

Real Estate Settlement Procedures Act

Background

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC 2601-17), which is implemented by the Department of Housing and Urban Development's Regulation X (24 CFR 3500), became effective in June 1975. The act requires lenders, mortgage brokers, and servicers of home loans to provide borrowers with pertinent and timely disclosures about the nature and costs of the real estate settlement process. It also protects borrowers against certain abusive practices, such as kickbacks, and places limitations on the use of escrow accounts.

Since its enactment, RESPA has been amended several times to cover, among other things, subordinate loans; required disclosures for the transfer, sale, or assignment of mortgage servicing; rules for mortgage escrow accounts, including the accounting method to be used for these accounts; required disclosures; and the established formats and procedures for initial and annual escrow statements.

Coverage—Section 3500.5(a)

RESPA is applicable to all federally related mortgage loans. *Federally related mortgage loans* are loans, including refinances, secured by a first or subordinate lien on residential real property upon which

- A one- to four-family structure is located or is to be constructed using proceeds of the loan (including individual units of condominiums and cooperatives) or
- A manufactured home is located or is to be constructed using proceeds of the loan

In addition, the federally related mortgage loan must meet one of the following conditions:

- Made by a lender,¹ creditor,² or dealer³
- Made by or insured by an agency of the federal government

1. A *lender* includes a financial institution either regulated by or whose deposits or accounts are insured by any agency of the federal government.

2. A *creditor* is defined in section 103(f) of the Consumer Credit Protection Act (15 USC 1602(f)). RESPA covers any creditor that makes or invests in residential real estate loans aggregating to more than \$1,000,000 a year.

3. *Dealer* is defined in Regulation X as a seller, contractor, or supplier of goods or services. Dealer loans are covered by RESPA if the obligations are to be assigned before the first payment is due to any lender or creditor otherwise subject to the regulation.

- Made in connection with a housing or urban development program administered by an agency of the federal government
- Made by and intended to be sold by the originating lender or creditor to FNMA, GNMA, or FHLMC (or its successor)⁴
- Subject of a home equity conversion mortgage or a reverse mortgage issued by a lender or creditor subject to the regulation
- Made by a lender, dealer, or creditor subject to the regulation and used in whole or in part to fund an installment sales contract, land contract, or contract for deed on otherwise qualifying residential property

Exemptions—Section 3500.5(b)

The following transactions are exempt from RESPA:

- A loan on property of twenty-five acres or more (whether or not a dwelling is located on the property)
- A loan primarily for business, commercial, or agricultural purposes (as defined in section 226.3(a)(1) of Regulation Z)
- A temporary loan, such as a construction loan (The exemption does not apply if the loan is used as, or may be converted to, permanent financing by the same financial institution.) If the lender issues a commitment for permanent financing, the loan is covered. A construction loan with a term of two years or more is covered unless it is made to a bona fide contractor. "Bridge" and "swing" loans are not covered.
- A loan secured by vacant or unimproved property when no proceeds of the loan will be used to construct a one- to four-family residential structure. If the proceeds will be used to locate a manufactured home or construct a structure within two years from the date of settlement, the loan is covered.
- An assumption, unless the mortgage instruments require lender approval for the assumption and the lender actually approves the assumption
- A renewal or modification when the original obligation (note) is still in effect but modified
- A bona fide transfer of a loan obligation in the secondary market (However, the mortgage servicing transfer disclosure requirements of

4. FNMA, Federal National Mortgage Association; GNMA, Government National Mortgage Association; FHLMC, Federal Home Loan Mortgage Corporation.

24 CFR 3500.21 still apply.) Mortgage broker transactions that are table-funded (that is, the loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds) are not secondary-market transactions and therefore are covered by RESPA.

The exemption does not apply if there is a transfer of title to the property.

Requirements

Special Information Booklet (§ 3500.6)

A financial institution is required to provide a borrower with a copy of the “special information booklet” at the time a written application is submitted or no later than three business days after the application is received. If the application is denied before the end of the three-business-day period, the institution is not required to provide the booklet. If the borrower uses a mortgage broker, the broker rather than the institution must provide the booklet.

- An application includes the submission of a borrower’s financial information, either written or computer generated, for a credit decision on a federally related mortgage loan. To be considered a written application, the submission must state or identify a specific property. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan. (section 3500.2(b))
- A financial institution that complies with Regulation Z for open-end home equity plans is deemed to have complied with this section of the regulation.
- The booklet does not need to be given for refinancing transactions, closed-end subordinate-lien mortgage loans, or reverse mortgage transactions or for any other federally related mortgage loan not intended for the purchase of a one- to four-family residential property.

Part 1 of the booklet describes the settlement process and the nature of charges and suggests questions to be asked of lenders, attorneys, and others to clarify what services they will provide for the charges quoted. It also contains information on the rights and remedies available under RESPA and alerts borrowers to unfair or illegal practices.

