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Escrow 101 (Updated)

Introduction

Several court decisions have discussed a mortgage servicer's obligations with regard to escrow accounts after the filing of a bankruptcy. In addition, borrowers and their attorneys often have difficulty understanding the numbers contained on an escrow analysis. This article is an update to primer article initially written in 2009 that outlined the proper steps in conducting an escrow analysis, as well as some of the servicer's obligations and options for having a borrower cure an escrow shortage or escrow deficiency.

In a subsequent article I will discuss how a mortgage servicer's requirements and options with respect to escrow accounts are affected by a bankruptcy filing.

RESPA and Regulation X

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601, *et seq.*) became effective on June 20, 1975. It requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures about the nature and costs of the real estate settlement process. RESPA also prohibits practices such as kickbacks, and limits the use of escrow accounts. The Department of Housing and Urban Development (HUD) originally published Regulation X (herein, "the Regulation"), which implemented RESPA.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111–203 (July 10, 2010) (Dodd-Frank Act) granted rule-making authority under RESPA to the Consumer Financial Protection Bureau (CFPB). In December 2011, the CFPB restated HUD's implementing regulation to 12 CFR Part 1024.

Section 10 of RESPA[1] places limits on the amount a lender or servicer may require a mortgagor to keep in his or her escrow account to cover the payment of taxes, insurance or other disbursements.[2] This section also governs a servicer's obligations with respect to providing an annual escrow account statement (i.e., escrow analysis)[3] and notice "not less than annually" of any shortage in the escrow account.[4] The regulation dealing with escrow accounts can be found at part 1024.17.

Regulation X defines an escrow account as:

> any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower

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and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

Initial and Annual Escrow Statements

Initial Statement

A servicer that establishes an escrow account in connection with a "federally related mortgage"[5] must provide the borrower a statement which clearly itemizes the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first twelve months after the escrow account is created. This statement must be provided to the borrower either at closing, or within 45 days after creation of the escrow account. If the initial statement is provided to the borrower at closing of the loan, the servicer may incorporate such statement in the uniform settlement statement.[6]

Annual Statement

A servicer that has established or continued an escrow account must provide the borrower with statement at least once for each 12-month period (otherwise known as the "escrow account computation year")[7] during which the servicer maintains the escrow account that "clearly" itemizes:

- i) the amount of the borrower's current monthly payment;
- ii) the portion of the monthly payment being placed in the escrow account;
- iii) the total amount paid into the escrow account during the period;
- iv) the total amount paid out of the escrow account during the period for taxes, insurance premiums and other charges (as separately identified);
- v) the balance in the escrow account at the conclusion of the period;
- vi) an explanation of how any surplus is being handled by the servicer;
- vii) an explanation of how any shortage or deficiency is to be paid by the borrower; and
- viii) if applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection.[8]

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The Regulation allows the servicer to provide or deliver the annual escrow statement to the borrower along with other statements or materials, including Form 1098, which is provided for federal income tax purposes.[9]

If at the time the servicer ***conducts*** *the escrow account analysis* the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of providing an annual escrow account statement to the borrower under Section (i) of the Regulation. This exemption also applies where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in a bankruptcy case. However, if the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer must provide a history of the account since the last annual statement (which may be longer than 12 months) within 90 days of the date the account became current.[10] It is important to note that even if the servicer chooses not to provide a borrower with a copy of an escrow analysis under this exemption, the servicer nevertheless still has an obligation to perform the escrow analysis on an annual basis. Moreover, as is emphasized later in this article, this exemption is independent from the servicer's obligation to provide the borrower with notice of any shortage or deficiency in the escrow account on at least an annual basis.[11]

Short year statements

A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement, a servicer may adjust its schedule for its entire portfolio or alter the escrow account computation year for the escrow account. The short year statement has the effect of ending the "escrow account computation year" for the escrow account and establishing the beginning date of the new escrow account computation year. Therefore, the servicer must deliver the short year statement to the borrower within 60 days from the end of the short year.

