

Real Estate Settlement Procedures Act Escrow

Community Banker for Compliance Program Second Quarter (Q2) 2024

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Section 1:

Applicable Definitions [12 C.F.R. § 1024.2]

General Definitions [12 C.F.R. § 1024.2]

Regulatory Discussion

The regulation includes specific definitions for this regulation. While many of the definitions are fairly obvious, some of them are unique to this regulation, and must be understood within a RESPA context.

There are additional definitions that appear in other parts of this manual, and are placed in the appropriate section as the definitions are specific to that portion of the regulation.

Regulatory Text

(a) **Statutory terms.** All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) **Other terms.** As used in this part:

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see §1024.5(b)(7)).

Regulatory Commentary

None.

Section 2:

Escrow Accounts [12 C.F.R. § 1024.17 (a) and (b)]

Introduction [12 CFR § 1024.17(a)]

Regulatory Discussion

This section of the regulation describes the requirements for an escrow account established by a lender in connection with a federally related mortgage loan. It establishes limits for escrow accounts by using calculations based on monthly payments and disbursements within a calendar year. If the escrow account involves biweekly or any other payment period, the requirements of this section must be modified accordingly.

Regulatory Text

(a) General. This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled “Biweekly Payments—Example” provides examples of biweekly accounting and a Public Guidance Document entitled “Annual Escrow Account Disclosure Statement—Example” provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled “Consumer Disclosure for Voluntary Escrow Account Payments” provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in §1024.17(g).

Regulatory Commentary

None.

Definitions - [12 CFR § 1024.17(b)]

Regulatory Discussion

This section has its own set of definitions that are included below in the regulatory text.

Regulatory Text

(b) Definitions. As used in this section:

Aggregate (or) composite analysis, hereafter called aggregate analysis, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

Annual escrow account statement means a statement containing all of the information set forth in §1024.17(i). As noted in §1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Cushion or reserve (hereafter cushion) means 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).

Deficiency is the amount of a negative balance in an escrow account. As noted in §1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

Escrow account means 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 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.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

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

Escrow account computation year is 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).

Escrow account item or **separate item** means 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.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of §1024.17(g) and be in substantially the format set forth in §1024.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

Penalty means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of §1024.17(c).

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means 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.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

Regulatory Commentary

None.

Section 3:

Limits on Payments and Acceptable Methods to Determine Limits - [12 CFR § 1024.17(c)]

Limits on Payments and Acceptable Methods to Determine Limits - [12 CFR § 1024.17(c)(1)]

Regulatory Discussion

A servicer may not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

At the time a servicer creates an escrow account for a borrower:

- The servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payments were last paid until the initial payment date.
- A servicer may also charge the borrower a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

Throughout the life of an escrow account:

- A 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.
- A servicer may add an amount, to maintain the permissible 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.

Regulatory Text

(c) Limits on payments to escrow accounts.

- (1) 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:
 - (i) **Charges at settlement or upon creation of an escrow account.** At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The “amount sufficient to pay” is

computed so that the lowest month end target balance projected for the escrow account computation year is zero (-0-) (see Step 2 in Appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth ($\frac{1}{6}$) of the estimated total annual payments from the escrow account.

- (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 ($\frac{1}{12}$) 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 ($\frac{1}{6}$) 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).

Regulatory Commentary

None.

Escrow Analysis at Creation of Escrow Account - [12 CFR § 1024.17(c)(2)]

Regulatory Discussion

Before establishing an escrow account, a servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account and the amounts of the borrower's periodic payments into the escrow account. When conducting the initial escrow account analysis, a servicer must estimate the disbursement amounts. The servicer must use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty as the disbursement date for the escrow item.

Upon completing the initial escrow account analysis, a servicer must prepare and deliver an initial escrow account statement to the borrower. A servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists since settlement and may make any adjustments to the account accordingly.

Regulatory Text

(c) Limits on payments to escrow accounts.

- (2) **Escrow analysis at creation of escrow account.** Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph

(c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

Regulatory Commentary

None.

Subsequent Escrow Account Analysis - [12 CFR § 1024.17(c)(3)]

Regulatory Discussion

For each escrow account, a servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, following the same guidelines as discussed above for escrow analysis before the creation of an escrow account.

Regulatory Text

(c) Limits on payments to escrow accounts.

- (3) **Subsequent escrow account analyses.** For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

Regulatory Commentary

None.

Acceptable Accounting Method for Determining Escrow Limits - [12 CFR § 1024.17(c)(4)]

Regulatory Discussion

A servicer must use aggregate accounting to conduct an escrow account analysis. In conducting the escrow account analysis, a servicer must use “month-end” accounting.

Regulatory Text

(c) Limits on payments to escrow accounts.

(4) **Aggregate accounting required.** All servicers must use the aggregate accounting method in conducting escrow account analyses.

Regulatory Commentary

None.

Cushion and Restriction on Pre-accrual - [12 CFR § 1024.17(c)(5) and (6)]

Regulatory Discussion

The cushion may not be greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account using aggregate-analysis accounting.

Regulatory Text

(c) Limits on payments to escrow accounts.

(5) **Cushion.** The cushion must be no greater than one-sixth ($\frac{1}{6}$) of the estimated total annual disbursements from the escrow account.

(6) **Restrictions on pre-accrual.** A servicer must not practice pre-accrual.

Regulatory Commentary

None.

