

# FAQs About RESPA for Industry

## Scope of RESPA

1. What kinds of transactions are covered under RESPA?

Transactions involving a federally related mortgage loan, which includes most loans secured by a lien (first or subordinate position) on residential property. This includes: home purchase loans, refinances, lender approved assumptions, property improvement loans, equity lines of credit, and reverse mortgages.

2. What types of transactions are generally not covered?

The following are kinds of transactions that are not covered: an all cash sale, a sale where the individual home seller takes back the mortgage, a rental property transaction or other business purpose transaction.

3. Is a "time share" a covered transaction under RESPA?

Yes, if the lender's interest is secured by a lien on residential property.

4. Is a loan secured by a condominium unit or a cooperative share a covered transaction under RESPA?

Yes, as long the units are not used for business purposes.

5. Is a loan secured by a manufactured home (mobile home) covered transaction under RESPA?

Yes, but only if the manufactured home is located on real property on which the lender's interest is secured by a lien.

6. Does a federally related mortgage loan only involve FHA, VA or other government sponsored loans?

No, RESPA covers most conventional loans too. See the statute or regulations for the definition of a federally related mortgage loan.

7. Are home equity loans covered under RESPA?

Yes, home equity loans secured by residential property are covered.

8. How does the coverage of home equity loans and subordinate lien loans differ from other RESPA covered loans?

If the loan involves an open-end line of credit, providing the disclosures required by Regulation Z satisfies the RESPA good faith estimate and the HUD-1 or HUD-1A requirements.

Both subordinate lien loans and open-end lines of credit (home equity loans) in first lien position are exempted from the loan servicing requirements.

9. Are construction loans covered under RESPA?

No. Unless: 1) the loan is used as, or may be converted to permanent financing by the same lender; or 2) the lender issues a commitment for permanent financing; or 3) the loan is used to finance a transfer of title to the first user; or 4) the loan is for a term of two years or more, unless it is to a bona fide builder.

10. If a construction loan is covered under RESPA, how do you account for construction loan closing on the HUD-1 if funds will be held back by the lender until performance?

List the sales price of the land on Line 204, the construction cost on Line 105 (Line 101 is left blank) and the amount of the loan on line 102. The remainder of the form should be completed taking into account adjustments and charges related to the temporary and permanent financing which are known at the date of the settlement.

11. When the loan transaction includes an option for the borrower to obtain additional funds in the future merely by signing a note for the new amount, must RESPA's disclosure requirements be followed for the future advance of additional funds?

Yes, because there is a new note. This is consistent with Truth in Lending Act provisions.

12. If a loan is sold within 1-7 days of closing to another lender, does the sale of that loan fall within RESPA's coverage?

The sale of a loan after the original funding of the loan at settlement is a secondary market transaction. Such a sale is exempt from RESPA coverage as a secondary market transaction. However, any transfer of ownership and/or servicing rights is subject to RESPA's requirements in Section 6.

13. Does the exemption from RESPA for the sale of a land parcel of at least 25 acres apply even if there are 2 homes on the property?

Yes, as long as the property is a single parcel.

14. Can a credit agency provide a lender with a dedicated printer to expedite communication between the credit agency and the lender?

Yes, provided the printer can only be used for communication with the lender and not for general use. If it's for general use it may be considered payment for the referral of business.

15. Can a flood zone certification company examine a lender's existing loan portfolio for free or at a reduced rate, in exchange for the lender sending the company future business?

No. Flood zone certification is a covered settlement service (24 CFR 3500.2), therefore RESPA would apply to agreements by companies or persons providing portfolio reviews. Providing free or reduced reviews is a thing of value. Providing this service in exchange for referrals of future flood insurance business would violate Section 8(a) of RESPA which provides that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person."

16. Can a lender set up a contest for real estate agents under which the agent who provides the lender with the most business will win a trip to Hawaii?

No. Under RESPA, the trip itself, and even the opportunity to win the trip, would be a thing of value given in exchange for the referral of business.

17. Can a lender give a borrower an incentive, such as a chance to win a trip or a rebate, for doing business with the lender?