If a borrower pays off a mortgage during the escrow account computation year, the servicer is *required* to send a short year statement to the borrower within 60 days after receiving the payoff funds.[12]

Transfer of Servicing

If servicing of the loan is transferred and the new servicer changes either the monthly payment amount or the accounting method used by the transferor (i.e., old servicer), then the *new* servicer must provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer. If the new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer must use the effective date of the transfer of servicing to establish the new escrow account computation year. On the other hand, where the new servicer retains the monthly payments and accounting method used by the old servicer, the new servicer may continue to use the escrow account computation year established by the old servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer must

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perform an escrow analysis and provide the borrower with an annual escrow account statement.[13] Regardless of whether the new servicer changes or retains the payment amount of accounting method used by the old servicer, upon the transfer of servicing, the *transferor* (i.e., **old servicer**) must provide a short year statement to the borrower within 60 days of the effective date of the transfer of servicing.[14]

Penalties and Remedies

Section 10(d) of RESPA provides that for *each* failure to provide a borrower with an escrow statement, the lender or escrow servicer may be assessed a civil penalty of $50. However, the total amount that may be imposed on a lender or escrow servicer during any 12-month period is limited to $100,000.[15] But if any failure to provide the escrow statement is "due to intentional disregard of the requirement" to provide the escrow statement, then the penalty for each failure is $100. Moreover, the $100,000 limit does not apply.

It is important to note that while other sections of RESPA provide a borrower with a private remedy (e.g., where a servicer fails to respond to a qualified written request), a borrower does not have private remedy against a servicer under Section 10 of RESPA for failing to provide an escrow statement as required.[16]

The Escrow Analysis

For purposes of Regulation X, an escrow analysis is the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

i) Determine the appropriate target balances;
ii) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
iii) Determine whether shortages, surpluses or deficiencies exist.

In general, there are five steps in completing an escrow analysis which are delineated in Section (d) of the Regulation. This new accounting method requires borrowers to maintain a lesser amount in their escrow accounts than the "single-item" method used by lenders.

An easy straightforward example of the steps in conducting an escrow analysis appears on the CFPB's website.[18] To simplify the explanation below, I will use the same numbers contained in the example on the CFPB's website.

Step 1 - Anticipated Escrow Disbursements

The first step in the analysis is to list all the anticipated disbursements that will be paid out of the escrow account over the next 12 months. The example assumes $1200 for property taxes ($500 paid July 25 and $700 paid December 10) and $360 for hazard insurance on September 20.

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County Taxes	$1,200.00
Homeowner’s Insurance	$ 360.00
Total	$1,560.00

If the borrower has a payment for flood insurance, which is ordinarily paid every three years, the Regulation requires the servicer to project a trial balance over the three-year period.[19]

Section (c)(3) of the Regulation says “[i]n conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section.” Section (c)(7) says the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow account item[20] in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. But if the charge is unknown to the servicer, the servicer *may* base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). (emphasis added). In estimating the amount to be disbursed, a servicer should be mindful that unless a borrower’s payments are not more than 30 days overdue, the servicer must pay the escrow items in a timely manner to avoid a penalty.[i]

If the taxing authority does not offer a discount for disbursements on a lump sum annual basis, and does not impose any additional charge, fee or penalty for installment disbursements, the servicer ***must*** (emphasis added) make disbursements on an installment basis. However, if the taxing authority does offer a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer ***may*** (emphasis added) make lump sum annual disbursements to take advantage of the discount for the borrower or avoid the additional charge or fee for installments. The CFPB encourages (but does not require) the servicer to follow the preference of the borrower, if such preference is known.[ii] The servicer and borrower can also agree to a different disbursement basis (installment or annual) or different disbursement date for property taxes provided the agreement complies with the other requirements of Regulation X. The agreement must also be voluntary. Therefore, approval of the loan or any term of the loan cannot be conditioned on the borrower agreeing to a disbursement date.[iii]

If an escrow account has been established for the payment of hazard insurance, a servicer may not purchase forced-placed insurance unless a servicer is unable to disburse funds from the borrower’s escrow account to ensure the insurance premiums are paid in a timely manner. This inability exists only if the servicer has a reasonable basis to believe that the insurance policy was canceled or not renewed for reasons other than nonpayment of the insurance premiums,[iv] or the property is vacant. Notably, a servicer shall ***not*** (emphasis added) be considered unable to disburse funds from the borrower’s escrow account because the escrow account does not contain sufficient funds for paying the insurance premiums.[v]

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Step 2 - Calculating the Monthly Escrow Component

The second step in the analysis calls for the servicer to divide the total from Step 1 by twelve (12) monthly payments ($1,560 divided by 12 = $130).

Step 3

The third step in the escrow analysis requires the servicer to create a trial running balance for the next twelve (12) months, listing all payments into the escrow account and all payments out of the account, and when the anticipated disbursements above are expected to be paid.