Servicer Estimates of Disbursement Accounts - [12 CFR § 1024.17(c)(7)]

Regulatory Discussion

A servicer must estimate the amount of escrow account items to be disbursed.

- If a servicer knows the exact charge for an escrow item in the next computation year, then that amount must be used in estimating disbursement amounts.
- If the charge is unknown, a servicer may base estimates on the previous year's charge, or on the previous year's charge as modified by an amount that does not exceed the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items).
- In cases of unassessed new construction, a servicer may base estimates on the assessment of comparable residential property in the market area.

Regulatory Text

(c) Limits on payments to escrow accounts.

(7) **Servicer estimates of disbursement amounts.** To conduct an escrow account analysis, 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. 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). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

Regulatory Commentary

None.

Provision in Mortgage Documents - [12 CFR § 1024.17(c)(8)]

Regulatory Discussion

If the mortgage loan documents provide for lower cushion limits than the regulation, the limitations of the loan documents will apply. When the terms of the mortgage loan documents allow for greater payments to an escrow account than permitted by regulation, the regulation will control the applicable limitations.

When the mortgage loan documents do not specifically establish an escrow account, state law will determine whether a servicer may establish an escrow account for the loan.

If the mortgage loan documents are silent on escrow account limits (for cushion) and a servicer establishes an account under state law, the limitations of the regulation apply unless state law provides for a lower amount.

If the mortgage loan documents provide for escrow accounts up to the RESPA limits, a servicer may require the maximum amounts allowable by the regulation subject to the limitations of state law.

Regulatory Text

(c) Limits on payments to escrow accounts.

- (8) Provisions in federally related mortgage documents.** The servicer must examine the federally related mortgage loan documents to determine the applicable cushion for each escrow account. If any such documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any such documents allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where such documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If such documents are silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If such 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 Federal or State law sets a lesser amount.

Regulatory Commentary

None.

Assessments for Periods Longer Than One Year- [12 CFR § 1024.17(c)(9)]

Regulatory Discussion

Some escrow account items may be billed for periods that are longer than one year. For example, a servicer may need to collect flood insurance or water purification escrow funds for payment every three years. In these cases, a servicer must estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every three years, a servicer must collect the payments reflecting 36 equal monthly amounts. For two out of the three years, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle rather than an annual one. The annual escrow account statement will explain this situation.

Regulatory Text

(c) Limits on payments to escrow accounts.

- (9) **Assessments for periods longer than one year.** Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled "Annual Escrow Account Disclosure Statement - Example", available in accordance with §1024.3).

Regulatory Commentary

None.

Section 4:

Methods of Escrow Account Analysis

- [12 CFR § 1024.17(d)]

Methods of Escrow Account Analysis - [12 CFR § 1024.17(d)(1)]

Regulatory Discussion

The following steps must be followed by a servicer to determine whether the use of an acceptable accounting method conforms with the limitations of the regulation. These steps derive maximum limits. A servicer may use accounting procedures that result in lower target balances and may use a cushion that is lower than the permissible cushion or no cushion at all.

Regulatory Text

(d) Methods of escrow account analysis.

- (1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in §1024.17(c)(1). The steps set forth in this section result in 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.

Regulatory Commentary

None.

Aggregate Analysis - [12 CFR § 1024.17(d)(2)]

Regulatory Discussion

The target balances must not exceed the balances computed according to the following arithmetic operations:

- The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). The servicer assumes 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 and also assumes the borrower will make monthly payments equal to one-twelfth (1/12) of the estimated total annual escrow account disbursements.

- The servicer then examines the monthly trial balance 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.
- 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 loan documents (net of any increases or decreases because of prior year shortages or surpluses, respectively).
- Under the aggregate-analysis method, the lowest monthly target balance for the account must be less than or equal to one-sixth (1/6) of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage loan documents. The target balances derived by the servicer, using these steps, will yield the maximum limit for the escrow account.

Regulatory Text

(d) Methods of escrow account analysis.

(2) Aggregate analysis.

- (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:
 - (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.
 - (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.
 - (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).
- (ii) **Lowest monthly balance.** Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps

yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

Regulatory Commentary

None.

Section 5:

Transfer of Servicing - [12 CFR § 1024.17(e)]

Transfer of Servicing - [12 CFR § 1024.17(e)]

Regulatory Discussion

If a new servicer changes either the monthly payment amount or the accounting method used by the previous servicer, then the new servicer must provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

When a new servicer is required to provide 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.

When a new servicer retains the monthly payments and accounting methods of the previous servicer, the new servicer may continue to use the escrow account computation year established by the previous servicer or may choose to establish a different computation year using a short-year statement. At the end of the escrow account computation year or any short year, a new servicer must perform an escrow analysis and provide the borrower with an annual escrow account statement.

Regulatory Text

(e) Transfer of servicing.

- (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.
 - (i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.
 - (ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor 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 shall perform an escrow analysis and provide the borrower with an annual escrow account statement.
- (2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in §1024.17(f).

Regulatory Commentary

None.

Section 6:

Shortages, Surpluses, and Deficiencies Requirements - [12 CFR § 1024.17(f)]

Shortages, Surpluses, and Deficiencies Requirements - [12 CFR § 1024.17(f)(1)]

Regulatory Discussion

Shortages, surpluses and deficiencies are handled as set forth in the regulation. A servicer can conduct an analysis at any time, provided it has not been longer than 12 months since the previous analysis.

