



# State of North Carolina

## Office of the Commissioner of Banks

Beverly E. Perdue

Joseph A. Smith, Jr.

Governor

December 3, 2010

Commissioner of Banks

**To: All NC Licensed Mortgage Lenders, Brokers, and Loan Originators**

**From: Charlie Fields, Jr., Non-Depository Entities Division**

**Re: Disclosure of Origination Fees under HUD's New RESPA Rules**

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This year, the North Carolina Office of the Commissioner of Banks ("OCOB") has received a number of inquiries regarding the new RESPA rules affecting HUD-1 disclosures and the impact such rules may have on compliance with North Carolina lending laws. At the outset, it is important to note that RESPA's disclosure requirements do not replace or preempt North Carolina's statutory limits on the types or amounts of fees and/or charges that may be imposed on mortgage loans. As such, non-preempted mortgage lenders and brokers must continue to comply with the provisions of Chapter 24 of the North Carolina General Statutes when originating and/or funding mortgage loans, including but not limited to N.C.G.S. §§ 24-1.1A, 24-1.1E, 24-1.1F, 24-8, and 24-10. The new RESPA rules merely dictate how originators are to disclose under federal law otherwise permissible charges.

### Aggregation of Origination Fees for Borrower Disclosures

Under the new RESPA rules, originators must aggregate and disclose "all charges received by a loan originator, except any charge for the interest rate chosen" on line 801 of the new HUD-1. See App. A to Pt. 3500. These changes were adopted to simplify disclosures and to enable borrowers to comparison shop.

The effort to aggregate fees for disclosure purposes should not seem entirely foreign for our licensees. In 1999, the North Carolina General Assembly addressed the then increasing imposition of duplicative, "junk" fees in mortgage transactions (e.g. processing, underwriting, document preparation, document review, and final review fees charged in addition to underwriting fees). N.C.G.S. § 24-1.1A was amended to address this growing problem. Under the amended statute, lenders on first mortgages are permitted to collect certain enumerated fees at such rates as the market would bear (e.g. origination, application, and rate lock fees); however, lenders cannot impose additional, miscellaneous fees and charges which exceed "(i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan or (ii) one hundred

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fifty dollars (\$150.00),” whichever is greater. As such, North Carolina lenders have been encouraged to aggregate lender-imposed charges into a single “origination” fee for nearly a decade.

HUD’s new regulations take this aggregation further. Now, all amounts received for origination services, inclusive of fees for processing and administrative services performed on behalf of the originator, are to be included in a single line on the HUD-1 (line 801). Similarly, various fees for title services and closing costs are similarly consolidated (in lines 1101 and 1102, respectively).

#### Disaggregation and Documentation for Supervisory Purposes

Despite HUD’s changes to RESPA’s disclosure requirements, licensees must continue to comply with Chapter 24’s fee limitations. Moreover, licensees should be able to document such compliance to the OCOB during regulatory examinations. Toward this end, licensees are instructed to maintain in their loan files itemizations of fees and charges imposed on all mortgage loans and supporting documentation to justify such charges.

For example, to the extent that an attorney prepares loan documents for a lender, the fees associated with such document preparation are now to be included in the aggregated origination fees, disclosed on line 801 of the borrower’s HUD-1. See New RESPA Rule FAQ p. 48, available at [http://www.hud.gov/offices/hsg/rmra/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm). However, under North Carolina law, such third-party fees must still be reasonable and bona fide under to N.C.G.S. §§ 24-1.1A(c)(1)e and 24-8(d). Moreover, to the extent that a portion of the aggregated origination fees were imposed by an attorney selected by the borrower, this portion may be excluded from the N.C. High Cost Home Loan points and fees calculation, pursuant to N.C.G.S. § 24-1.1E(a)(5)b.

In order to assess whether the loan complied with North Carolina’s lending laws, the OCOB will need to be able to determine what portion of the aggregated origination fees identified on the HUD-1 were in fact paid to third-parties (including attorneys). As such, lenders (including table funded lenders) are instructed to separately itemize third-party charges and retain such itemizations within the loan file. Such an itemization should identify the nature and amount of the charge and the identity of the recipient. Additionally, supporting documentation, such as invoices should be available for inspection and review. Lenders may elect to provide the full written itemization, including all separate origination charges and third-party fees and charges, to the borrower, but in so doing the lender is responsible for compliance with federal law, including RESPA.

Nothing herein should be understood to require mortgage lenders to further breakdown the portion of the origination fee being retained by the lender itself. A lender need not itemize what portion of its own origination fees is applied to its internal departments for various services (e.g. processing, underwriting, document preparation, etc.). Where OCOB examiners identify instances where lenders itemize excessive processing, document preparation, underwriting and similar miscellaneous fees in the loan file, such fees will be cited as violations of the N.C.G.S. §§ 24-1.1A(c)(1)f and 53-244.111(5).

To the extent that the licensee makes use of an aggregated origination fee on its loan documents, such aggregated fees should be reflected in the licensee’s advertisements and promotional materials. For example, a licensee cannot advertise a “1% origination fee” to borrowers and then subsequently impose hidden processing, underwriting, document preparation, or similar charges that would result in a significantly higher aggregated origination fee, disclosed at closing. Such advertisements may be deemed unfair, misleading, or deceptive in violation of N.C.G.S. § 53-244.111(15).

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Licensees are encouraged to familiarize themselves with HUD's final rule and the associated FAQ, available at [http://www.hud.gov/offices/hsg/rmra/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm). Failure to comply with the new RESPA rules may be deemed a prohibited act in violation of N.C.G.S. § 53-244.111(14).

In the event that you have additional questions or concerns about this issue, please contact our office at (919) 733-3016 or via email at [mortgage@nccob.gov](mailto:mortgage@nccob.gov).