Part 2 contains an itemized explanation of settlement services and costs, as well as sample forms and worksheets for comparing costs. The appendix in the booklet has a list of consumer literature on home purchasing, maintenance protection, and related topics.

Good Faith Estimates of the Amount or Range of Settlement Costs (§ 3500.7)

A financial institution must provide, in a clear and concise form, a good faith estimate (GFE) of the amount of settlement charges the borrower is likely to incur. The GFE must include all charges that will be listed in section L of the HUD-1 settlement statement and must be provided no later than three business days after the written application is received. The estimate for each settlement service may be an estimate of the dollar amount or a range of dollar amounts. However the estimate is stated (amount or range), for each charge the estimate (1) must bear a reasonable relationship to the borrower’s ultimate cost for each settlement charge and (2) must be based on experience in the locality or area in which the property involved is located. A suggested form is set forth in appendix C to Regulation X. If the application is denied before the end of the three-business-day period, the institution is not required to provide a GFE.

- A financial institution that complies with Regulation Z for open-end home equity plans is deemed to have complied with this section.
- For “no cost” or “no point” loans, the GFE must disclose any payments to be made to affiliated or independent settlement service providers. These payments should be shown as P.O.C. (paid outside of closing).
- For dealer loans, the institution is responsible for providing the GFE directly to the consumer or for ensuring that it is provided by the dealer.
- For brokered loans, if the mortgage broker is the exclusive agent of the institution, either the institution or the broker must provide the GFE within three business days after the broker receives or prepares the application. When the broker is not the exclusive agent of the institution, the institution is not required to provide the GFE if the broker has already provided it. However, the funding lender must ascertain that the GFE has been delivered.

If the financial institution requires the use of a particular settlement service provider and requires the borrower to pay all or a portion of the cost of those services, the institution must include with the GFE the following disclosures:

- A statement that use of the provider is required and that the estimate is based on the charges of the designated provider
- The name, address, and telephone number of the designated provider
- A description of the nature of any relationship between each such provider and the institu-

tion. A relationship exists if any of the following apply:

- The provider is an associate of the institution, as defined in section 3(8) of RESPA (12 USC 2602(8))
- The provider has maintained an account with the institution or had an outstanding loan or credit arrangement with the institution within the past twelve months
- The institution has repeatedly used or required borrowers to use the provider's services within the past twelve months
- A statement explaining that except for a provider that is the institution's chosen attorney, credit-reporting agency, or appraiser, if the institution has an affiliated business relationship with the provider, the institution may not require use of that provider (24 CFR 3500.15)

If the institution maintains a controlled list of required providers (five or more for each discrete service) or relies on a list maintained by others and at the time of the application has not decided which provider will be selected, the institution may comply with this section by

- Providing a written statement that the institution will require a particular provider from an approved list and
- Disclosing in the GFE the range of costs for the required providers and providing the name of the specific provider and the actual cost on the HUD settlement statement

If the list contains fewer than five providers of service, the names, addresses, telephone numbers, and costs are required along with an explanation of the business relationship.

Uniform Settlement Statements (HUD-1 and HUD-1A) (§ 3500.8)

The HUD-1 and HUD-1A settlement statements must be completed by the person (settlement agent) conducting the closing and must conspicuously and clearly itemize all charges related to the transaction. The HUD-1 is used for transactions in which there is a borrower and a seller. It may also be used for transactions in which there is a borrower but no seller (refinancings and subordinate-lien loans) by completing the borrower's side of the statement; alternatively, the HUD-1A may be used for borrower-only transactions.

No settlement statement is required for home equity plans subject to the Truth in Lending Act and Regulation Z.

Appendix A to Regulation X gives instructions for completing the two forms.

Printing and Duplication of Settlement Statements (§ 3500.9)

Financial institutions have numerous options for layout and format in reproducing the HUD-1 and HUD-1A settlement statements. The following variations do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; spacing; printing on separate pages, the front and back of a single page, or one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; addition of signature lines; and translation into any language. Other changes may be made only with the approval of the Secretary of Housing and Urban Development.

One-Day Advance Inspection of Settlement Statements (§ 3500.10)

Upon request by the borrower, the HUD-1 or HUD-1A settlement statement must be completed and made available for inspection during the business day immediately preceding the day of settlement. The statement must set forth those items known at that time by the person conducting the closing.

Delivery of Settlement Statements (§§ 3500.10(a) and 3500.10(b))

The completed HUD-1 or HUD-1A settlement statement must be mailed or delivered to the borrower, the seller (if there is one), and the lender (if the lender is not the settlement agent) or their agents at or before settlement. However, the borrower may waive the right of delivery by executing a written waiver at or before settlement. If the borrower or the borrower's agent does not attend the settlement, the settlement statement must be mailed or delivered as soon as practicable after settlement.