Regulatory Text

(f) Shortages, surpluses, and deficiencies requirements

- (1) **Escrow account analysis.** For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.
 - (i) As noted in §1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.
 - (ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

Regulatory Commentary

None.

Surpluses - [12 CFR § 1024.17(f)(2)]

Regulatory Discussion

If, at the time of the analysis, the surplus exceeds \$50, the surplus must be returned to the

borrower. The borrower must be current on payments at the time of the refund.

If the borrower elects to place additional money in the escrow account (often occurs during a construction/permanent financing loan, the borrower can authorize the creditor holding the additional funds one year at a time.

Regulatory Text

(f) Shortages, surpluses, and deficiencies requirements

(2) Surpluses.

- (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars (\$50). If the surplus is less than 50 dollars (\$50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.
- (ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. 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 federally related mortgage loan documents.
- (iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

Regulatory Commentary

None.

Shortages - [12 CFR § 1024.17(f)(3)]

Regulatory Discussion

A shortage exists when the current escrow balance is positive, but there will be insufficient funds in the account to pay all expenditures in the coming year.

If an escrow account analysis discloses a shortage of less than one month's escrow account

payment, then the servicer may allow a shortage to exist and do nothing, require the borrower to repay the shortage amount within 30 days, or may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer may allow a shortage to exist and do nothing, or require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

Regulatory Text

(f) Shortages, surpluses, and deficiencies requirements

(3) Shortages.

- (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:
 - (A) The servicer may allow a shortage to exist and do nothing to change it;
 - (B) The servicer may require the borrower to repay the shortage amount within 30 days; or
 - (C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.
- (ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:
 - (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.

Regulatory Commentary

None.

Deficiencies - [12 CFR § 1024.17(f)(4)]

Regulatory Discussion

A deficiency exists when the current escrow balance is negative. If this occurs, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment (unlikely), then the servicer may allow the deficiency to exist and do nothing, may require the borrower to repay the deficiency within 30 day, or may require the borrower to repay the deficiency in 2 or more equal monthly payments.

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, or may require the borrower to repay the deficiency in two or more equal monthly payments.

Both options above apply if the borrower is current at the time of the escrow account analysis. If the borrower is not current, then further action would be dictated by the mortgage loan documents.

Regulatory Text

(f) Shortages, surpluses, and deficiencies requirements

(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:

(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.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. 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 federally related mortgage loan documents.

(5) Notice of shortage or deficiency in escrow account. 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.

Regulatory Commentary

None.

Notice of Shortage or Deficiency in Escrow Account - [12 CFR § 1024.17(f)(5)]

Regulatory Discussion

Generally, this notice is provided at the time of the escrow analysis. It could also be a separate document.

Regulatory Text

(f) Shortages, surpluses, and deficiencies requirements

- (5) **Notice of shortage or deficiency in escrow account.** 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.

Regulatory Commentary

None.

Section 7:

Initial Escrow Account Statement

[12 CFR § 1024.17(g)]

Initial Escrow Account Statement (Settlement) - [12 CFR § 1024.17(g)(1)]

Regulatory Discussion

After conducting the escrow account analysis for each escrow account, a servicer must submit an initial escrow account statement to the borrower, either at settlement or within 45 calendar days of settlement, for all escrow accounts that are established as a condition of the loan. The initial escrow account statement must include:

- The amount of the borrower's monthly mortgage payment;
- The portion of the monthly payment that will be placed in the escrow account;
- An itemization of the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates will be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges;
- A statement specifying the amount selected as a cushion; and
- A trial running balance for the account.

Regulatory Text

(g) Initial escrow account statement.

- (1) **Submission at settlement, or within 45 calendar days of settlement.** As noted in §1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.
 - (i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

- (ii) Pursuant to §1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

Regulatory Commentary

None.

Initial Escrow Account Statement (Post-Settlement) - [12 CFR § 1024.17(g)(2)]

Regulatory Discussion

For escrow accounts established after settlement (and which are not a condition of the loan), a servicer must submit an initial escrow account statement to a borrower within 45 calendar days of the date of the establishment of the escrow account.

Regulatory Text

(g) Initial escrow account statement.

- (2) **Time of submission of initial escrow account statement for an escrow account established after settlement.** For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

Regulatory Commentary

None.

Appendix E – Arithmetic Steps

I. Example Illustrating Aggregate Analysis

ASSUMPTIONS:

Disbursements:

\$360 for school taxes disbursed on September 20

\$1,200 for county property taxes:

\$500 disbursed on July 25

\$700 disbursed on December 10

Cushion: One sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

Step I – Initial Trial Balance			
	Aggregate		
	pmt	disb	bal
Jun	000	000	-000
Jul	130	500	-370
Aug	130	000	-240
Sep	130	360	-470
Oct	130	000	-340
Nov	130	000	-210
Dec	130	700	-780
Jan	130	000	-650
Feb	130	000	-520
Mar	130	000	-390
Apr	130	000	-260
May	130	000	-130
Jun	130	000	-000

Step 2 – Adjusted Trial Balance (Increase monthly balances to eliminate negative balances)			
	Aggregate		
	pmt	disb	bal
Jun	000	000	780
Jul	130	500	410
Aug	130	000	540
Sep	130	360	310
Oct	130	000	440
Nov	130	000	570
Dec	130	700	000
Jan	130	000	130
Feb	130	000	260
Mar	130	000	390
Apr	130	000	520
May	130	000	650
Jun	130	000	780

Step 3 - Trial Balance with Cushion			
	Aggregate		
	pmt	disb	bal
Jun	000	000	1040
Jul	130	500	0670
Aug	130	000	0800
Sept	130	360	0570
Oct	130	000	0700
Nov	130	000	0830
Dec	130	700	0260
Jan	130	000	0390
Feb	130	000	0520
Mar	130	000	0650
Apr	130	000	0780
May	130	000	0910
Jun	130	000	1040

Section 8:

Format for Initial Escrow Account Statement

[12 CFR § 1024.17(h)]

Format for Initial Escrow Account Statement - [12 CFR § 1024.17(h)]

Regulatory Discussion

The first two paragraphs of this section are not significant, and are for your review.

