

- 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’s Inquiries (§3500.21(e))

A financial institution servicer must respond to a borrower’s qualified written inquiry and take appropriate action within established time frames after receipt of the inquiry. Generally, the financial institution must provide written acknowledgment within 20 business days, and take certain specified actions within 60 business days of receipt of such 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 60 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 regarding any overdue payment, and relating to this period or the qualified written request, to any consumer reporting agency.

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 shall not be 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 §3500.21 will result in actual damages, and where 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 any 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 one percent of the net worth of the servicer. In addition, costs of the action and attorney fees in case of any successful action.

Examination Objectives

- To determine if the financial institution has established procedures to ensure compliance with RESPA.
- To determine whether the financial institution engages 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.
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.
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. Identity of persons or entities referring federally related mortgage loan business;
 - b. The nature of services provided by referral sources, if any;
 - c. 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; and
 - h. Whether escrow arrangements exist on mortgage loans.
5. Assess the overall level of knowledge and understanding of mortgage lending personnel.

Special Information Booklet

6. 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)]

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 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)]
 - 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 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").
 - c. An estimate of any other charge the borrower will pay based upon common practice in the locality of the mortgaged property.
9. 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.

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 the services of a particular individual or firm for settlement services. [§3500.7(e)]
 - a. 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:
 1. The fact that the particular provider is required;
 2. The fact that the estimate is based on the charges of the designated provider;
 3. The name, address, and telephone number of each provider; and

4. The specific nature of any relationship between the provider and the lender. [§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.

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

12. Determine if the financial institution uses the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate [§3500.8 (a)] and that:
 - a. 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).
 - b. All charges paid to one other than the lender are itemized and the recipient named. [§3500.8(b); Appendix A]
 - c. 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]
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 prior to 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 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)]
14. 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)]

Mortgage Servicing Transfer Disclosure

15. Determine whether the disclosure form is in substantial conformance with either the model disclosure in Appendix MS-1 to §3500.21 or section 6(a) of RESPA, 12 USC §2605(a).
16. Determine that the applicant received the mortgage servicing transfer disclosure at the time of application or

with the GFE. If the application was not taken face-to-face, the disclosure must have been provided within three business days after receipt of the application or with the GFE.

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

Notice to Borrower of Transfer of Mortgage Servicing

18. Determine whether the institution has transferred or received mortgage servicing rights.
19. 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)]
20. If it has received servicing rights, determine whether notice was given to the borrower within 15 days after the transfer. [§3500.21(d)(2)]
21. Determine whether the notice by transferor and transferee includes the following information. Sample language for the notice of transfer is contained in Appendix B. [§3500.21(d)(3)]
- a. The effective date of the transfer;
 - b. 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;
 - 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 present 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 of 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; and,
 - g. A statement of the borrowers rights in connection with complaint resolution. (Appendix MS-2)

Responsibilities of Servicer

22. 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)]

23. 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. 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)]
- b. 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; and [§3500.21(e)(3)]
- c. 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)]

No Fees for RESPA Disclosures

24. 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]

Purchase of Title Insurance

25. 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

26. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees. [RESPA Section 8; §3500.14]
27. 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.
- 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 §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.

Affiliated Business Arrangements

- 28. 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 §3500.15(b)(1).
- 29. Other than an attorney, credit reporting agency, or appraiser representing the lender, was the use of a provider 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.

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

- d. Disbursement dates
- e. Amount of cushion

- 31. 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)]
- 32. Determine whether the institution performs an annual analysis of the escrow account. [§3500.17(c)(3) and (7), and §3500.17(i)]
- 33. 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)]
- 34. Determine if the annual escrow statement contains the following:
 - a. Amount of monthly mortgage payment and portion that was placed in escrow;
 - b. Amount of past year's monthly mortgage payment and portion that went into escrow;
 - c. Total amount paid into escrow during the past computation year;
 - d. Total amount paid out of escrow account during same period for taxes, insurance, and other charges;
 - e. Balance in the escrow account at the end of the period;
 - f. How a surplus, shortage, or deficiency is to be paid/handled; and,
 - g. If applicable, the reason why estimated low monthly balance was not reached.
- 35. Determine whether monthly escrow payments following settlement are within the limits of §3500.17(c).

Examination Checklist—Real Estate Settlement Procedures Act		
	Yes	No
1. Are written loan policies in connection with federally related mortgage loans in compliance with Regulation X?		
2. Does the institution have established operating procedures which address the requirements of Regulation X?		
3. Are mortgage lending personnel knowledgeable of the requirements of RESPA and Regulation X?		
Special Information Booklet		
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?		
Good Faith Estimate		
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?		
6. Does the good faith estimate appear in a similar form as in Appendix C to Regulation X?		
7. Does the good faith 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?		
b. An estimate of all charges listed in Section L of the HUD-1 or HUD-1A, expressed either as a dollar amount or range?		
c. For "no cost" or "no point" loans, charges shown on the GFE to include payments to be made to affiliated or independent settlement service providers (shown on HUD-1 or HUD-1A as "paid outside of closing")?		
d. An estimate of any other charge the borrower will pay based upon common practice in the locality of the mortgaged property?		
8. From a review of Form HUD-1 or HUD-1A, prepared in connection with the transaction, are amounts shown on the good faith estimate reasonably similar to fees actually paid by the borrower?		
9. Does the financial institution require the borrower to use the services of a particular individual or firm for settlement services?		
a. 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, does the GFE include:		
1. The fact that the particular provider is required?		
2. The fact that the estimate is based on the charges of the designated provider?		