Retention of Settlement Statements (§ 3500.10(e))

The financial institution must retain each completed HUD-1 or HUD-1A settlement statement and related documents for five years after settlement, unless the institution disposes of its interest in the mortgage and does not service the mortgage. If the loan is transferred, the institution must provide a copy of the statement to the owner or servicer of the mortgage as part of the transfer. The owner or servicer must retain the statement for the remainder of the five-year period.

Prohibition of Fees for Preparing Federal Disclosures— Section 3500.12

For loans subject to RESPA, no fee may be charged for preparing the settlement statement or the escrow account statement or any disclosures required by the Truth in Lending Act.

Prohibition against Kickbacks and Unearned Fees—Section 3500.14

Any person who gives or receives a fee or a thing of value (a payment, commission, fee, gift, or special privilege) for the referral of settlement business is in violation of section 8 of RESPA. Payments in excess of the reasonable value of goods provided or services rendered are considered kickbacks. Appendix B to Regulation X provides guidance on the meaning and coverage of the prohibition against kickbacks and unearned fees.

Penalties and Liabilities

Civil and criminal liability is provided for violating the prohibition against kickbacks and unearned fees, including

- Civil liability to the parties affected equal to three times the amount of any charge paid for such settlement service
- The possibility that the costs associated with any court proceeding, together with reasonable attorney's fees, could be recovered
- A fine of not more than \$10,000 or imprisonment for not more than one year, or both, for each violation

Affiliated Business Arrangements— Section 3500.15

If a financial institution has either an affiliate relationship or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services and the lender directly or indirectly refers business to the provider, this relationship is an affiliated business arrangement. An affiliated business arrangement is not a violation of section 8 of RESPA or of section 3500.14 of Regulation X if the following conditions are satisfied:

- Prior to the referral, the person making each referral has provided, to each person whose business is referred, an affiliated business arrangement disclosure statement (Appendix D to Regulation X). This disclosure must specify both

- The nature of the relationship (explaining the ownership and financial interest) between the provider and the financial institution and
- The estimated charge or range of charges generally made by such provider

This disclosure must also be provided on a separate piece of paper either at the time of loan application, or with the GFE, or at the time of the referral.

Generally, the institution may not require the use of such a provider. The institution may, however, require a buyer, borrower, or seller to pay for the services of an attorney, credit-reporting agency, or real estate appraiser chosen by the institution to represent its interest. The only thing of value the institution may receive is a return on an ownership or franchise interest or a payment otherwise permitted by RESPA.

Title Companies—Section 3500.16

Financial institutions that hold legal title to the property being sold are prohibited from requiring borrowers, either directly or indirectly, to use a particular title company. Civil liability for violating this provision is an amount equal to three times the total of all charges made for such title insurance.

Escrow Accounts—Section 3500.17

HUD's escrow accounting rule, known as aggregate accounting, establishes formats and procedures for initial and annual escrow account statements.

Under the rule, the amount of escrow funds that may be collected at settlement or upon creation of an escrow account is restricted to an amount sufficient to pay charges, such as taxes and insurance, that are attributable to the period from the date such payments were last paid until the initial payment date. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth of the total annual escrow payments that 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 of the estimated total annual payment from the account.

Escrow Account Analysis (§§ 3500.17(c)(2) and 3500.17(c)(3))

Before establishing an escrow account, a servicer must conduct an analysis to determine the periodic payments and the amount to be deposited. The servicer must use an escrow disbursement date

that is on or before the earlier of (1) the deadline to take advantage of discounts, if available, or (2) the deadline to avoid a penalty. The servicer must also analyze each account at the completion of the computation year to determine the borrower's monthly payments for the next computation year.

Transfer of Servicing (§ 3500.17(e))

If a new servicer changes either the monthly payment amount or the accounting method used by the former servicer, it must provide the borrower with an initial escrow account statement within sixty days of the date of transfer. When the new servicer provides an initial escrow account statement, it must use the effective date of the transfer of servicing to establish the new escrow account computation year. In addition, if the new servicer retains the monthly payments and accounting method used by the former servicer, the new servicer may continue to use the same computation year established by the former servicer or may choose a different one, using a short-year statement.

Shortages, Surpluses, and Deficiencies Requirements (§ 3500.17(f))

The servicer must conduct an annual escrow account analysis to determine whether a surplus, shortage, or deficiency exists, as defined in section 3500.17(b).

If the escrow account analysis discloses a *surplus*, the servicer must, within thirty days from the date of the analysis, refund the surplus to the borrower if the surplus is \$50 or more. If the surplus is less than \$50, the servicer may refund such amount to the borrower or credit the amount against the next year's escrow payments. These provisions apply as long as the borrower's mortgage payment is current at the time of the analysis.

