

P.O. Box 2211
Loveland, CO 80539
www.a-e-a.org



October 18, 2021

BY ELECTRONIC TRANSMISSION ONLY TO:

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re: Proposed Interagency Guidance on Third-Party Relationships: Risk
Management

**FEDERAL RESERVE SYSTEM [Docket No. OP-1752], FEDERAL DEPOSIT
INSURANCE CORPORATION RIN 3064-ZA26, DEPARTMENT OF THE
TREASURY Office of the Comptroller of the Currency [Docket ID OCC-2021-
0011]**

Ms. Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System (Board)
20h Street & Constitution Avenue, NW
Washington, DC 20551

James P. Sheesley Assistant Executive Secretary
Federal Deposit Insurance Corporation (FDIC)
Attention: Comments-RIN 3064-ZA26, Legal ESS
550 17th Street NW
Washington, DC 20429

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency (OCC)
400 7th Street, SW Suite 3E-218
Washington, DC 20219

Dear Ladies and Gentlemen:

I am writing on behalf of the members of the American Escrow Association (AEA), the nation's trade association on federal matters for real estate settlement agents. Our members work for businesses who provide escrow and

other forms of settlement (closing) services. We are submitting our views on this proposed guidance issued with request for public comment. We appreciate the open process and this opportunity to place our comments in the public record for the consideration of the Board, the FDIC, and the OCC.

As settlement agents (also referred to herein as escrow or escrow settlement agents) AEA members have substantial experience in closing residential real estate transactions including those with a loan closing component managed and conducted for a financial institution. (We are limiting our remarks to residential closings in particular those subject to federal banking and consumer protection laws.)

Our experiences include purchase-sale transactions involving a new loan, as well as refinance transactions. A very significant number of loan closings and the related steps, including those to protect the lender, are handled by an outside settlement company and personnel rather than “in-house.” All the documents and disbursement funds for the closing, including recorded instruments and recording fees requiring local knowledge both at the state and county level, pass through the hands of the escrow agent. She or he discharges all liens affecting the marketability of title, pays for the services rendered in the course of the transaction, and finally disburses net proceeds if applicable.

In addition, there are many advantages to this way of conducting an efficient and smooth closing including for such matters as mandatory federal disclosures under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). In this regard settlement agents and lenders collaborate to meet federal law. For example in a refinance transaction escrow is opened by the lender and a title report is ordered by the escrow settlement agent. An estimate of the escrow fees, title premium, endorsement fees, recording fees and charges for other ancillary services is provided by the escrow settlement agent to the lender, enabling the lender to complete the timely delivery of an estimate to the consumer.

The escrow agent will then typically collaborate further with the lending institution regarding the mandatory combined TILA-RESPA Closing Disclosure (CD) required of the lender, that factors in the requisite number of days for consumer review, prior to receiving actual loan documents. The standard practice is the lender, under their processes, sends their CD to the consumer to review and sign and the escrow settlement agent does not explain or obtain the signature(s) on this document unless the lender requests the escrow agent take on the CD disclosure requirements. The escrow agent will provide a finalized

version of both the closing (settlement) statement generated by their system and the CD to the consumer at the time they sign their loan documents.

In summary a guided and managed process that employs the specific skills of the outside settlement agent and close coordination and collaboration between the lender and settlement agent during the course of the transaction.

With that as background, we have two specific areas of general comments as follows.

1. We agree with your taking a “tailored approach” (Preamble III. C., 86 FR 38185) to third-party risk analysis given the varying levels of risk in business relationships. We believe the lender-settlement agent relationship merits a narrowly tailored approach which would require an additional section (or exception) in the guidance and is further explained below.
2. In the Scope section (Preamble III. B., 86 FR 38185) the question is asked “3. In what ways, if any, could the proposed description of third-party relationships be clearer?” As we read the proposal including preamble and text it is quite clear that a real estate settlement agent handling a loan closing would be considered a covered third-party relationship. The question then becomes whether, in addition to the elaborate total framework presented, there should also be a somewhat narrower framework for such services as outside settlement agents and perhaps others such as attorneys and auditors as well. They all have a set of professional standards and internal and licensure guidelines to follow. It appears to us this addition to the guidance could be in connection with the business arrangement definitional section which could be framed to delimit the scope (in the listed arrangements) with wording such as “certain business arrangements may have a sufficiently limited role and standard ongoing safeguards built into the relationship that the risk management approach may be mostly transactional due diligence. For example with settlement agents, topics of concern and focus would be on such matters as policies on cybersecurity, data (information security) protection and privacy.” Note also, escrow agents are directly governed by certain Federal Trade Commission rules including the “Safeguards Rule.”

However before going forward with additional specifics we don’t know if there may be future FAQs or if the proposed guidance may be the sole source of guidance. Either way there are other considerations such as the fact that the escrow agent always operates in a limited, specific purpose role, does not have access to the LOS (loan origination system) of the financial institution and is

always guided by written closing instructions which must be strictly followed. Ultimately the chief risk issue is the handling of a lot of private information (but not retention in the file)—such as the ULA (uniform loan application), other information and documents, and the handling of funds—which are well-managed, with detailed accountings and audits, by being placed into and disbursed from a pooled trust account held by a financial institution. All of those are appropriate subjects for proper scrutiny and assurances but also have a very long history of adequate risk management through policies and procedures including internal company guidelines, and thus do not require a full-blown life-cycle approach.

We would be pleased to participate in helping to draft additional details on the points above after all comments are reviewed. In summary, we see the need to clarify the description of the third-party relationship in the case of settlement agents handling loan closings with some additional guidance on reduced risk levels that are part and parcel of this relationship.

Thank you for your consideration of our comments.

Our primary drafter and his contact information for questions is:

Arthur E Davis III
Washington DC Representative
American Escrow Association
art.davis@a-e-a.org; mobile 703-625-9288

Sincerely,



Donna Inman
2021-2022 President
American Escrow Association