



OVERVIEW OF LAWS AND REGULATIONS

Real Estate Settlement Procedures Act

Real Estate Settlement Procedures Act (Regulation X)

Executive Summary:

The Real Estate Settlement Procedures Act (RESPA), as implemented by Regulation X (24 CFR 3500), is designed to ensure that consumers are provided with timely and accurate information regarding the nature and costs associated with residential real estate transactions. The other primary purpose of RESPA is to prohibit abusive practices such as kickbacks, referral fees, and excessive escrow requirements which might add to the cost of settlement. RESPA applies to all “federally related mortgage loans,” which includes any loan made by a federally insured financial institution secured by a first or subordinate lien on residential real property (including a refinance of such a loan) upon which there is located or placed a structure designed for one to four family occupancy (including individual units of condominiums or cooperatives). Limited exemptions to RESPA coverage are set forth in Regulation X.

In addition to the standard information and documentation that must be provided during the application and settlement stages of a mortgage loan transaction, RESPA requires that lenders furnish detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing rights. The lender must also provide certain disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and the funds disbursed or to be disbursed from the account by the servicer. Detailed rules imposed by RESPA and Regulation X regulate the management of escrow accounts and reveal when affiliated business arrangements will not constitute a violation of the Section 8 prohibitions against kickbacks and unearned fees.

The specific disclosures and other documentation that the lender is required by RESPA to provide to consumers include the following: (i) the Servicing Disclosure Statement (concerning the lender’s right to assign, sell or transfer the loan); (ii) a copy of the Special Information Booklet on settlement costs; (iii) a copy of the Good Faith Estimate of Settlement Costs; (iv) an Affiliated Business Arrangement Disclosure Statement, where applicable; (v) the HUD-1 or HUD-1A Settlement Statement; (vi) an Initial Escrow Account Notice, where applicable; (vii) Annual Escrow Statements, where applicable; and (viii) Notice of Transfer of Servicing, where applicable. The specific content of these documents and the prescribed time periods for their delivery to consumers and the retention by the lender is set forth in Regulation X.

Business Areas Impacted:

- Residential Lending Units
- Credit Application Processing/Underwriting
- Credit Operations
- Customer Service



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Highlights:

REQUIREMENTS/RECOMMENDATIONS	TIME FRAME	DOCUMENT, RECORD OR REPORT
<p>Policy/Procedures</p> <p>Adopt policy and comprehensive procedures for implementing RESPA and Regulation X, including explanation of the coverage of the regulation, exemptions, disclosure requirements, Section 8 prohibitions, and other relevant requirements.</p>	Continuing	<p>Policy Statement</p> <p>Written Procedures</p>
<p>Coverage</p> <p>RESPA applies to federally-related mortgage loans, which includes any loan:</p> <ul style="list-style-type: none"> • made by a lender whose deposits are insured by the Federal government; • secured by a first or subordinate lien on residential real property (including a refinance of such a loan); • secured by property designed principally for occupancy of from one to four families; and • located in a state. <p>Note: An installment sales contract, land contract or contract for deed may also constitute a federally related mortgage loan.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • Loan secured by 25 acres or more (even if it has a residential structure); • Business purpose loans (excluding loans to persons involving residential rental property); • Temporary financing such as construction loans without permanent end financing or not involving the transfer of title to land (note exceptions); • Bridge loans or swing loans; • Loan secured by vacant land unless a structure is constructed or placed on the property using loan proceeds; 	Continuing	Loan Origination Manuals



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<ul style="list-style-type: none"> • Assumptions without lender approval; • Conversion of a federally related mortgage loan to different terms where no new note required; and • Secondary market transactions (not including table funded transactions). 		
<p>Special Information Booklet</p> <p>Provide loan applicants with the HUD Special Information Booklet describing the nature and costs of settlement services.</p> <p>Note: If a borrower uses a mortgage broker, the mortgage broker must provide the booklet and the lender need not do so.</p> <p>In the case of open end credit plan (home equity lines of credit) subject to Regulation Z, a lender can provide brochure entitled <i>When Your Home is on the Line: What You Should Know About Home Equity Lines of Credit</i> instead of the booklet.</p> <p>No booklet required for:</p> <ol style="list-style-type: none"> 1. refinancing transactions; 2. closed-end subordinate lien loans; 3. reverse mortgages; and 4. any other mortgage loan not involving a 1-4 family residential purchase. 	<p>Provide within 3 business days after receipt of the application.</p> <p>If the application is denied within the 3 day period, the booklet need not be given.</p>	<p>HUD Special Information Booklet</p> <p>Loan Origination Manuals</p>



