



## State of New Jersey

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### BULLETIN NO. 10-17

**TO: ALL ENTITIES AND INDIVIDUALS LICENSED OR REGISTERED  
UNDER THE NEW JERSEY LICENSED LENDERS ACT**

**ALL ENTITIES AND INDIVIDUALS CONDITIONALLY APPROVED  
UNDER THE NEW JERSEY RESIDENTIAL MORTGAGE LENDING  
ACT**

**FROM: THOMAS B. CONSIDINE, COMMISSIONER**

**RE: MAINTAINING COMPLIANCE WITH NEW JERSEY  
MORTGAGE TRANSACTION DISCLOSURE REQUIREMENTS  
WHILE ALSO COMPLYING WITH RECENT AMENDMENTS  
TO THE REGULATIONS IMPLEMENTING THE  
REAL ESTATE SETTLEMENT PROCEDURES ACT**

The Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, ("RESPA") applies to residential mortgage loan transactions, including those performed by mortgage industry participants licensed and regulated by the States. Amendments to the regulations implementing the RESPA set forth at 24 C.F.R. Parts 203 and 3500 were adopted by the United States Department of Housing and Urban Development ("HUD") and became effective on January 1, 2010. These amendments changed the nature of the disclosures required to be made in two major HUD documents, the Good Faith Estimate ("GFE") and the HUD-1/HUD-1A Settlement Statements. The amendments also generally prohibit the alteration or customizing of those forms in order to meet State disclosure requirements.

New Jersey law establishes certain mortgage transaction disclosure requirements that are distinct from those required under the RESPA regulations. HUD has made it clear that State disclosure requirements are not preempted by the new RESPA regulations. The amended HUD forms, however, are not available as a vehicle for making State disclosures that would require any alteration of the new HUD forms. In these circumstances, States must provide a separate mechanism other than the new HUD forms by means of which licensees can comply with a State's distinct disclosure requirements.

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The Department of Banking and Insurance (“Department”) is issuing this Bulletin to notify all entities and individuals involved in residential mortgage lending activity regulated under the New Jersey Licensed Lenders Act (the “Act”), N.J.S.A. 17:11C-1 et seq., and the New Jersey Residential Mortgage Lending Act (“RMLA”), N.J.S.A. 17:11C-51 through 17:11C-89, of the means by which they may comply with New Jersey disclosure requirements without altering the HUD forms that have been revised to conform to the new RESPA regulations. The Department intends to propose amendments to conform its rules to the revised RESPA regulations. Until such amendments are adopted, recipients of this Bulletin may be guided by the statements set forth below to ensure that they comply with the disclosure requirements imposed by New Jersey’s law and rules.

The relevant sections of the New Jersey Administrative Code are: N.J.A.C. 3:1-16.3(d), which provides that “Not later than three business days after the lender receives the borrower’s application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur;” N.J.A.C. 3:1-16.3(d)2, which provides that “With respect to the settlement service fees imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund;” and N.J.A.C. 3:1-16.3(d)3, which provides that “Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation X shall satisfy the disclosure requirement of this subsection, provided that the lender also makes the disclosures required by (d)2 above.”

The amended RESPA regulations are no longer consistent with these rules. Under the revised RESPA rules, the individual mortgage broker and banker fees that are described in N.J.A.C. 3:1-16.2 and that are required to be disclosed to the borrower under N.J.A.C. 3:1-16.3(d) are no longer separately disclosed on the GFE form, but are aggregated on Blocks 1 through 11 of that form. Thus, the information that is permitted to be entered on the GFE form by the amended RESPA rules will no longer satisfy the disclosure requirements imposed by N.J.A.C. 3:1-16.3(d). In addition, the inclusion of fees for settlement services on the GFE as referenced in N.J.A.C. 3:1-16.3(d)3 may no longer be relied upon to comply with New Jersey’s disclosure requirements.

### **New Jersey Disclosures Form**

In order to satisfy the fee disclosure requirements of N.J.A.C. 3:1-16.3(d) without affecting the scope of required RESPA disclosures, the borrower should be presented with a New Jersey Disclosures Form that is completely separate and apart from the HUD forms, and on which all of the applicable origination and settlement fees encompassed in N.J.A.C. 3:1-16.2 are listed. The individual fees must be totaled by category, with the total amounts equal to the amounts shown on the various Blocks and Lines on the GFE form. In order to satisfy the requirements of N.J.A.C. 3:1-16.3(d)2, the New Jersey Disclosures Form should also identify which, if any, fees are refundable in whole or in part and the terms and conditions for such refund.

The New Jersey Disclosures Form should be provided to the borrower, and specify the date of such presentation, in accordance with N.J.A.C. 3:1-16.3(d). The Department recommends having the borrower sign and date the New Jersey Disclosures Form as evidence of compliance. A copy should be maintained with the disclosure documentation in the licensee's mortgage files, and would be subject to inspection and examination by the Department. The New Jersey Disclosures Form should not, however, be attached or referred to in any manner as an addendum or supplement to the GFE or HUD-1/HUD-1A forms. Until new rules or amendments are adopted, to comply with the New Jersey rules referenced above licensees should create and use their own New Jersey Disclosure Forms for these purposes, consistent with the content requirements noted above.

In addition, licensees should be aware that the Department does not believe the amended RESPA regulations affect the validity of the requirements established in the New Jersey Home Ownership Security Act, including the notice requirements set forth at N.J.S.A. 46:10B-26.

Business entity and individual licensees under the Act and conditionally approved business entities and qualified individual licensees under the RMLA are directed to provide copies of this bulletin to the mortgage solicitors or licensed mortgage loan originators employed by their firms.

August 2, 2010  
Date

  
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Thomas B. Considine  
Commissioner