RESPA does not prohibit a lender or other settlement provider from giving the borrower an incentive for doing business with it as long as the incentive is not based on the borrower referring business to the lender.

18. Can a mortgage banker and a real estate broker advertise their services together, for example, on the same brochure or newspaper advertisement?

Nothing in RESPA prevents joint advertising. However, if one party is paying less than a pro-rata share for the brochure or advertisement, there could be a RESPA violation.

19. Can a lender give a real estate agent note pads with the lender's name on it?

Yes. Such note pads with the lender's name on it would be allowable as normal promotional items. However, if the lender gives the real estate agent note pads with the real estate agent's name on it for the agent to use to market clients for its real estate business, then the note pads could be a thing of value given for referral of loan business, because it defrays a marketing expense that the real estate agent would otherwise incur.

20. Can a mortgage broker be compensated for referring business to a lender that is unrelated to a real estate transaction, such as automobile loans?

Yes, provided that the compensation is exclusively related to the automobile loan and does not represent, in whole or in part, compensation for the referral of real estate business, and no lien is placed on a residence to secure the auto loan.

### **Affiliated businesses**

21. If a lender refers a consumer to more than one of its affiliated settlement service providers, does the lender have to provide a separate affiliated business arrangement disclosure statement for each referral?

No, the lender can use one disclosure statement.

22. If a lender refers a consumer to a settlement service provider with which it does not have an affiliate relationship, as defined by RESPA, does the lender still have to provide the affiliated business arrangement disclosure statement?

No, the affiliated business arrangement disclosure statement is only for affiliates.

23. When a principal in a law firm is a member of the board of a lender and the lender refers RESPA covered settlement service business to the firm, but not personally to the principal, must the relationship be disclosed?

Yes. When the lender refers the borrower to the law firm, the borrower must be given an Affiliated Business Arrangement Disclosure Statement.

### **Fee splitting**

24. Can a lender charge a borrower a fee for sending documents via courier and disclose it on the HUD-1 where in fact the borrower stops by the lender's office and picks up the documents instead?

No, because the charge for the courier service does not represent a charge for work actually performed which can be imposed on the borrower.

25. Can a lender collect from the borrower an appraisal fee of \$200, listing the fee as such on the HUD-1, yet pay an independent appraiser \$175 and collect the \$25 difference?

No, the lender may only collect \$175 as the actual charge. It is a violation of Section 8 (b) for any person to accept a split of a fee where services are not performed.

26. Can a lender charge a borrower at closing a one time charge for setting up an account with a tax service to arrange for tax payments?

Yes, the lender may collect a reasonable charge for the service provided.

27. Can a title company, which has the only convenient closing room in the area, provide it to any interested party at \$100 per closing?

Yes, provided the charge is reasonably related to the value of the space.

### **Specific forms and consumer information**

28. Where a mortgage broker is used, is it the mortgage broker's responsibility to provide the Good Faith Estimate (GFE) to consumers, or is that the lender's

responsibility?

If the mortgage broker is not an exclusive agent of the lender, the broker should provide a GFE within 3 days of receiving an application. The lender is not required to send an additional GFE; however, it is the lender's responsibility to ascertain that one was sent and includes an estimate of all costs that are likely to occur. Where the broker is the exclusive agent of the lender, either the broker or the lender shall provide the GFE.

29. When must the special information booklet be provided and by whom?

In general, the lender or mortgage broker should provide the special information booklet at application. Alternatively, they may place it in the mail to the applicant not later than three business days after the application is received or prepared.

30. Must a mortgage servicing transfer notice be given for a prospective table funded transaction?

Yes, by the mortgage broker.

31. When the potential borrower furnishes a substantial amount of financial information for prequalification, but no particular property has been identified, must the good faith estimate be furnished to the borrower?

No. A submission by a borrower to a lender that does not identify a property is not an application and thus does not trigger the Good Faith Estimate requirement. However, HUD encourages providing information to the borrower on settlement costs as soon as it can be estimated, so that the borrower may be better able to shop.