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<p>Good Faith Estimate</p> <p>Provide loan applicants with Good Faith Estimate (GFE) of the amount or range of charges for the specific settlement services the borrower is likely to incur in connection with the settlement. This document should be prepared in accordance with the regulatory requirements.</p> <p>If lender requires use of a particular provider of a settlement service and requires borrower to pay any portion of the costs, the GFE must provide additional information as provided in the regulation.</p> <p>Mortgage brokers and dealer loans:</p> <ul style="list-style-type: none"> • If mortgage broker is not an exclusive agent of lender, broker provides GFE and lender verifies compliance. • If broker is an exclusive agent, either lender or broker may provide GFE. • In the case of dealer loans, lender must provide GFE, either directly or by the dealer. <p>For open-end lines of credit (home equity plans) covered under Regulation Z, no GFE need be given if disclosures required by 12 CFR 226.5b are provided to borrower.</p>	<p>Provide within 3 business days after receipt of the application.</p> <p>If the application is denied within the 3 day period, the GFE need not be given.</p>	<p>Good Faith Estimate (a suggested format is set forth in Appendix C of Regulation X)</p> <p>Loan Origination Manuals</p> <p>Mortgage Broker Agreement</p>
<p>Affiliated Business Arrangement</p> <p>In the case of affiliated business arrangements, the person making the referral must provide a written disclosure to each person whose business is referred at the time of referral or the time of application (if the lender requires use of a particular provider). This disclosure must be provided on a separate sheet of paper. The disclosure is designed to (i) specify the relationship between the parties giving and receiving the referral and (ii) describe the estimated charges generally made</p>	<p>Disclosure is given no later than the time of referral or the time of application (if the provider is required by the lender).</p>	<p>Affiliated Business Arrangement Disclosure Statement (in the format set forth in Appendix D of Regulation X)</p> <p>Loan Origination Manuals</p>



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<p>by the provider of settlement services.</p> <p>[An affiliated business arrangement is an arrangement in which: (1) a person who is in a position to refer settlement business has either an affiliate relationship with or an ownership interest of more than one percent in a provider of settlement services and (2) such person refers business to that provider or affirmatively influences the selection of that provider.]</p>		
<p>Directing Use of Title Company</p> <p>If a lender holds legal title to property being sold, the lender as seller may not directly or indirectly require the borrower to purchase title insurance from any particular title company as condition for selling the property.</p>	Continuing	Loan Operations Manuals
<p>HUD-1 / HUD-1A Settlement Statement</p> <p>A HUD-1 or HUD-1A (if no seller involved) Settlement Statement must be used in every settlement involving a federally-related mortgage loan, itemizing all charges imposed on borrower and seller by the lender. The HUD-1 or HUD-1A must be completed in accordance with the instructions set forth in Appendix A of Regulation X.</p> <p>The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z.</p>	<p>Borrower must be permitted to inspect the completed HUD-1 or HUD-1A one day prior to closing.</p> <p>HUD-1 or HUD-1A must be delivered to borrower at or before settlement in limited circumstances, it may be mailed/ delivered as soon as practicable after settlement.</p>	<p>HUD-1 or HUD-1A Settlement Statement (Appendix A to Regulation X contains instructions for completing HUD-1 and HUD-1A Settlement Statements along with samples of each.)</p> <p>Loan Origination Manuals</p>



