

RESCINDED

Real Estate Settlement Procedures Act Program

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Real Estate Settlement Procedures.

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 Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

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2. Review the types of loans covered by RESPA and applicable exemptions.
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3. 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 standardized and model forms in the appendices to the regulation.
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4. If electronic disclosures are provided, determine whether the institution has policies and procedures to provide electronic delivery in accordance with the Electronic Signatures in Global and National Commerce Act (ESIGN).
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5. Review written loan policies and operating procedures in connection with federally related mortgage loans and discuss them with institution personnel. Determine whether the financial institutions has policies and procedures that address the following:
- The information that will be collected from applicants in connection with issuing a GFE, and what information will be relied on to issue a GFE.
 - Provision of a revised GFE in the event of changed circumstances.
 - Provision of a revised GFE for transactions involving new home purchases.
 - To cure a tolerance violation by reimbursing the borrower the amount by which the tolerance was exceeded within 30 calendar days from date of settlement.
 - To cure a technical or inadvertent error on the HUD-1/1A by providing a revised settlement statement to the borrower within 30 calendar days of settlement.
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6. 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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7. Assess the overall level of knowledge and understanding of mortgage lending personnel.
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Special Information Booklet

8. 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

9. 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)).
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10. Review the Good Faith Estimate to determine if it appears exactly as set forth in Appendix C to Part 3500.
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11. Review a sample of loan files that include GFEs to determine the following:
- Whether the financial institution followed GFE application requirements.
 - If the institution provided a revised GFE to the applicant due to changed circumstances, determine whether institution followed regulatory requirements for issuing a revised GFE due to changed circumstances.
 - Whether the GFE was completed as required in the regulations and instructions (§ 3500.7 and Appendix C to Part 3500) and whether it included the following information:
 - Interest rate expiration date,
 - Settlement charges expiration date,
 - Rate lock period,
 - Number of days before settlement the interest rate must be locked, if applicable,
 - Summary of loan information,
 - Escrow account information,
 - Estimates for settlement charges, and
 - Left hand column on trade-off table completed for loan in the GFE.

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- Whether, for no cost loans, all third-party fees paid by the financial institution are itemized and listed in the appropriate blocks on the second page of the GFE.
 - Whether a separate sheet was provided with the GFE that identifies the settlement service providers for the services listed on the GFE.
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Uniform Settlement Statement Form (HUD-1 and HUD-1A)

12. Using the same sample of loan files as used for the review of the GFE, review the Uniform Settlement Statement (HUD-1 or HUD-1A, as appropriate) (§ 3500.8 and Appendix A to Part 3500) to determine whether:
- Charges are properly itemized in accordance with the Instructions for completion of the HUD-1 or HUD-1A (Appendix A to Part 3500).
 - All charges paid by the borrower and the seller are itemized and include the name of the recipient (§ 3500.8(b), Appendix A).
 - Average charges for settlement services are calculated in accordance with § 3500.8(b)(2).
 - 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 cost totals (§ 3500.8(b); Appendix A).
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13. If the financial institution conducts the 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)).
 - The HUD-1 or HUD-1A is provided to the borrower and seller at or before settlement (except where the borrower has waived the right to delivery and in the case of exempt transactions) (§ 3500.10(b)).
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- In cases where the right to delivery is waived or the transaction is exempt, the HUD-1/1A is mailed as soon as practicable after settlement (§ 3500.10(b),(c), and (d)).

14. Determine whether, in the case of an inadvertent or technical error on the HUD-1/1A, the financial institution provides a revised HUD-1/1A to the borrower within 30 calendar days after settlement (§ 3500.8(c)).

15. Review the HUD-1 or HUD-1A form prepared in connection with each GFE reviewed to determine if the amount stated for any itemized service exceeds the amount shown on the GFE for that service. If the amount stated on the HUD-1 exceeds the amount shown on the GFE and such overcharge violates the tolerance for that category of settlement services, determine whether the financial institution cured the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days from date of settlement (§ 3500.7(i)).

16. 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, determine whether the HUD-1 or HUD-1A form is transferred to the new asset owner with the loan file (§ 3500.10(e)).

Mortgage Servicing Transfer Disclosure

17. Determine whether the disclosure form is substantially in conformity with the model disclosure in Appendix MS-1 to Part 3500.

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18. Determine that the mortgage servicing transfer disclosure was provided to the applicant within three business days after receipt of the application (§ 3500.21(c)).

19. Determine that the disclosure states whether the loan may be assigned, sold, or transferred while the loan is outstanding (§ 3500.21(b)(2)).

Notice to Borrower of Transfer of Mortgage Servicing

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

21. 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)).

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

23. Determine whether the notice by transferor and transferee includes the following information (§ 3500.21(d)(3)). Sample language for the notice of transfer is contained in Appendix MS-2 to Part 3500.

- The effective date of the transfer;
- A statement that the transfer does not affect the terms or conditions of the mortgage, other than terms directly related to its servicing;

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- 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 or terms of optional insurance and any action the borrower must take to maintain coverage; and
 - A statement of the borrowers rights in connection with complaint resolution (Appendix MS-2 to Part 3500.)
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Responsibilities of Servicer

24. 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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25. 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:
- Provides the notice of receipt of inquiry for qualified written requests 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)).

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- Provides 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 request 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

26. 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).
- If any fee is charged before providing a GFE, determine whether such fee is limited to the cost of a credit report (§ 3500.7(a)(4)).
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Purchase of Title Insurance

27. When the financial institution owns the property being sold, determine whether it requires that title insurance be purchased from a particular company (§ 3500.16).
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Payment or Receipt of Referral or Unearned Fees

28. 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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29. 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.
 - 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. This includes payments to an affiliate or the affiliate's employees.
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Affiliated Business Arrangements

30. Determine from the HUD-1 or HUD-1A and from interviews with institution management if the institution referred a borrower to a settlement service provider.
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31. If the financial institution referred a borrower to an affiliated settlement service provider, determine whether the Affiliated Business Arrangement disclosure statement (Appendix D to Part 3500) was provided as required by section 3500.15(b)(1).
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32. Other than an attorney, credit reporting agency, or appraiser representing the lender, if the financial institution referred a borrower to a settlement service provider, determine whether the institution required the use of the provider (§ 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.

33. 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
 - Disbursement dates
 - Amount of cushion
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34. 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) and (2)).

35. Determine whether the institution performs an annual analysis of the escrow account (§ 3500.17(c)(3) and (7), and 3500.17(i)).

36. 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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37. 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 (§ 3500.17(i)(1)).
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38. Determine whether monthly escrow payments following settlement are within the limits of § 3500.17(c).

PROGRAM CONCLUSIONS

1. Summarize the findings, supervisory concerns and regulatory violations.

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are repetitive or systemic.

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3. Identify action needed to correct violations and weaknesses in the institution's compliance system.
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4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.
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5. Record violations according to agency policy in the EDS/ROE system to facilitate analysis and reporting.
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EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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