32. If the servicer neglects to pay the homeowner's insurance bill out of escrow and, as a result, the consumer loses coverage, what are the servicer's responsibilities and what is the servicer's liability for harm to the consumer that results?

The servicer is required to pay escrow items on time, so long as the borrower is timely in his/her mortgage payments. If the borrower is damaged by the servicer's failure to pay for the insurance on time, the borrower can sue under section 6.

### **Additional FAQs**

33. If the borrower is getting a "no cost" loan, must the lender list charges the lender is going to pay?

Yes. The charges to be shown on the GFE and the HUD-1 must include any payments by the lender to affiliated or independent settlement providers. These payments should be shown as P.O.C. (paid outside of closing).

34. The regulations at 3500.15 (b)(1)(i) state that where a lender makes a referral to a borrower the condition for providing an Affiliated Business

Disclosure (AfBA) may be satisfied as part of and at the time of the GFE. Does this mean the lender does not have to give a separate AfBA disclosure if the information is part of the GFE?

No. A separate AfBA must be given. The regulation means the AfBA may be given at the time the GFE is given if this is when the affiliate is referred or is required to be used (a lender may require the use of an appraisal, credit reporting company, or attorney).

35. Must a mortgage broker disclose payments he receives that the borrower does not pay for directly?

Yes. The mortgage broker must disclose all payments and fees he receives whether they are received directly from the borrower or indirectly from the lender.

36. If I have a question concerning the calculation of the "Annual Percentage Rate" or "APR", can HUD answer it?

The calculation of the APR is part of the Truth-in-Lending Act (TILA) which is administered by the Federal Reserve Board. Questions concerning TILA as well as Section 32 (high cost loan disclosure) may be directed to the Federal Reserve Board at (202) 452-3693.

37. May a settlement service provider charge a fee that reflects its own fee plus any recording fees as the servicer provider's fee? Example: An attorney charges \$500 for its services and the county charges \$30 for recording fees. May the attorney simply charge the consumer \$530 and pay the county as a cost of doing business?

No. The "Line Item" instructions to the HUD-1 state that "[f]or all items except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown." The attorney must disclose all entities ultimately receiving the fee.

38. May real estate agents that are independent contractors be considered employees under the "employer-employee" exemption, for purposes of being allowed to be paid referral fees from employers?

No. The exemption applies only to bona-fide employees.

39. If the borrower's escrow account includes a surplus greater than \$50 which HUD's rules require be refunded, may the servicer credit the surplus directly to the principal, rather than refund the surplus to the borrower?

No. However, the servicer may inform the borrower in the information accompanying the return of the surplus that the borrower may elect to use the refund to reduce principal or have it credited against the next year's escrow payments.

40. If there is a surplus in the escrow account and the borrower is in default, may the servicer retain the surplus as payment towards the amount in default?

HUD's escrow rules are inapplicable to loans that are in default, which is defined under the RESPA rules as current payments which are more than 30 days delinquent. The parties should consult the mortgage documents or state law to resolve whether escrow funds are available for this purpose.

41. May a consumer delay or avoid a mortgage transaction if it discovers that there exists a RESPA violation?

No. RESPA specifically provides that it does not affect the validity or enforceability of any sale or contract for the sale of real property, or any agreement arising in connection with a federally-related mortgage loan.

42. How should I report a violation of RESPA?

You should send a written complaint describing the practice that you believe violates RESPA. The complaint should include the names, addresses and phone numbers of the alleged violators. It is preferred that you include your name and phone number in case an investigator wishes to ask further questions. You may request confidentiality. Send the complaint to:

U.S. Department of HUD  
Office of RESPA and Interstate Land Sales  
451 7th Street, SW, Room 9154  
Washington, DC 20410

You may also wish to send a complaint to State and other Federal agencies that have the responsibility for regulating the settlement providers engaged in the referenced practice.

U.S. Department of Housing and Urban Development  
451 7th Street S.W., Washington, DC 20410  
Telephone: (202) 708-1112 TTY: (202) 708-1455  
[Find the address of a HUD office near you](#)