This of course leads one to ask, what is the servicer required to assume about payments coming into the escrow account between the time the escrow analysis is performed and the effective date of the analysis, which is usually a month or two later? Some borrowers (and their attorneys) believe that a servicer is *required* to assume the payments for the last few months of the escrow computation period, that is, leading up to the effective date of the new analysis, will come into the escrow account. In fact, Section (i)(l) of the Regulation says in preparing the statement, the servicer *may* assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year.[21] To emphasize, the operative word is "may". This is important for projecting the initial balance in the escrow account on the effective date.

Step 4

Step 4 requires the servicer to increase all the monthly balances to bring the lowest point in the account (in the CFPB example, December -$780) up to zero. This is sometimes referred to as the theoretical low point. Usually the low point comes in the month during or after the largest disbursement for the escrow computation period has been paid.[22]

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	payment	disbursement	3) balance	4) balance
Jun	-	-	0	780
Jul	130	500	-370	410
Aug	130	0	-240	540
Sep	130	360	-470	310
Oct	130	0	-340	440
Nov	130	0	-210	570
Dec	130	700	* -780	* 0
Jan	130	0	-650	130
Feb	130	0	-520	260
Mar	130	0	-390	390
Apr	130	0	-260	520
May	130	0	-130	650
Jun	130	0	0	780

Step 5

Step 5 directs the servicer to add any cushion the lender requires to the monthly balances. The cushion may be a maximum of one-sixth of the total escrow charges anticipated over the next 12 months.[23] The Regulation provides that the servicer shall examine the loan documents to determine the applicable cushion and limitations for each escrow account. If the loan documents provide for lower cushion limits than under the Regulation, then the terms of the loan documents apply. Where the terms of any loan document allow greater payments to an escrow account than allowed by the Regulation, then the Regulation controls the applicable limits. Where the loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is determined by State law. If the loan document is silent on the escrow account limits and a servicer establishes an escrow account under State law, then the limitations under the Regulation apply unless State law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with the Regulation, unless an applicable State law sets a lower amount.[24]

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In the example provided

1/6 of $1,560 = $260.00

	payment	Disbursement	Balance
Jun	-	-	1040
Jul	130	500	670
Aug	130	0	800
Sep	130	360	570
Oct	130	0	700
Nov	130	0	830
DEC	130	700	* 260
Jan	130	0	390
Feb	130	0	520
Mar	130	0	650
Apr	130	0	780
May	130	0	910
Jun	130	0	1040

Following the CFPB guidelines, the maximum the servicer could require in the escrow account is $1,040.

Surpluses, Shortages and Deficiencies

At this point, the servicer then compares the "required" amount (otherwise known as the "target balance") to the actual account at the time the escrow analysis was being performed (in the example provided, the escrow analysis is being performed in the month of June).[25] If the amount in the escrow account exceeds the required amount, then there is a "surplus" in the escrow account. Where the surplus is less than $50, the servicer *may* apply the surplus to reduce the amount of the escrow payment, or may choose to return the surplus to the borrower. If the

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surplus is more than $50, the servicer must return the surplus to the borrower within 30 days of performing the escrow analysis.

It is important to note that these provisions regarding surpluses only apply if the borrower is current at the time of the escrow account analysis. According to the Regulation, a borrower is considered to be current if the servicer receives the borrower's payments within 30 days of the payment due date. However, if the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the loan documents.

If the amount in the escrow account is positive, but less than the required amount, then there is an escrow shortage.[26] If the amount of the escrow shortage is less than one month’s escrow payment, the servicer *may* ask the borrower to pay this shortage within 30 days, or the servicer *may* spread it out over 12 months. If the amount of the escrow shortage is greater than one month’s escrow payment, then the servicer must spread the shortage out over at least 12 months. A servicer *may* also do nothing and allow an escrow shortage to exist.[27]

In general, escrow shortages are caused by:

- The borrower is delinquent on regular payments
- The actual disbursements in the prior escrow computation period exceeded the amount of anticipated disbursements
- Anticipated disbursements for the upcoming year are higher than the previous escrow computation period

A combination of two or more of the above will increase the size of the escrow shortage

If the amount in the escrow account not only falls below the required amount, but is negative (i.e., where the servicer has had to use its own funds to make a disbursement) then there is an escrow deficiency.[28] If the amount of the deficiency is less than one monthly escrow payment, the servicer *may* require the borrower to pay the deficiency within 30 days or it may require the borrower to repay the deficiency in two (2) or more equal payments. However, if the amount of the deficiency is equal to or greater than one monthly escrow payment, the servicer *may* require the borrower to repay the amount over 2-12 months. A servicer also has the option to allow the deficiency to exist and do nothing to change it.[29]