If the escrow account analysis discloses a *shortage of less than one month's escrow payments*, the servicer may do any of the following:

- Allow the shortage to exist and do nothing to change it
- Require the borrower to repay the shortage amount within thirty days
- Require the borrower to repay the shortage amount in equal monthly payments over at least a twelve-month period

If the analysis shows a *shortage more than or equal to one month's escrow payment*, the servicer may do either of the following:

- Allow the shortage to exist and do nothing to change it

- Require the borrower to repay the shortage in equal monthly payments over at least a twelve-month period

If the escrow account analysis discloses a *deficiency*, 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*, the servicer may do any of the following:

- Allow the deficiency to exist and do nothing to change it
- Require the borrower to repay the deficiency within thirty days
- Require the borrower to repay the deficiency in two or more equal monthly payments

If the *deficiency is equal to or more than one month's escrow payment*, the servicer may do either of the following:

- Allow the deficiency to exist and do nothing to change it
- Require the borrower to repay the deficiency in two or more equal monthly payments

These provisions for eliminating deficiencies and shortages apply as long as the borrower's mortgage payment is current at the time of the escrow account analysis.

A servicer must notify the borrower at least once during the escrow account computation year if a shortage or deficiency exists in the account.

Initial Escrow Account Statement (§ 3500.17(g))

After analyzing each escrow account, a servicer must submit an initial escrow account statement to the borrower at settlement or within forty-five calendar days of settlement for escrow accounts that are established as a condition of the loan. The initial escrow account statement must include the monthly mortgage payment; the portion going to escrow; itemized estimated taxes, insurance premiums, and other charges; the anticipated disbursement dates of those charges; the amount of the cushion; and a trial running balance.

Annual Escrow Account Statement (§ 3500.17(i))

A servicer must submit to the borrower an annual statement for each escrow account within thirty days of the completion of the computation year. The servicer must conduct an escrow account analysis before submitting the annual statement to the borrower.

The annual escrow account statement must contain an account history; a projection for the next year; the amount of the current mortgage payment and the portion going to escrow; the amount of the past year's monthly mortgage payment and the portion that went to escrow; the total amount paid into the escrow account during the past year; the amount paid from the account for taxes, insurance premiums, and other charges; the balance at the end of the period; an explanation of how the surplus, shortage, or deficiency is being handled; and, if applicable, the reasons why the estimated low monthly balance was not reached.

Short-Year Statements (§ 3500.17(i)(4))

A short-year escrow account statement may be issued to end one escrow account computation year and establish the beginning date of the new computation year. Such a statement may be provided upon the transfer of servicing and is required upon loan payoff. The statement must be submitted to the borrower within sixty days after receipt of the payoff funds.

Timely Payments (§ 3500.17(k))

The servicer must pay escrow disbursements by the disbursement date. In calculating the disbursement date, 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.

Recordkeeping (§ 3500.17(l))

The servicer must keep easily retrievable records that reflect the servicer's handling of each borrower's escrow account. The records for each escrow account must be maintained for at least five years after the servicer last serviced the account.

Penalties (§ 3500.17(m))

Failure to provide an initial or annual escrow account statement to a borrower can result in the financial institution's or servicer's being assessed a civil penalty of \$55 for each such failure, with the total for any twelve-month period not to exceed \$110,000. If the violation is due to intentional disregard, the penalty is \$110 for each failure, with no annual cap on liability.

Mortgage Servicing Disclosures— Section 3500.21

Disclosures related to the transfer of mortgage servicing are required for first mortgage liens,

including all refinancing transactions. Subordinate-lien loans and open-end lines of credit (home equity plans) that are covered under the Truth in Lending Act and Regulation Z are exempt from this section of Regulation X.

A financial institution that receives an application for a federally related mortgage loan is required to provide the servicing disclosure statement to the borrower at the time of application if there is a face-to-face interview; otherwise, it must provide the statement within three business days after receiving the application.

When a federally related mortgage loan is assigned, sold, or transferred, the transferor (the current servicer) must provide a disclosure at least fifteen days before the effective date of the transfer. The same notice from the transferee (the new servicer) must be provided not more than fifteen days after the effective date of the transfer. Both notices may be combined in one notice if delivered to the borrower at least fifteen days before the effective date of the transfer. The disclosure must include

- The effective date of the transfer
- The name, address for consumer inquiries, and toll-free or collect-call telephone number of the transferee
- A toll-free or collect-call telephone number for an employee of the transferor who can be contacted by the borrower to answer servicing questions
- The date on which the transferor will cease accepting payments relating to the loan and the date on which the transferee will begin accepting such payments. The dates must be either the same or consecutive dates.
- Any information concerning the effect of the transfer on the terms or continued availability of mortgage life or disability insurance or any other type of optional insurance, and any action the borrower must take to maintain coverage
- A statement that the transfer does not affect the terms or conditions of the mortgage (except as related to servicing)
- A statement of the borrower's rights in connection with complaint resolution

During the sixty-day period beginning on the date of transfer, no late fee may be imposed on a borrower who has made the payment to the wrong servicer.