Identification of Payees

The initial escrow account statement does not need to identify a specific payee by name if it provides sufficient information to identify the use of the funds. Appropriate entries might include county taxes, hazard insurance, etc.

If a particular payee (e.g., a taxing body) receives more than one payment during the escrow account computation year, the statement must indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement must identify each taxing body or insurer (e.g., “city taxes,” “school taxes,” “hazard insurance,” or “flood insurance,” etc.).

Regulatory Text

(h) Format for initial escrow account statement.

- (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled “Initial Escrow Account Disclosure Statement—Format” and “Initial Escrow Account Disclosure Statement—Example”, available in accordance with §1024.3.
- (2) **Incorporation of initial escrow account statement into HUD-1 or HUD-1A settlement statement.** Pursuant to §1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.
- (3) **Identification of payees.** The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., “City Taxes”, “School Taxes”, “Hazard Insurance”, or “Flood Insurance,” etc.).

Regulatory Commentary

None.

Section 9:

Annual Account Statements and Other Escrow Requirements

[12 CFR § 1024.17(i) through 12 CFR § 1024.17(j)]

Content of Annual Escrow Account Statements - 12 CFR § 1024.17(i)(1)

Regulatory Discussion

There are several requirements for the content of the annual escrow account statement. They are detailed in the regulatory text below.

Regulatory Text

- (i) **Annual escrow account statements.** For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.
- (1) **Contents of annual escrow account statement.** The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. 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. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):
- (i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;
 - (ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;
 - (iii) The total amount paid into the escrow account during the past computation year;
 - (iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);
 - (v) The balance in the escrow account at the end 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. Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement—Format" and "Annual Escrow Account Disclosure Statement—Example" set forth an acceptable format and methodology for conveying this information.

Regulatory Commentary

None.

No Annual Statements in the Case of Default, Foreclosure, or Bankruptcy - 12 CFR § 1024.17(i)(2)

Regulatory Discussion

There are three scenarios in which annual statements are not required – default, foreclosure, and bankruptcy.

Regulatory Text

(i) Annual escrow account statements. ***

- (2) **No annual statements in the case of default, foreclosure, or bankruptcy.** This paragraph (i)(2) contains an exemption from the provisions of §1024.17(i)(1). 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 submitting an annual escrow account statement to the borrower under §1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. 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 shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

Regulatory Commentary

None.

Delivery with Other Material - 12 CFR § 1024.17(i)(3)

Regulatory Discussion

The annual statements can be mailed with other materials.

Regulatory Text

(i) Annual escrow account statements. ***

- (3) **Delivery with other material.** The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.

Regulatory Commentary

None.

Short Year Statements - 12 CFR § 1024.17(i)(4)

Regulatory Discussion

A short year statement may be issued at any time for any reason. This often occurs when the amounts that need to be paid out of the account changed dramatically. Short year statements are required upon sale of the servicing of the loan and upon loan payoff.

Regulatory Text

(i) Annual escrow account statements. ***

- (4) **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 production schedule or alter the escrow account computation year for the escrow account.

- (i) **Effect of short year statement.** The short year statement shall end the “escrow account computation year” for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

- (ii) **Short year statement upon servicing transfer.** Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.
- (iii) **Short year statement upon loan payoff.** If a borrower pays off a federally related mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the payoff funds.

Regulatory Commentary

None.

Formats for Annual Escrow Account Statement - 12 CFR § 1024.17(j)

Regulatory Discussion

This section points out two example documents for the annual escrow account statement.

Regulatory Text

- (j) **Formats for annual escrow account statement.** The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled “Annual Escrow Account Disclosure Statement - Format” and “Annual Escrow Account Disclosure Statement - Example”.

Regulatory Commentary

None.

Section 10: Timely and Discretionary Payments 12 CFR § 1024.17(k) and (l)

Timely Payments - 12 CFR § 1024.17(k)(1)

Regulatory Discussion

The regulation requires the servicer to pay amounts out of the escrow account in a timely manner if the borrower is no more than 30 days past due.

Regulatory Text

(k) Timely payments.

- (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

Regulatory Commentary

None.

Recouping Advanced Funds - 12 CFR § 1024.17(k)(2)

Regulatory Discussion

A servicer may attempt to recoup funds paid out of the account when sufficient funds were not available in the account. This is covered above in section F.

Regulatory Text

(k) Timely payments.

- (2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a

disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

Regulatory Commentary

None.

Discounts for Lump Sum Property Tax Payments - 12 CFR § 1024.17(k)(3) and (4)

Regulatory Discussion

A servicer may take advantage of any discounts offered for lump sum payments of real estate taxes. There is no requirement to do so. Additionally, the regulation suggests that the decision regarding this matter should be at least discussed with the borrower.