V. Lending — RESPA

	Yes	No
3. The name, address, and telephone number of each provider?		
4. The specific nature of any relationship between the provider and the lender?		
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?		
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?		
a. If an affiliated business arrangement exists, is the lender's only required use that of the attorney, credit bureau, or appraiser?		
b. Did the financial institution provide the Appendix D disclosure form?		
Uniform Settlement Statement Form (HUD-1 and HUD-1A)		
11. Does the financial institution use the current Uniform Settlement Statement (HUD-1 or HUD-1A) as appropriate?		
12. Does the HUD-1 or HUD-1A contain the following:		
a. Charges properly itemized for both borrower and seller in accordance with the instructions for completion of the HUD-1 or HUD-1A?		
b. All charges paid to one other than the lender itemized and the recipient named?		
c. Charges required by the financial institution but paid outside of closing, itemized on the settlement statement, marked as "paid outside of closing" or "P.O.C.," but not included in totals?		
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?		
b. Is the HUD-1 or HUD-1A provided to the borrower and seller at settlement?		
c. In cases where the right to delivery is waived or the transaction is exempt, is the statement mailed as soon as possible after settlement?		
14. Are the HUD-1 and HUD-1A forms retained for five years?		
Mortgage Servicing Transfer Disclosure		
15. Is the mortgage servicing transfer disclosure form language in substantial conformance with either the model disclosure in Appendix MS-1 to §3500.21 or §(a) or RESPA, 12 USC §2605(a)?		

	Yes	No
16. Does the applicant receive the mortgage servicing transfer disclosure at the time of application or with the GFE, or, if the application was not taken face-to-face, within three business days after receipt of the application or the GFE?		
17. Does the disclosure state whether the loan may be assigned or transferred while outstanding?		
Notice to Borrower of Transfer of Mortgage Servicing		
18. If the institution has transferred servicing rights, was notice to the borrower given at least fifteen days prior to the transfer?		
19. If the institution has received servicing rights, was notice given the borrower within fifteen days after the transfer?		
20. Does the notice by transferor and transferee include the following information as contained in Appendix MS-2 to §3500.21:		
a. The effective date of the transfer?		
b. The new servicer's name, address, and toll-free or collect call telephone number of the transferor servicer?		
c. A toll-free or collect call telephone number of the present Servicer to answer inquiries relating to the transfer?		
d. 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?		
e. 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?		
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 borrowers rights in connection with complaint resolution?		
Responding to Borrower Inquiries		
21. Have late fees been imposed within 60 days following a transfer of servicing or were payments treated as late when received by transferor rather than transferee?		
22. Does the institution respond to borrower inquiries relating to servicing of RESPA covered mortgage loans and refinancings as prescribed in the regulation?		
Specifically, does the institution:		
a. Provide a written response acknowledging receipt of a qualified written request from a borrower for information relating to the servicing of the oan within 20-business days?		
b. If not, has the action requested been taken with the 20-business day period and the borrower?		

V. Lending — RESPA

	Yes	No
<p>c. Within 60-business days after the 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 the telephone number of a representative of the institution who can provide assistance)?</p> <p>OR</p>		
Provide the borrower with a written explanation:		
<p>i. Stating the reasons the account is correct (including the name and telephone number of a representative of the institution who can provide assistance)?</p> <p>OR</p>		
<p>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)?</p>		
<p>23. 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 any qualified written request relating to a dispute regarding the borrower's payments?</p>		
Escrow Accounts		
<p>24. Does the institution perform an escrow analysis at the creation of the escrow account?</p>		
<p>25. Is the initial escrow statement given to the borrower within forty-five days after the escrow account is established?</p>		
<p>26. For continuing escrow arrangements, is an annual escrow statement provided to the borrower at least once every twelve months?</p>		
27. Does the initial annual escrow statement itemize:		
<p>a. Amount of monthly mortgage payment?</p>		
<p>b. Portion of the monthly payment being placed in escrow?</p>		
<p>c. Charges to be paid from the escrow account during the first 12 months?</p>		
<p>d. Disbursement date?</p>		
<p>e. Amount of cushion?</p>		
<p>28. Is the escrow statement provided within thirty days of the completion of the escrow account computation year?</p>		
29. Does the annual escrow statement itemize:		
<p>a. Current mortgage payment and portion going to escrow?</p>		

	Yes	No
b. Amount of last year's mortgage payment and portion that went to escrow?		
c. Total amount paid into the escrow account during the past computation year?		
d. Total amount paid from the escrow account during the year for taxes, insurance premiums, and other charges?		
e. Balance in the escrow account at the end of the period?		
f. Explanation of how any surplus is being handled?		
g. Explanation of how any shortage or deficiency is to be paid by the borrower?		
h. If applicable, the reason(s) why the estimated low monthly balance was not reached?		
30. Are monthly escrow payments following settlement no larger than 1/12 of the amount expected to be paid for taxes, insurance premiums, and other charges in the following twelve months, plus 1/6 of that amount?		
31. Does the servicer notify the borrower at least annually of any shortage or deficiency in the escrow account?		
32. Does the institution make payments from the escrow account for taxes, insurance premiums and other charges in a timely manner as they become due?		
No Fees for RESPA Disclosures		
33. Does the financial institution charge a fee specifically for preparing and distributing the HUD-1 forms, escrow statements or documents required under the Truth in Lending Act?		
Purchase of Title Insurance		
34. 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?		
Payment or Receipt of Referral or Unearned Fees		
35. Is institution management aware of the prohibitions against payment or receipt of kickbacks and unearned fees?		
36. Are federally related mortgage loan transactions referred by brokers, affiliates, or other parties? OR		
Does the institution refer services to brokers, affiliates, or other parties?		
37. 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 §3500.14(g) and for goods or facilities actually furnished or services actually performed?		
b. Were payments made to an affiliate or the affiliate's employees?		