The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, the address to which payment must be delivered, the account number, or the amount of payment due:

- Transfers between affiliates
- Transfers resulting from mergers or acquisitions of servicers or subservicers
- Transfers between master servicers, when the subservicer remains the same

Servicers Must Respond to Borrower Inquiries (§ 3500.21(e))

A financial institution servicer must respond to a borrower's qualified written inquiry and must take appropriate action within established time frames after receiving the inquiry. Generally, the institution must provide written acknowledgment within twenty business days and must take certain specified actions within sixty business days after receiving the inquiry. The inquiry must include the name and account number of the borrower and the reasons the borrower believes the account is in error.

During the sixty-business-day period following receipt of a qualified written request from a borrower relating to a disputed payment, a financial institution may not provide information to any consumer reporting agency regarding any overdue payment relating to this period or to the qualified written request.

Relationship to State Law (§ 3500.21(h))

Financial institutions complying with the mortgage servicing transfer disclosure requirements of RESPA

are considered to have complied with any state law or regulation requiring notice to a borrower at the time of application or transfer of a mortgage.

State laws are not affected by the act, except to the extent that they are inconsistent, and then only to the extent of the inconsistency. The Secretary of Housing and Urban Development is authorized, after consulting with the appropriate federal agencies, to determine whether such inconsistencies exist.

Penalties and Liabilities (§ 3500.21(f))

Failure to comply with any provision of section 3500.21 of Regulation X will result in actual damages and, if there is a pattern or practice of noncompliance, any additional damages in an amount not to exceed \$1,000. In class action cases, each borrower will receive actual damages and additional damages, as the court allows, up to \$1,000 for each member of the class, except that the total amount of damages in any class action may not exceed the lesser of \$500,000 or 1 percent of the net worth of the servicer. In addition, in any successful action, the entity that failed to comply will be liable for the costs of the action and reasonable attorney's fees.

Real Estate Settlement Procedures Act

Examination Objectives and Procedures

EXAMINATION OBJECTIVES

1. To determine if the financial institution has established procedures to ensure compliance with RESPA
2. 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
3. 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 are provided to borrowers within prescribed time periods
4. To determine if the institution is submitting the required initial and annual escrow account statements to borrowers, as applicable, and is complying with established limitations on escrow account arrangements
5. 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
 - b. The nature of services provided by referral sources, if any
 - c. The settlement service providers used by the institution
 - d. When the special information booklet is given
 - e. The timing of the good faith estimate, and how fee information is determined
 - f. Any providers whose services are required by the institution
 - g. How borrower inquiries regarding loan servicing are handled, and within what time frames
 - h. Whether escrow arrangements exist for mortgage loans

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.
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 appendixes to the regulation and after section 3500.21.
3. Review written loan policies and operating procedures in connection with federally related mortgage loans and discuss them with institution personnel.
4. Interview mortgage lending personnel to determine
 - a. The identity of persons or entities referring federally related mortgage loan business

Special Information Booklet

6. Determine through discussion with management and review of credit files whether the special information booklet, if required, is provided within three business days after the financial institution or broker receives a written application for a loan. (§ 3500.6(a)(1))

Good Faith Estimate

7. 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))
8. Review appendix C to Regulation X to determine if the good faith estimate appears in a similar form and contains the following required elements: (§§ 3500.7(c) and 3500.7(d))
 - a. 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.
 - b. An estimate of all charges listed in section L of the HUD-1 or HUD-1A, expressed as either a dollar amount or a range—For “no cost” or “no point” loans, the charges to be shown on the GFE include payments to be made to affiliated or independent settlement service providers (shown on HUD-1 or HUD-1A as “paid outside of closing”).
 - c. An estimate of any other charge the bor-

- rower will pay based on common practice in the locality of the mortgaged property
9. Review the HUD-1 or HUD-1A prepared in connection with the lending 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.)
 10. 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 a particular individual or firm for settlement services. (§ 3500.7(e))
 - a. In cases in which 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 all of the following:
 - i. The fact that the particular provider is required
 - ii. The fact that the estimate is based on the charges of the designated provider
 - iii. The name, address, and telephone number of each provider
 - iv. The specific nature of any relationship between the provider and the lender (see section 3500.7(e)(2))
 11. 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.
 - c. Charges required by the financial institution but paid outside of closing are itemized on the settlement statement and marked as “paid outside of closing” or “P.O.C.,” but are not included in totals (§ 3500.8(b); appendix A)
 13. If the financial institution conducts settlement, determine whether
 - a. The borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day before settlement (§ 3500.10(a))
 - b. The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement (§ 3500.10(b))
 - c. In cases in which 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))
 14. Determine whether HUD-1 and HUD-1A forms are retained for five 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))