Regulatory Text

(k) Timely payments.

- (3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.
- (4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

Regulatory Commentary

None.

Hazard Insurance Issues - 12 CFR § 1024.17(k)(5)

Regulatory Discussion

A thorough reading of this section is suggested. Generally, if the borrower has an escrow account, hazard insurance must be paid whether or not there is sufficient money in the account. The only exception is when the insurance has been cancelled for some other reason. For instance, if the insurance was cancelled because of the condition of the property, these rules do not apply.

Additionally, small servicers do not necessarily have to pay the insurance premium. They can elect to go with force placed insurance.

Regulatory Text

(k) Timely payments.

(5) Timely payment of hazard insurance

(i) **In general.** Except as provided in paragraph (k)(5)(iii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, but who has established an escrow account for the payment for hazard insurance, as defined in §1024.31, a servicer may not purchase force-placed insurance, as that term is defined in §1024.37(a), unless a servicer is unable to disburse funds from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner.

(ii) Inability to disburse funds

(A) **When inability exists.** A servicer is considered unable to disburse funds from a borrower's escrow account to ensure that the borrower's hazard insurance premiums are paid in a timely manner only if the servicer has a reasonable basis to believe either that the borrower's hazard insurance has been canceled (or was not renewed) for reasons other than nonpayment of premium charges or that the borrower's property is vacant.

(B) **When inability does not exist.** A servicer shall not be considered unable to disburse funds from the borrower's escrow account because the escrow account contains insufficient funds for paying hazard insurance premium charges.

(C) **Recoupment of advances.** If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.

- (iii) **Small servicers.** Notwithstanding paragraphs (k)(5)(i) and (k)(5)(ii)(B) of this section and subject to the requirements in §1024.37, a servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4) may purchase force-placed insurance and charge the cost of that insurance to the borrower if the cost to the borrower of the force-placed insurance is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.

Regulatory Commentary

When inability exists. 17(k)(5)(ii)(A)

1. **Examples of reasonable basis to believe that a policy has been cancelled 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.*

17(k)(5)(ii)(C) Recoupment for advances.

1. **Month-to-month advances.** *A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if permitted by State or other applicable law and accepted by the borrower's hazard insurance company.*

Discretionary Payments - 12 CFR § 1024.17(l)

Regulatory Discussion

Any payment that is handled through the escrow account for any item that is not required by the servicer is not subject to the rule. Additional information can be found in the regulatory text below.

Regulatory Text

- (l) **Discretionary payments.** Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in §1024.2, or the servicer

chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

Regulatory Commentary

None.

Section 11:

Timely Escrow Payments and Treatment of Escrow Account Balances 12 CFR § 1024.34

Introduction

This new section creates little in the way of additional requirements. It was moved from an earlier section of the regulation to this location. Any other changes are discussed below.

Timely Escrow Disbursements Required [12 CFR § 1024.34(a)]

Regulatory Discussion

RESPA provides that the servicer make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as such payments become due. The CFPB proposed to incorporate the substance of the current regulatory text into this new section. No substantive changes were made.

Regulatory Text

(a) Timely escrow disbursements required. If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in § 1024.17(k).

Regulatory Commentary

None.

Refunds of Escrow Balance [12 CFR § 1024.34(b)]

Regulatory Discussion

In General

The Dodd-Frank Act amended RESPA by requiring that any balance in any account that is within the servicer's control at the time the loan is paid off be promptly returned to the borrower

within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the “same lender.”

The regulation provides that a servicer shall return escrow funds to the borrower, with the option of applying the escrow account to the new loan in specified circumstances. The CFPB also included commentary indicating that the regulation does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower’s mortgage loan.

Servicer May Credit Funds to a New Escrow Account

RESPA permits a servicer to credit the escrow account balance to an escrow account for a new mortgage loan to the borrower with the same lender if the servicer does not return the balance to the borrower within 20 business days. Regulatory language states that this is acceptable if the new mortgage loan is provided to the borrower by a lender that was also the lender to whom the prior mortgage loan was initially payable, is the owner or assignee of the prior mortgage loan; or uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

Regulatory Text

(b) Refund of escrow balance

- (1) **In general.** Except as provided in paragraph (b)(2) of this section, within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, a servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer's control.
- (2) **Servicer may credit funds to a new escrow account.** Notwithstanding paragraph (b)(1) of this section, if the borrower agrees, a servicer may credit any amounts remaining in an escrow account that is within the servicer's control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is provided to the borrower by a lender that:
 - (i) Was also the lender to whom the prior mortgage loan was initially payable;
 - (ii) Is the owner or assignee of the prior mortgage loan; or
 - (iii) Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

Regulatory Commentary

Paragraph 34(b)(1).

1. **Netting of funds.** *Section 1024.34(b)(1) does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.*

Paragraph 34(b)(2).

1. **Refund always permissible.** *A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of §1024.34(b) by refunding the funds in the escrow account to the borrower pursuant to §1024.34(b)(1).*
2. **Borrower agreement.** *A borrower may agree either orally or in writing to a servicer's crediting of any remaining balance in an escrow account to a new escrow account for a new mortgage loan pursuant to §1024.34(b)(2).*

Section 12: CFPB: FAQs Relating to the Escrow Account Provisions under Regulation X (RESPA) (June 2, 2021)

CFPB: FAQs Relating to the Escrow Account Provisions under Regulation X (RESPA) (June 2, 2021)

Link

<https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/mortserv/>

The CFPB released a set of FAQs that discuss certain topics relating to escrow accounts under Regulation X. The FAQs provide a general overview of the escrow account provisions in Regulation X, and they address topics such as deficiencies, shortages, and surpluses.