It is again important to note that these provisions regarding deficiencies apply only if the borrower is current at the time the servicer is performing the escrow account analysis. A borrower is considered to be current under the Regulation if the servicer receives the borrower's payments within 30 days of the payment due date. However, if the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the loan documents.[30]

Regulation X also contains additional requirements with regard to escrow shortages or escrow deficiencies. To begin with, Section (f)(5) requires the servicer to provide the borrower with notice of any shortage or deficiency in the escrow account on at least an annual basis.[31] Since this requirement appears in a different section of the Regulation other than the requirement

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to provide the borrower with an annual escrow statement, the two requirements are independent of each other. Therefore, any exception or exemption from having to provide an annual escrow statement, such as where the loan is delinquent or the borrower is in a bankruptcy case, does not excuse the servicer from having to provide notice of an escrow shortage or deficiency on at least an annual basis.[32] Moreover, the Regulation also provides that if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency. Arguably, the phrase "seeking repayment of the deficiency" could include seeking repayment of the deficiency through a bankruptcy case by way of a proof of claim.

Frequently Asked Questions

1) Is a servicer required to have a borrower maintain a reserve or cushion? NO. See Regulation X Section (c)(1)(ii).[33]

> A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:
>
> *(ii) Charges during the life of the escrow account. Throughout the life of an escrow account, the servicer* ***may*** *charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account.* ***In addition****, the servicer* ***may add*** *an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer* ***may*** *require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in* § 1024.17(f).

The operative word in this paragraph is "may".

This paragraph also recognizes there can be a charge equal to 1/12 of the anticipated disbursements over the next year, plus a cushion or reserve up to 1/6 of the estimated total payments (Step 5). Finally, if there is a shortage or deficiency, the servicer may require additional deposits to make up or eliminate the deficiency (Step 4).

The introduction to Section (d) of the regulation, which sets forth the steps for conducting an escrow analysis, confirms that while the steps in conducting the analysis are required steps, the cushions are nevertheless permissive. In particular, section (d) provides:

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> The steps set forth in this section derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers **may** use a cushion **less** than the permissible cushion **or no cushion at all**. This section **does not require the use of a cushion**.

Section (c)(8) of the Regulation further provides if the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable State law sets a lesser amount.

2) How does a servicer estimate the disbursements for next year? Section (c)(3) of the Regulation provides "In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section." Section (c)(7) says the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. But if the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items).

3) What are the servicer's option when there is an escrow shortage greater than or equal to one month's escrow account payment? The servicer has two (2) options. See Regulation X Section (f)(3)(ii).[34]

> (A) The servicer may allow a shortage to exist and do nothing to change it; or
>
> (B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

4) What are the servicer's option when there is a deficiency in the escrow account? See Regulation X Section (f)(4).[35]

> (4) Deficiency. If the escrow account analysis confirms a deficiency, then the servicer **may** require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.
>
> (i) If the deficiency is less than one month's escrow account payment, then the servicer:

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(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer **may allow the deficiency to exist and do nothing** to change it **or may require the borrower to repay the deficiency in two or more equal monthly payments**.

5) What are the steps in conducting an escrow analysis? See Regulation X Section 1024.17(d)(1) for aggregate analysis. See also the Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement—Format" and "Annual Escrow Account Disclosure Statement—Example" for examples.[36]

Steps 1-3

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

Step 4

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

Step 5

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively). See Regulation X, Section (c).[37]

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6) What is a servicer required to or permitted to assume regarding payments made during the final months of the escrow computation year leading up to the effective date of the escrow analysis? In other words, what is the servicer required to or permitted to assume about the beginning balance? Section 1024.17(i)(l) says in preparing the statement, the servicer **may** assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. Again, the operative word is "may".

7) Can lenders be required to pay interest on escrow accounts? No. Legislation was introduced in Congress in 1992 and 1993 that would have required lenders to pay interest on escrow account balances, but this legislation never passed. Nevertheless, some states do require interest to be paid on escrow account funds (e.g., Alaska, California, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Utah, Vermont, and Wisconsin).

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1. 12 U.S.C. § 2609.

2. 12 U.S.C. § 2609(a).