Mortgage Servicing Transfer Disclosure

15. 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))
16. Determine that the disclosure states whether the loan may be assigned or transferred while it is outstanding. (§ 3500.21(b)(3))

Notice to Borrower of Transfer of Mortgage Servicing

17. Determine whether the institution has transferred or received mortgage servicing rights.
18. If the financial institution has transferred servicing rights, determine whether notice to the borrower was given at least fifteen days prior to the transfer. (§ 3500.21(d)(2))
19. If the financial institution has received servicing rights, determine whether notice was given to the borrower within fifteen days after the transfer. (§ 3500.21(d)(2))
20. Determine whether the notices by transferor and transferee include the following information (sample language for the notice of transfer is contained in appendix B to section 3500.21(d)(3)):

Uniform Settlement Statement Forms (HUD-1 and HUD-1A)

12. Determine if the financial institution uses the current uniform settlement statement (the HUD-1 and HUD-1A forms) as appropriate (section 3500.8 (a)) and that
 - a. Charges for both borrower and seller are properly itemized in accordance with the instructions for completion of the HUD-1 or HUD-1A (appendix A to Regulation X)
 - b. All charges paid to someone other than the lender are itemized, and the recipient is named (§ 3500.8(b); appendix A)

- a. The effective date of the transfer
- b. The name, consumer inquiry addresses (including, at the option of the servicer, a separate address to which qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer
- c. 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
- d. The date on which the current servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan
- e. Any information concerning the effect of the transfer on the availability or terms of optional insurance, and any action the borrower must take to maintain coverage
- f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing
- g. A statement of the borrower's rights in connection with complaint resolution (appendix MS-2 to Regulation X)

Responsibilities of Servicer

- 21. 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 sixty days following a transfer of servicing. (§ 3500.21(d)(5))
- 22. 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
 - a. Provides the notice of receipt of inquiry for qualified written correspondence from borrowers within twenty 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))
 - b. Provides written notification of the corrections taken on the account, a statement of the reasons the account is correct, or an explanation of why the information requested is unavailable not later than sixty business days after receipt of the qualified written correspondence from the borrower (§ 3500.21(e)(3))

- c. Does not provide information to any consumer reporting agency regarding overdue payment when investigating a qualified written request from a borrower regarding disputed payments during the sixty-business-day period (§ 3500.21(e)(4)(i))

No Fees for RESPA Disclosures

- 23. Determine whether the financial institution charges a fee specifically for preparing and distributing HUD-1 forms, escrow statements, or documents required under the Truth in Lending Act. (§ 3500.12)

Purchase of Title Insurance

- 24. 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)

Payment or Receipt of Referral or Unearned Fees

- 25. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees. (§ 3500.14)
- 26. Through interviews with institution management and personnel, file reviews, and reviews of good faith estimates and HUD-1 and HUD-1A forms, 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.
 - a. Identify the types of services rendered by the broker, affiliate, or service provider.
 - b. By a review of the institution's general ledger or otherwise, determine if fees were paid to the institution or any parties identified.
 - c. 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 performed. These fees include payments to an affiliate or the affiliate's employees.

Affiliated Business Arrangements

- 27. 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 such an arrangement exists, determine which providers the lender requires and that the affiliated business arrangement disclosure statement (appendix D to the regulation) was provided as required by section 3500.15(b)(1).

28. Determine whether the use of a provider of settlement services, other than an attorney, credit reporting agency, or appraiser representing the lender, was required. (§ 3500.15(b)(2))

Escrow Accounts

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

29. Determine whether the institution performed an initial escrow analysis (section 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 twelve months
 - Disbursement dates
 - Amount of cushion
30. Determine if the statement was given to the borrower at settlement or within forty-five days after the escrow account was established. This statement may be incorporated into the HUD-1 statement. (§ 3500.17(g)(1))
31. Determine whether the institution performs an annual analysis of the escrow account. (§§ 3500.17(c)(3), 3500.17(c)(7), and 3500.17(i))
32. Determine whether the annual escrow account statement is provided to the borrower within thirty days of the end of the computation year. (§ 3500.17(i))
33. Determine if the annual escrow statement contains the following:
- Amount of monthly mortgage payment and portion that was 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 for taxes, insurance, and other charges during the same period
 - Balance in the escrow account at the end of the period
 - How a surplus, shortage, or deficiency is to be paid or handled
 - If applicable, the reason the estimated low monthly balance was not reached
34. Determine whether monthly escrow payments following settlement are within the limits of section 3500.17(c).