Escrow Accounts: General

1. What is an escrow account under Regulation X?

Regulation X provides that an escrow account is any account established or controlled by a servicer on behalf of a borrower to pay taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, including those charges that the servicer and borrower agreed to have the servicer collect and pay. 12 CFR § 1024.17(b).

Last updated: June 2, 2021

2. What is an escrow account computation year under Regulation X?

Regulation X provides that an escrow account computation year is a 12-month period that the servicer establishes for the escrow account, beginning with the borrower's initial payment date, and includes each 12-month period thereafter, unless the servicer issues a short year statement. 12 CFR § 1024.17(b).

For more information on short year statements, see Escrow Accounts: General FAQ #8 below.

Last updated: June 2, 2021

3. When does the servicer send the annual escrow statement?

The servicer sends the borrower the annual escrow account statement within 30 days of the completion of the escrow account computation year. 12 CFR § 1024.17(i). The servicer must conduct an escrow account analysis before sending the annual escrow account statement to the borrower. 12 CFR § 1024.17(i).

Last updated: June 2, 2021

4. What charges may the servicer require a borrower to deposit into an escrow account?

The servicer may impose charges at settlement or upon creation of the escrow account. For example, upon creation of the escrow account, the servicer may charge the borrower an amount sufficient to pay the charges for the mortgaged property, such as taxes and insurance, that are attributable to the period from the date payment(s) for those charges were last paid until the initial payment date of the mortgage. 12 CFR § 1024.17©(1)(i).

The servicer may also impose charges during the life of the escrow account. During the life of the escrow account, the servicer may collect from the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the servicer reasonably anticipates paying from the account. 12 CFR § 1024.17©(1)(ii). In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth of the estimated total annual payments from the account upon creation or during future escrow account analyses. 12 CFR § 1024.17©(1)(ii).

Last updated: June 2, 2021

5. What is a disbursement date?

A disbursement date is the date the servicer pays an escrow item from the escrow account. 12 CFR § 1024.17(b).

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6. What information must be included in an initial escrow statement?

The initial escrow statement is the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. 12 CFR § 1024.17(b).

It must include:

- The amount of the monthly mortgage payment;
- The portion of the monthly payment going into the escrow account;
- Itemized anticipated disbursements to be paid from the escrow account;
- Anticipated disbursement dates;
- The amount the servicer elects as a cushion; and
- Trial running balance for the account.

12 CFR § 1024.17 (g)(1)(i).

Last updated: June 2, 2021

7. What information must be included in an annual escrow statement?

The annual escrow statement must include an account history that reflects the activity in the escrow account during the prior escrow account computation year and a projection of the activity in the account for the next escrow account computation year. 12 CFR § 1024.17(i). The servicer must send it to the borrower within 30 calendar days of the end of the escrow account computation year, after the servicer conducts an escrow account analysis. 12 CFR § 1024.17(i).

It must include:

- The amount of the current monthly mortgage payment and the portion of it going into the escrow account;
- The amount of the past year's monthly mortgage payment and the portion of it that went into the escrow account;
- The total amount paid into the escrow account during the past escrow account computation year;
- The total amount paid out of the escrow account during the past account computation year for taxes, insurance premiums, and other charges (as separately identified);
- The balance in the escrow account at the end of the account computation year;
- An explanation of how any surplus is being handled;
- An explanation of how any shortage or deficiency is to be paid by the borrower; and
- 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.

12 CFR § 1024.17(i)(1)(i)-(viii).

Last updated: June 2, 2021

8. What is a short year statement?

A servicer may issue a short year statement to change one escrow account computation year to another. 12 CFR § 1024.17(i)(4).

For example, if the servicer transfers servicing to another servicer, then the old servicer must submit a short year statement to the borrower within 60 days of the effective date of the transfer. 12 CFR § 1024.17(i)(4)(ii).

Another example is when the borrower pays off the mortgage loan during the escrow account computation year, then the servicer must submit the short year statement within 60 days after the servicer receives the payoff funds. 12 CFR § 1024.17(i)(4)(iii).

Last updated: June 2, 2021

Escrow Accounts: Escrow Account Analysis

1. What is an escrow account analysis?

An escrow account analysis is the accounting a servicer conducts in the form of a trial running balance for an escrow account to:

- Determine the appropriate target balances;
- Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and
- Determine whether a shortage, surplus, or deficiency exists.

12 CFR § 1024.17(b).

Last updated: June 2, 2021

2. When does a servicer conduct an escrow account analysis?

A servicer may conduct an escrow account analysis at any time, but Regulation X requires that the servicer conduct an escrow account analysis before the servicer establishes an escrow account and at the completion of the escrow account computation year in order to provide the borrower with an annual escrow account statement no later than 30 days prior to the end of the escrow computation year. 12 CFR § 1024.17 (c)(2), (c)(3) and (i).

Last updated: June 2, 2021

Escrow Accounts: Deficiencies, Shortages, and Surpluses

1. What is deficiency?

A deficiency is the amount of a negative balance in an escrow account. 12 CFR § 1024.17(b).