3. 12 U.S.C. § 2609(c).

4. 12 U.S.C. § 2609(b).

5. 12 U.S.C. § 2602(1) provides: (1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which–

> (A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
>
> (B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or
> (ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or
> (iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

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(iv) is made in whole or in part by any "creditor", as defined in 15 U.S.C. § 1602(f), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this chapter, the term "creditor" does not include any agency or instrumentality of any State.

6. 12 U.S.C. § 2609(c)(1). *See also* 12 CFR § 1024.17(g) and 12 U.S.C. § 2603. Regulation X defines the term "initial escrow account statement" as the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account.

7. 12 U.S.C. § 2609(c)(2)(B). Regulation X defines the term "escrow account computation year" as a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 1024.17(i)(4).

8. 12 U.S.C. § 2609(c)(2)(A) and 12 CFR § 1024.17(i)(1).

9. 12 CFR § 1024.17(i)(3).

10. 12 CFR § 1024.17(i)(2).

11. *See In re Laskowski*, 384 B.R. 518, 534 (Bankr. N.D. Ind. 2008).

12. 12 CFR § 1024.17(i)(4)(iii).

13. 12 U.S.C. § 2609(e).

14. 12 CFR § 1024.17(i)(4)(ii).

15. *See* 12 U.S.C. § 2609(d).

16. *See Hardy v. Regions Mortg.*, 449 F.3 1357, 1359 (11th Cir. 2006)("Under §10, no private right of action exists because 'The Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty")(citing 12 U.S.C. § 2609). *See also State of La v. Litton Mortg.*, 50 F.3d 1298 (5th Cir. 1995)("Congress did not intend to create a private right of action under Section 10 of RESPA"; *Allison v. Liberty Sav*., 695 F.2d 1086 (7th Cir. 1982)(Real Estate Settlement Procedures Act of 1974 creates no implied private right of action for violation of § 2609 since neither language of Act nor legislative history indicate congressional intention to create private cause of action under § 2609).

17. *See* https://www.consumerfinance.gov/rules-policy/regulations/1024/e/.

18. 12 CFR § 1024.17(c)(9).

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19. Regulation X defines the term "escrow account item" or "separate item" as any separate expenditure category, such as "taxes" or "insurance", for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

20. 12 CFR § 1024.17(k).

21. 12 CFR § 1024.17(k)(3).

22. 12 CFR § 1024.17(k)(4).

23. The CFPB has provided examples on its website of "reasonable basis" to believe that a policy has been canceled or not renewed.

> The following are examples of where a servicer has a reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than the nonpayment of premium charges:
>
> i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received notification of other hazard insurance coverage.
>
> ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.
>
> iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

https://www.consumerfinance.gov/rules-policy/regulations/1024/interp-17/

24. 12 CFR § 1024.17(k)(5).

25. 12 CFR § 1024.17(i)(l).

26. 12 CFR § 1024.17(d)(2)(i)(B).

27. 12 CFR § 1024.17(d)(2)(i)(C). Regulation X defines the term "cushion" as funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 1024.17(c).

28. 12 CFR § 1024.17(c)(8).

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29. Regulation X defines the term "target balance" as the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any. 12 CFR § 1024.17(b).

30. Regulation X defines the term "escrow shortage" as "an amount by which a current escrow balance falls short of the target balance at the time of the escrow analysis." 12 CFR § 1024.17(b).

31. 12 CFR § 1024.17(f)(3).

32. Regulation X defines an escrow deficiency as the amount of a negative balance in an escrow account.

33. 12 CFR § 1024.17(f)(4).

34. 12 CFR § 1024.17(f)(4)(iii).

35. 12 CFR § 1024.17(f)(5) provides:

> The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

36. *See also* Section 10(b) of RESPA (12 U.S.C. § 2609(b)) which provides "the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account."; *In re Johnson*, 384 B.R. 763, 771 (Bankr. E.D. Mich. 2008)(Even though, due to borrower's bankruptcy case, mortgage lender was excused by regulation from sending the borrower an annual escrow statement, it still had an obligation, pursuant to the notice requirements under RESPA, to provide the borrower with notice regarding any escrow account shortage or deficiency).

37. 12 CFR § 1024.17(c)(1)(ii).

38. 12 CFR § 1024.17(f)(3)(ii).

39. 12 CFR § 1024.17(f)(4).

40. https://www.consumerfinance.gov/rules-policy/regulations/1024/e/

41. 12 CFR § 1024.17(c).

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