Real Estate Settlement Procedures Act Examination Checklist

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| 1. Are written loan policies in connection with federally related mortgage loans in compliance with Regulation X? | Yes | No |
| 2. Does the institution have established operating procedures that address the requirements of Regulation X? | Yes | No |
| 3. Are mortgage lending personnel knowledgeable of the requirements of RESPA and Regulation X? | Yes | No |

Special Information Booklet

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| 4. For applicable transactions, is the special information booklet provided within three business days after the financial institution or broker receives or prepares a written application for a loan? | Yes | No |
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Good Faith Estimate

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| 5. Is a good faith estimate of charges for settlement services, if required, provided within three business days after an application is received or prepared? | Yes | No |
| 6. Does the good faith estimate appear in a form similar to that in appendix C to Regulation X? | Yes | No |
| 7. Does the good faith estimate (GFE) contain the following required elements? | | |
| a. The lender's name or, if the GFE is being given by a broker, the legend required in accordance with appendix C to Regulation X | Yes | No |
| b. An estimate of all charges listed in section L of the HUD-1 or HUD-1A form, expressed as either a dollar amount or a range | Yes | No |
| c. For "no cost" or "no point" loans, payments to be made to an affiliated or independent settlement service provider (shown on the HUD-1 or HUD-1A form as "paid outside of closing") | Yes | No |
| d. An estimate of any other charge the borrower will pay based on common practice in the locality of the mortgaged property | Yes | No |
| 8. From a review of the HUD-1 or HUD-1A form prepared in connection with the federally related mortgage loan transaction, are amounts shown on the good faith estimate reasonably similar to the fees actually paid by the borrower? | Yes | No |
| 9. Does the financial institution require the borrower to use a particular individual or firm for settlement services? | Yes | No |
| a. In cases in which the lender requires the use of a particular provider of a settlement service (except the lender's own employees) <i>and</i> requires the borrower to pay any portion of the cost, does the GFE include the following? | | |
| i. The fact that the particular provider is required | Yes | No |
| ii. The fact that the estimate is based on the charges of the designated provider | Yes | No |
| iii. The name, address, and telephone number of each provider | Yes | No |
| iv. The specific nature of any relationship between the provider and the lender | Yes | No |

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| b. 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, does the lender satisfy 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? | Yes | No |
| 10. If an affiliated business arrangement exists between a referring party and any provider of settlement services, does the lender require the services of particular providers? | Yes | No |
| a. If an affiliated business arrangement exists, is the lender's only required use that of the attorney, credit bureau, or appraiser? | Yes | No |
| b. Did the financial institution provide a disclosure in the format of the disclosure statement form in appendix D to Regulation X? | Yes | No |

Uniform Settlement Statement Forms (HUD-1 and HUD-1A)

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| 11. Does the financial institution use the current uniform settlement statement (HUD-1 or HUD-1A) as appropriate? | Yes | No |
| 12. Does the HUD-1 or HUD-1A contain the following? | | |
| a. Charges for both borrower and seller, properly itemized in accordance with the instructions for completion of the HUD-1 or HUD-1A | Yes | No |
| b. All charges paid to someone other than the lender, itemized, and the recipient named | Yes | No |
| c. Charges required by the financial institution but paid outside of closing, itemized and marked as "paid outside of closing" or "P.O.C." but not included in totals | Yes | No |
| 13. If the financial institution conducts settlement, | | |
| a. Is the borrower, upon request, allowed to inspect the HUD-1 or HUD-1A at least one day prior to settlement? | Yes | No |
| b. Is the HUD-1 or HUD-1A provided to the borrower and seller at settlement? | Yes | No |
| c. In cases in which the right to delivery is waived or the transaction is exempt, is the statement mailed as soon as possible after settlement? | Yes | No |
| 14. Are the HUD-1 and HUD-1A forms retained for five years? | Yes | No |

Mortgage Servicing Transfer Disclosure

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| 15. Does the applicant receive the mortgage servicing transfer disclosure at the time of application or, if the application was not taken face-to-face, within three business days after receipt of the application? | Yes | No |
| 16. Does the disclosure state whether the loan may be assigned or transferred while it is outstanding? | Yes | No |

Notice to Borrower of Transfer of Mortgage Servicing

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| 17. If the institution has transferred servicing rights, was notice to the borrower given at least fifteen days prior to the transfer? | Yes | No |
| 18. If the institution has received servicing rights, was notice given to the borrower within fifteen days after the transfer? | Yes | No |