For more information on deficiencies, see Escrow Accounts: Deficiencies, Shortages, and Surpluses FAQ #7, #8, and #9.

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2. What is a shortage?

A shortage is an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis. 12 CFR § 1024.17(b).

For more information on shortages, see Escrow Accounts: Deficiencies, Shortages, and Surpluses FAQ #4, #5, and #6.

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3. What is a surplus?

A surplus is an amount by which the current escrow account balance exceeds the target balance at the time of escrow analysis. 12 CFR § 1024.17(b).

Last updated: June 2, 2021

4. What can the servicer do if the escrow account analysis shows a shortage?

It depends on the amount of the shortage. If the shortage is less than one month's escrow payment, then the servicer:

- May allow a shortage to exist and do nothing to change it,
- May require the borrower to repay the shortage amount within 30 days, or
- May require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

If the shortage is equal to or more than one month's escrow account payment, then the servicer:

- May allow a shortage to exist and do nothing to change it, or
- May require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

12 CFR § 1024.17(f)(3).

The specified repayment options in Regulation X are exclusive. Therefore, a servicer cannot include in the annual escrow statement any options for repayment of shortages that are not specified in Regulation X, such as a lump sum payment option for a shortage that is equal to or more than one month's escrow payment.

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5. If there is a shortage that is equal to or more than one month's escrow account payment, can the servicer accept an unsolicited lump sum payment from the borrower to resolve the shortage?

Yes, if there is a shortage that is equal to or more than one month's escrow account payment, the servicer may accept an unsolicited lump sum repayment to resolve the shortage. However, the servicer cannot require or provide the option of a lump sum payment on the annual escrow account statement. The annual escrow statement, which reflects the escrow account analysis, may indicate that a shortage can exist or that the borrower can repay the shortage in equal monthly payments over at least a 12-month period. 12 CFR § 1024.17(f)(3).

Also, Regulation X does not govern whether borrowers can voluntarily make payments to the servicer for the purpose of satisfying an escrow account shortage. Hence, the acceptance of a voluntary, unsolicited payment made by the borrower to the servicer to satisfy an escrow account shortage is not a violation of Regulation X.

Last updated: June 2, 2021

6. Can a servicer communicate to the borrower that the borrower may voluntarily provide a lump sum payment to satisfy an escrow shortage if they choose to?

Yes, provided that the communication is not in the annual escrow account statement itself and does not appear to indicate that a lump sum payment is something that the servicer requires but rather is an entirely voluntary option. The specified repayment options in Regulation X are exclusive. Therefore, servicers cannot include in the annual escrow statement any options for repayment of shortages that are not specified in Regulation X, such as a lump sum payment option. 12 CFR § 1024.17(f)(3); 12 CFR § 1024.17(i)(vii).

Regulation X does not, however, prohibit a servicer from including other statements or materials in the same envelope as the annual escrow statement or in an entirely separate communication that provides general information regarding the operation of a borrower's escrow account or additional guidance on ways in which a borrower may manage or make voluntary payments into their escrow account. 12 CFR § 1024.17(i)(3).

Regulation X does not govern whether borrowers can voluntarily make payments in any amount into the escrow account at any time. Hence, informing the consumer that voluntary payment of any amount to the servicer to satisfy the escrow account shortage is not a violation of Regulation X as long as such information is not included on the annual escrow account statement and does not appear to indicate that a lump sum payment is something that the servicer requires, but that it is an entirely voluntary option.

Last updated: June 2, 2021

7. What can the servicer do if the escrow account analysis shows a deficiency?

If the escrow account analysis shows a deficiency, the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency. How much the servicer may require depends on the amount of the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer:

- May allow the deficiency to exist and do nothing to change it;
- May require the borrower to repay the deficiency within 30 days; or
- May require the borrower to repay the deficiency in 2 or more equal monthly payments

12 CFR § 1024.17(f)(4)(i).

If the deficiency is greater than or equal to one month's escrow payment, then 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.

12 CFR § 1024.17(f)(4)(ii).

These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis, which means that the servicer receives the borrower's payments within 30 days of the payment due date. 12 CFR § 1024.17(f)(4)(iii).

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. 12 CFR § 1024.17(f)(4)(iii).

Last updated: June 2, 2021

8. If there is a deficiency that is equal to or more than one month's escrow account payment, can the servicer accept a voluntary, unsolicited lump sum payment from the borrower to resolve the deficiency?

Yes, if there is a deficiency that is equal to or more than one month's escrow account payment, the servicer may accept an unsolicited lump sum payment to resolve the deficiency. However, the servicer cannot require or provide the option of a lump sum payment on the annual escrow account statement. The annual escrow statement may only reflect that the servicer is allowing a deficiency to exist or that the servicer is requiring the borrower to repay the deficiency in two or more equal monthly payments.

12 CFR § 1024.17(f)(4)(ii).

Regulation X does not govern whether borrowers can voluntarily make payments to the servicer for the purpose of satisfying an escrow account deficiency. Hence, a voluntary, unsolicited payment to the servicer to satisfy an escrow account deficiency equal to or more than one month's escrow account payment by the consumer is not a violation of Regulation X as long as such information is not included on the annual escrow account statement and does not appear to indicate that a lump sum payment is something that the servicer requires, but that it is an entirely voluntary option for the borrower.

