 of the Housing and Urban-Rural Recovery Act of 1983 added an exemption under Section 8 of RESPA for affiliated business arrangements (AfBAs) as long as certain requirements were met. The implementing regulations at 12 CFR 1024.15 require that a disclosure be given when a settlement service provider refers a borrower to another settlement service provider when an AfBA exists.
- **Servicing Transfer Disclosure.** This disclosure is required of all transferring and transferee loan servicers upon assignment, sale, or transfer of the servicing of the loan. These servicers must notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan. The transferring loan servicer must provide notice to the borrower not less than 15 days before the effective date of transfer of the servicing of the loan and the transferee loan servicer must provide notice to the borrower not more than 15 days after the effective date of the loan transfer. (Section 941 of the Cranston-Gonzalez National Affordable Housing Act, P.L. 101-625, amended Section 6 of RESPA.)
- **Servicing Disclosure Statement/Acknowledgement of Probable Transfer of Loan Servicing Disclosure.** In adopting regulations implementing RESPA, HUD substituted the Servicing Disclosure Statement for the Acknowledgement of Probable Transfer of Loan Servicing Disclosure. All lenders are required to provide a Servicing Disclosure Statement at the time a GFE is delivered. The Servicing Disclosure Statement provides notice to the borrower that the servicing of the loan may be transferred. This disclosure conforms with the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Title II of the Omnibus Consolidated Appropriations Act, 1997) (Pub. L. 104-208) (the Act). Section 2103(a) of the Act amended Section 6(a) of RESPA to eliminate the requirement that applicants for federally related mortgage loans be provided a disclosure describing the lender's historical practice regarding the sale or transfer of servicing rights, and the requirement that loan applications contain signed statements from applicants acknowledging that they have read and understood the disclosure provided.

3. Use of Information Technology

These third party disclosures may be submitted to consumers electronically. Additionally, most disclosures are computer generated. The CFPB expects to make the HUD1/1-A and GFE forms available on the CFPB's website (www.consumerfinance.gov). HUD has previously noted that lenders/brokers may use a computer generated program to estimate costs reported on the GFE for specific settlement services. HUD has previously estimated that approximately 50,000 loan originators process an estimated 21,250,000 loan applications which would require a GFE and that at least 90% of the GFEs are now generated by computer. HUD has also previously noted that most servicers are using integrated computer systems for billing, recordkeeping, and generating escrow statements and that software manufacturers continue to market improved versions of these systems.

4. Efforts to Identify Duplication

The only disclosure containing partial duplication is the annual escrow account statement. To reduce duplication, servicers may adapt CFPB-required information to comply with IRS reporting requirements regarding escrow account items, such as taxes. Furthermore, the rule allows servicers to report a "short year" in the first annual statement so that CFPB-required annual statements can be issued coincident with IRS forms. For open-end lines of credit, the GFE and HUD-1 are not required when certain truth-in-lending disclosures are given.

5. Efforts to Minimize Burdens on Small Entities

The Interim Final Rule contains information collection requirements, which have been previously submitted by HUD and approved by OMB under the OMB Control No. 2502-0265. As part of that collection, HUD has previously estimated that 52% of the paperwork costs associated with the GFE are borne by small business and that 38% of the closings are performed by small business. The Interim Final Rule adds no additional information collection requirements.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

This information is not submitted to the federal government. These third-party disclosures are required by statute, 12 U.S.C. 2601 *et seq.*, and regulations. The burdens on respondents are the minimum necessary to comply with the statute, and to assist borrowers in comparison shopping for loans and tracking escrow funds.

7. Circumstances Requiring Special Information Collection

Information is not reported to the CFPB. By law, respondents are required to keep records (HUD-1/1-A, affiliated business arrangement disclosures, escrow

account records) for five years. The collection of information in Regulation X are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

This Supporting Statement is based on HUD's most recent Supporting Statement for OMB Control Number 2502-0265. As this is a request for emergency processing and approval of the transfer of certain burdens from existing information collections to the CFPB, the CFPB has not sought public comment on this information collection request. Upon receipt of OMB's emergency approval, the CFPB will begin the standard approval process and will seek public input and input from other agencies at that time.

9. Payments or Gifts to Respondents

Not applicable.

10. Assurances of Confidentiality

There are no assurances of confidentiality provided to respondents.

11. Justification for Sensitive Questions

There is no information of a sensitive nature being requested.

12. Estimated Burden of Information Collection

Hours: 17,183,000

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation X is based on the assumption that the total ongoing burden for this regulation remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, HUD's ongoing recordkeeping and disclosure burdens for Regulation X were approximately 17,183,000 hours.¹ In light of the changes made by the Dodd-Frank Act, all 17,183,000 hours of that burden is being transferred to the CFPB.

Associated Labor Costs: \$ 727,312,000

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours

¹For purposes of the current request for emergency review and approval, the CFPB has relied on the estimates previously developed by HUD concerning the number of entities subject to Regulation X and the hours of paperwork burden under the statute (for a detailed breakdown of the burden estimates of HUD, please reference HUD's supporting statement for Regulation X which can be found at www.reginfo.gov). These estimates do not necessarily represent the full extent of the CFPB's enforcement authority. The CFPB will conduct a more detailed review of burden allocations and provide more detailed estimates in its follow-up application to OMB for a standard approval of this information collection.

assumed from HUD.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation X are \$727,312,000. This estimate was calculated following HUD's own cost analysis. For a detailed breakdown of the cost analysis, please reference HUD's supporting statement for Regulation X.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

None.

14. Estimated Cost to the Federal Government

None.

15. Program Changes or Adjustments

None.

16. Plans for Tabulation, Statistical Analysis, and Publication

The results of the information collection will not be published.

17. Display of Expiration Date

HUD has previously sought and received approval not to display the expiration date for OMB approval of the information collection.

18. Exceptions to the Certification Requirement

Please see Item 17.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.