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| 19. Does the notice by the transferor (the current servicer) and the transferee (the new servicer) include the following information, as contained in appendix MS-2 to section 3500.21? | | |
| a. The effective date of the transfer | Yes | No |
| b. The new servicer's name, address, and toll-free or collect-call telephone number | Yes | No |
| c. A toll-free or collect-call telephone number for the current servicer to answer inquiries relating to the transfer | Yes | No |
| d. The date on which the current servicer will cease accepting payments and the date the new servicer will begin accepting payments relating to the transferred loan | Yes | No |
| e. Any information concerning the effect of the transfer on the availability or terms of optional insurance, and any action the borrower must take to maintain coverage | Yes | No |
| f. A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing | Yes | No |
| g. A statement of the borrower's rights in connection with complaint resolution | Yes | No |

Responding to Borrower Inquiries

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| 20. Have late fees been imposed within sixty days following a transfer of servicing, or were payments treated as late when received by the transferor rather than the transferee? | Yes | No |
| 21. Does the institution respond to borrower inquiries relating to the servicing of RESPA-covered mortgage loans and refinancings as prescribed in the regulation? Specifically, does the institution | Yes | No |
| a. Provide a written response acknowledging receipt of a qualified written request for information relating to the servicing of the loan within twenty business days? | Yes | No |
| b. If not, was the requested action taken within the twenty-business-day period, and was the borrower notified in writing of that action? | Yes | No |
| c. Within sixty business days after receipt of a qualified written request, does the institution make appropriate corrections in the account of the borrower and provide a written notification of the correction (including in the notice the name and telephone number of a representative of the institution who can provide assistance)? | Yes | No |
| <i>or</i> | | |
| Provide the borrower with a written explanation | | |
| i. Stating the reasons the account is correct (including the name and telephone number of a representative of the institution who can provide assistance) <i>or</i> | Yes | No |
| ii. Explaining why the information requested is unavailable or cannot be obtained by the institution (including the name and telephone number of a representative of the institution who can provide assistance) | Yes | No |
| 22. Does the institution provide information regarding an overdue payment to any consumer reporting agency during the sixty-day period beginning on the date the institution received a qualified written request relating to a dispute regarding the borrower's payments? | Yes | No |

Escrow Accounts

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| 23. Does the institution perform an escrow analysis when an escrow account is established? | Yes | No |
| 24. Is the initial escrow statement given to the borrower within forty-five days after the escrow account is established? | Yes | No |
| 25. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months? | Yes | No |
| 26. Does the initial annual escrow statement itemize the following information? | | |
| a. Amount of monthly mortgage payment | Yes | No |
| b. Portion of the monthly payment being placed in escrow | Yes | No |
| c. Charges to be paid from the escrow account during the first twelve months | Yes | No |
| d. Disbursement date | Yes | No |
| e. Amount of cushion | Yes | No |
| 27. Is the escrow statement provided within thirty days of the end of the escrow account computation year? | Yes | No |
| 28. Does the annual escrow statement itemize the following information? | | |
| a. Current payment and portion going to escrow | Yes | No |
| b. Amount of last year's mortgage payment and portion that went to escrow | Yes | No |
| c. Total amount paid into escrow during the past computation year | Yes | No |
| d. Total amount paid from escrow during the year for taxes, insurance premiums, and other charges | Yes | No |
| e. Balance in the escrow account at the end of the period | Yes | No |
| f. Explanation of how any surplus is being handled | Yes | No |
| g. Explanation of how any shortage or deficiency is to be paid by the borrower | Yes | No |
| h. If applicable, the reason(s) the estimated low monthly balance was not reached | Yes | No |
| 29. Are monthly escrow payments following settlement larger than one-twelfth of the amount expected to be paid for taxes, insurance premiums, and other charges in the following twelve months, plus one-sixth of that amount? | Yes | No |
| 30. Does the servicer notify the borrower at least annually of any shortage or deficiency in the escrow account? | Yes | No |
| 31. Does the institution make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as they become due? | Yes | No |

No Fees for RESPA Disclosures

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| 32. Does the financial institution charge a fee specifically for preparing and distributing HUD-1 forms, escrow statements, or documents required under the Truth in Lending Act? | Yes | No |
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Purchase of Title Insurance

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| 33. When the financial institution owns the property being sold, does it require or give the impression that title insurance is required from a particular company? | Yes | No |
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Payment or Receipt of Referral or Unearned Fees

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| 34. Is institution management aware of the prohibitions against payment or receipt of kickbacks and unearned fees? | Yes | No |
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| 35. Are federally related mortgage loan transactions referred by brokers, affiliates, or other parties? | Yes | No |
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or

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| Does the institution refer services to brokers, affiliates, or other parties? | Yes | No |
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| 36. If fees were paid to the institution or any parties identified, | | |
| a. Were all fees paid to the broker, affiliate, service provider, or other party consistent with the requirements of section 3500.14(g) and for goods or facilities actually furnished or services actually performed? | Yes | No |
| b. Were payments made to an affiliate or the affiliate's employees? | Yes | No |