Last updated: June 2, 2021

9. Can a servicer communicate to the borrower that the borrower may voluntarily provide a lump sum payment to satisfy an escrow deficiency if they choose to?

Yes, provided that the communication is not in the annual escrow account statement itself and does not appear to indicate that a lump sum payment is something that the servicer requires but rather is an entirely voluntary option. The specified repayment options in Regulation X are exclusive. Therefore, servicers cannot include in the annual escrow statement any options for repayment of deficiencies that are not specified in Regulation X, such as a lump sum payment option that is greater than or equal to one month's escrow payment. 12 CFR § 1024.17(f)(4)(i) and (ii); 12 CFR § 1024.17(i)(vii).

Regulation X does not, however, prohibit a servicer from including other statements or materials in the same envelope as the annual escrow statement or in an entirely separate communication that provides general information regarding the operation of a borrower's escrow account or additional guidance on ways in which a borrower may manage or make voluntary payments into their escrow account. 12 CFR § 1024.17(i)(3).

Regulation X does not govern whether borrowers can voluntarily make payments in any amount into the escrow account at any time. Hence, informing the consumer that voluntary payment of any amount to the servicer to satisfy the escrow account deficiency is not a violation of Regulation X as long as such information is not included on the annual escrow account statement and does not appear to indicate that a lump sum payment is something that the servicer requires, but that it is an entirely voluntary option.

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10. If a charge will terminate during the escrow account computation year and disbursements related to that charge will no longer need to be made, how does the servicer factor this into the escrow account analysis?

For the escrow account analysis, the servicer estimates the amount of items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer must use that amount in estimating disbursement amounts. 12 CFR § 1024.17(c)(7). Thus, if the servicer knows that a charge will terminate in the next computation year, it must use that information for the escrow account analysis and adjust the charges to the borrower, as applicable.

For example, if a borrower is current at the time of the escrow analysis and the servicer's system reflects that charges for private mortgage insurance (PMI) will terminate during the next computation year pursuant to the Homeowners Protection Act, then the servicer must consider the PMI termination date for the escrow account analysis and adjust the charges to the borrower, as applicable. However, if the borrower is not current at the time of the escrow account analysis and the servicer's system reflects that the charges for PMI will not terminate during the next computation year, then the servicer must also consider the extension of the termination date and adjust the charges to the borrower, as applicable.

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11. What can a servicer do if, during the course of the escrow account computation year, the amount of costs to be paid from the escrow account will decrease or increase beyond the amounts anticipated from the escrow account analysis that was conducted before the annual escrow account statement was prepared?

A servicer can conduct another escrow account analysis to confirm whether the change will result in a surplus, shortage, or deficiency. The servicer can then provide a short year escrow account statement to reset the escrow account computation year and inform the consumer what actions the servicer will take to address the surplus, shortage, or deficiency. 12 CFR 1024.17(c)(3), (f) and (i)(4).

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Escrow Accounts: Public Guidance Documents

1. What are escrow disclosure Public Guidance Documents?

Under Regulation X, "Public Guidance Documents" are Federal Register documents adopted or published, that the Bureau may amend in the future. 12 CFR 1024.2(b). These documents may also be provided by the Bureau in response to written requests for such documents. The Public Guidance Documents that reference escrows disclosures are referred to as Escrow Disclosure Public Guidance Documents.

For example, section 1024.17(h)(1) references Public Guidance Documents for initial escrow account statements which are published in the Federal Register under the titles "Initial Escrow Account Disclosure Statement—Format" and "Initial Escrow Account Disclosure Statement—Example."

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2. Where can I find the Escrow Disclosure Public Guidance Documents? Do these documents differ from HUD's Escrow Disclosure Public Guidance Documents?

The Escrow Disclosure Public Guidance Documents can be found on the Bureau's mortgage servicing webpage and the RESPA webpage under the "additional materials" section. The Bureau has maintained HUD's definition of Public Guidance Documents in Regulation X since assuming authority for RESPA and its implementing regulation, Regulation X, in 2011. The Bureau has not issued any new escrow disclosure Public Guidance Documents under RESPA or any other statements about the HUD Public Guidance Documents.

The Bureau maintains a list of escrow disclosure appendices that were removed from the CFR and converted into Public Guidance Documents by HUD's 1996 Streamlining Final Rule. 61 FR 13232 (Mar. 26, 1996). Public Guidance Documents are not "rules, regulations, or interpretations" of the Bureau for purposes of RESPA section 19(b). 12 CFR § 1024.4(a)(2)

Examples of escrows disclosure appendices in Public Guidance Documents include:

- HUD's 1994 Final Escrow Accounting Rule – 59 FR 53890 (Oct. 26, 1994).
- HUD's February 1995 Final Escrow Accounting Rule including appendices with revised escrow disclosure formats and examples – 60 FR 8812 (Feb. 15, 1995).
- HUD's May 1995 Final Escrow Accounting Rule titled "Correcting Amendment and Clarifications" which includes several revised escrow formats and a revision of an example – 60 FR 24734 (May 9, 1995).
- HUD's March 1996 RESPA Streamlining Final Rule – 61 FR 13232 (Mar. 26, 1996). This removes the escrow disclosure format and examples from the CFR as appendices to Regulation X and designates them "public guidance documents."
- HUD's January 1998 Final Escrow Accounting Rule – 63 FR 3214 (Jan. 21, 1998). This adds a new public guidance document concerning a notice for voluntary escrow account payments.

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