

Real Estate Settlement Procedures Act Program

EXAMINATION OBJECTIVES

To determine if the financial institution has established procedures to ensure compliance with RESPA.

To determine that the financial institution does not engage in any practices prohibited by RESPA, such as kickbacks, payment or receipt of referral fees or unearned fees, or excessive escrow assessments.

To determine if the Special Information Booklet, Good Faith Estimate, Uniform Settlement Statement (Form HUD-1 or HUD-1A), mortgage servicing transfer disclosures, and other required disclosures are in a form that complies with Regulation X, are properly completed, and provided to borrowers within prescribed time periods.

To determine if the institution is submitting the required initial and annual escrow account statements to borrowers as applicable and complying with established limitations on escrow account arrangements.

To determine whether the institution is responding to borrower inquiries for information relating to the servicing of their loans in compliance with the provisions of RESPA.

EXAMINATION PROCEDURES

If the financial institution has loans covered by the act, determine whether the institution's policies, practices and procedures are in compliance.

1. Review the types of loans covered by RESPA and applicable exemptions.

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2. Review the Special Information Booklet, good faith estimate (GFE) form, Uniform Settlement Statement form (HUD-1 or HUD-1A), mortgage servicing transfer disclosure forms, and affiliated business arrangement disclosure form for compliance with the requirements of Regulation X. Review model forms in the appendices to the regulation and after §3500.21.
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3. Review written loan policies and operating procedures in connection with federally related mortgage loans and discuss them with institution personnel.
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4. Interview mortgage lending personnel to determine:

- Identity of persons or entities referring federally related mortgage loan business;
 - The nature of services provided by referral sources, if any;
 - Settlement service providers used by the institution;
 - When the Special Information Booklet is given;
 - The timing of the good faith estimate and how fee information is determined;
 - Any providers whose services are required by the institution;
 - How borrower inquiries regarding loan servicing are handled and within what time frames; and
 - Whether escrow arrangements exist on mortgage loans;
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5. Assess the overall level of knowledge and understanding of mortgage lending personnel.
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Special Information Booklet

1. Determine through discussion with management and review of credit files whether the Special Information Booklet, if required, is provided within 3 business days after the financial institution or broker receives a written application for a loan.
[§3500.6(a)(1)].
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Good Faith Estimate

1. Determine whether the financial institution provides a good faith estimate of charges for settlement services, if required, within three business days after receipt of a written application. [§3500.7(a)].

2. Review Appendix C of Regulation X to determine if the good faith estimate appears in a similar form and contains the following required elements: [§3500.7(c) and (d)].
 - The lender's name. If the GFE is being given by a broker, instead of the lender, the GFE must contain a legend in accordance with Appendix C.
 - An estimate of all charges listed in Section L of the HUD-1 or HUD-1A, expressed either as a dollar amount or range. For “no cost” or “no point” loans, charges to be shown on the GFE including payments to be made to affiliated or independent settlement service providers (shown on HUD-1 or HUD-1A as “paid outside of closing”).
 - An estimate of any other charge the borrower will pay based upon common practice in the locality of the mortgaged property.

3. Review Form HUD-1 or HUD-1A prepared in connection with the transaction to determine if amounts shown on the GFE are reasonably similar to fees actually paid by the borrower. [§3500.7(c)(2)]. Note: the definition of “reasonably” is subject to interpretation by HUD.

4. Determine through review of the institution's good faith estimates, HUD-1 and HUD-1A forms, and discussions with management whether the financial institution requires the borrower to use the services of a particular individual or firm for settlement services. [§3500.7(e)].
 - In cases where the lender requires the use of a particular provider of a settlement service (except the lender's own employees) AND requires the borrower to pay any portion of the cost, determine if the GFE includes:

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- The fact that the particular provider is required;
 - The fact that the estimate is based on the charges of the designated provider;
 - The name, address, and telephone number of each provider; and
 - The specific nature of any relationship between the provider and the lender [see §3500.7(e)(2)].
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5. If the lender maintains a list of required providers (five or more for each service) and, at the time of application has not chosen the provider to be selected from the list, determine that the lender satisfies the GFE requirements by providing a written statement that the lender will require a particular provider from a lender-controlled list and by providing the range of costs for the required providers. The name and actual cost must be reflected on the HUD-1 or HUD-1A.
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Uniform Settlement Statement Form (HUD-1 and HUD-1A)

1. Determine if the financial institution uses the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate [§3500.8 (a)] and that:
- Charges are properly itemized for both borrower and seller in accordance with the instructions for completion of the HUD-1 or HUD-1A (Appendix A).
 - All charges paid to one other than the lender are itemized and the recipient named. [§3500.8(b); Appendix A].
 - Charges required by the financial institution but paid outside of closing are itemized on the settlement statement, marked as “paid outside of closing” or “P.O.C.,” but not included in totals. [§3500.8(b); Appendix A].
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2. If the financial institution conducts settlement, determine whether:
- The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement. [§3500.10(a)].

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- The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement. [§3500.10(b)].
 - In cases where the right to delivery is waived or the transaction is exempt, the statement is mailed as soon as possible after settlement. [(3500.10(b),(c), and (d)].
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3. Determine whether HUD-1 and HUD-1A forms are retained for 5 years. If the financial institution disposes of its interest in the mortgage and does not service the loan, the HUD-1 or HUD-1A form must be transferred with the loan file. [§3500.10(e)].
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Mortgage Servicing Transfer Disclosure

1. Determine whether the disclosure form is substantially in conformity with the model disclosure in Appendix MS-1.

2. Determine that the applicant received the mortgage servicing transfer disclosure at the time of application. If the application was not taken face-to-face, the disclosure must have been provided within three business days after receipt of the application. [§3500.21(c)].

3. Determine that the disclosure states whether the loan may be assigned or transferred while outstanding. [§3500.21(b)(3)].

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Notice to Borrower of Transfer of Mortgage Servicing

1. Determine whether the institution has transferred or received mortgage servicing rights.

2. If it has transferred servicing rights, determine whether notice to the borrower was given at least 15 days prior to the transfer. [§3500.21(d)(2)].

3. If it has received servicing rights, determine whether notice was given to the borrower within 15 days after the transfer. [§3500.21(d)(2)].

4. Determine whether the notice by transferor and transferee include the following information. Sample language for the notice of transfer is contained in Appendix B to [§3500.21(d)(3)].
 - The effective date of the transfer;
 - The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect call telephone number for an employee or department of the transferee servicer;
 - A toll-free or collect call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries,
 - The date on which the present servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan;
 - Any information concerning the effect of the transfer on the availability of terms of optional insurance and any action the borrower must take to maintain coverage;

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- A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing; and,
 - A statement of the borrowers rights in connection with compliant resolution (Appendix MS-2.)
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Responsibilities of Servicer

1. Through a review of late notices or otherwise if the transferor servicer received payment, determine that no late fees have been imposed and that no payments have been treated as late within 60 days following a transfer of servicing. [§3500.21(d)(5)].
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2. Determine that the institution, as loan servicer for mortgage loans and refinancings subject to RESPA, responds to borrower inquiries relating to these loans as prescribed in the regulation, including:
 - Provide the notice of receipt of inquiry for qualified written correspondence from borrowers within 20-business days (unless the action requested is taken within that period and the borrower is notified in writing of that action), [§3500.21(e)(1)].
 - Provide written notification of the corrections taken on the account, or statement of the reasons the account is correct or explanation why the information requested is unavailable not later than 60-business days after receipt of the qualified written correspondence from the borrower, [§3500.21(e)(3)]
 - Determine that the institution does not provide information to any consumer reporting agency regarding overdue payment when investigating a qualified written request from borrower regarding disputed payments during this 60-business day period. [§3500.21(e)(4)(i)].
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No Fees for RESPA Disclosures

1. Determine whether the financial institution charges a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act. [§3500.12].
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Purchase of Title Insurance

1. When the financial institution owns the property being sold, determine whether it requires or gives the impression that title insurance is required from a particular company. [§3500.16]
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Payment or Receipt of Referral or Unearned Fees

1. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees. [RESPA 8; §3500.14].
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2. Through interviews with institution management and personnel, file reviews, review of good faith estimates, and HUD-1 and HUD-1A, determine if federally related mortgage loan transactions are referred by brokers, affiliates, or other parties. Identify those parties. Also, identify persons or entities to which the institution refers services in connection with a federally related mortgage transaction.
 - Identify the types of services rendered by the broker, affiliate, or service provider.
 - By a review of the institution's general ledger or otherwise, determine if fees were paid to the institution or any parties identified.

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- Confirm that any fees paid to the broker, affiliate, service provider, or other party meet the requirements of section 3500.14(g) and are for goods or facilities actually furnished or services actually an attorney, credit reporting agency or appraiser representing the lender, was the use of a provider required. [§3500.15(b)(2)].
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Affiliated Business Arrangements

1. Determine from the HUD-1 or HUD-1A and from interviews with institution management if an affiliated business arrangement exists between a referring party and any provider of settlement services. (§3500.15). If so, determine which providers the lender requires and that the Affiliated Business Arrangement disclosures statement (Appendix D) was provided as required by section 3500.15(b)(1).
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2. An attorney, credit reporting agency, or appraiser representing the lender, was the use of a provider required. [§3500.15(b)(2)].
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Escrow Accounts

If the institution maintains escrow accounts in connection with a federally related mortgage loan, complete the following procedures.

1. Determine whether the institution performed an initial escrow analysis [§3500.17(c)(2)] and provided the initial escrow statement required by section 3500.17(g). The statement must contain the following:
 - Amount of monthly payment;
 - Portion of the monthly payment being placed in escrow;
 - Charges to be paid from the escrow account during the first 12 months;

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- Disbursement dates; and,
 - Amount of cushion.
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2. Determine if the statement was given to the borrower at settlement or within 45 days after the escrow account was established. This statement may be incorporated into the HUD-1 statement. [§3500.17(g)(1)].
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3. Determine whether the institution performs an annual analysis of the escrow account [§3500.17(c)(3) and (7), and 3500.17(i)].
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4. Determine whether the annual escrow account statement is provided to the borrower within 30 days of the end of the computation year [§3500.17(i)].
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5. Determine if the annual escrow statement contains the following:
- Amount of monthly mortgage payment and portion that went placed in escrow;
 - Amount of past year's monthly mortgage payment and portion that went into escrow;
 - Total amount paid into escrow during the past computation year;
 - Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
 - Balance in the escrow account at the end of the period;
 - How a surplus, shortage, or deficiency is to be paid/handled; and,
 - If applicable, the reason why estimated low monthly balance was not reached.
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6. Determine whether monthly escrow payments following settlement are within the limits of (3500.17(c)).
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EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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