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<p>Escrow Accounts</p> <p>When a borrower is required to make payments into an escrow account to pay taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, the lender must:</p> <ul style="list-style-type: none"> • Provide an Initial Escrow Statement (may be included in HUD-1 or HUD-1A). (See Section 3500.17(g) and (h) for required information and format.) • Provide an Annual Escrow Statement. (See Section 3500.17(i) and (j) for required information and format.) • Follow limits on amounts which may be required to be paid into escrow. • Conduct escrow account analysis at closing and end of computation year to determine payments into escrow. • Shortages/Deficiencies/Surpluses <ol style="list-style-type: none"> a. If escrow analysis reveals a shortage or a deficiency, choose one of options provided in Section 3500.17(f). b. Notify borrower at least annually of shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document. c. If escrow analysis reveals surplus, provide refund to borrower. • Ensure that all payments from escrow accounts are made in a timely manner • Adhere to aggregate accounting method (except pre-rule accounts). <p>Note that Section 3500.17 sets out detailed requirements for establishing and maintaining escrow accounts, including acceptable accounting methods that may be utilized.</p>	<p><u>Initial Escrow Statement:</u> within 45 days of closing.</p> <p><u>Annual Escrow Statement:</u> within 30 days after end of account computation year.</p> <p><u>Escrow Account Analysis:</u></p> <ul style="list-style-type: none"> • at closing to determine amount to be deposited into escrow account; • at completion of account computation year to set monthly escrow payment for the next year. <p><u>Notification of shortage in account:</u> at least annually</p> <p><u>Surplus revealed by escrow analysis:</u> refund within 30 days from date revealed by escrow analysis.</p> <p><u>Disbursement date of escrow proceeds:</u> Disburse in installments if that option is offered, instead of lump sum annual disbursements. (But if a discount is offered for annual disbursements, it is the servicer's choice.) In any event, disburse in time to avoid a penalty.</p>	<p>Initial Escrow Statement (or HUD-1 or HUD-1A)</p> <p>Annual Escrow Statement</p> <p>Notification of escrow account shortage</p> <p>Loan Origination Manuals</p> <p>Loan Operations Manuals</p> <p>Escrow Account Management Software</p>



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<p>Servicing Disclosure Statement</p> <p>Provide loan applicants with a Servicing Disclosure Statement which explains the process of transferring servicing rights in the form described in Section 3500.21. Obtain signed acknowledgment of the applicant.</p>	<p>Provide at the time the application is submitted or within 3 business days.</p> <p>If application is denied within 3 business days, no notice need be given.</p>	<p>Loan Servicing Disclosure Statement (See the format set forth in Appendix MS-1 to Regulation X.)</p> <p>Loan Origination Manuals</p>



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<p>Servicing Transfer Notice</p> <p>If servicing is assigned, sold or transferred, both the transferor and transferee servicers must provide either separate notices or a combined notice of the transfer to the borrower in the manner set forth in the regulation.</p> <p>An extended notice period is allowed where the transfer of servicing is preceded by:</p> <ol style="list-style-type: none"> a. termination of the loan servicing contract for cause; b. commencement of proceedings for bankruptcy of the servicer; or c. FDIC proceedings for conservatorship or receivership of the servicer. <p>Special provisions apply in connection with the transfer of servicing, relating to:</p> <ol style="list-style-type: none"> 1. Treatment of loan payments during transfer period; 2. Handling of borrower inquiries (if inquiry is a qualified written request); and 3. Protection of credit rating. 	<p><u>Transferor notice</u> deliver at least 15 days before the transfer date.</p> <p><u>Transferee notice</u> deliver no later than 15 days after transfer date.</p> <p><u>Combined notice</u> deliver at least 15 days before the transfer date.</p> <p><u>Extended notice period</u> delivery of notice not more than 30 days after transfer.</p> <p><u>Loan payments during transfer period:</u> No late fees if transferor receives payment during 60 day period following transfer of loan servicing.</p> <p><u>Response to inquiries:</u></p> <ul style="list-style-type: none"> • Acknowledge request within 20 business days. <p>Resolve errors and notify within 60 business days.</p> <p><u>Protection of Credit Rating</u> do not provide adverse information on disputed payments to credit bureaus during the 60 day period.</p>	<p>Servicing Transfer Notice(s)</p> <p>Written response acknowledging receipt of qualified written request from borrower</p> <p>Loan Operation Manuals</p> <p>Servicing Transfer Agreements</p> <p>Credit Reporting Information Guidelines</p>



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<p>Kickbacks and Unearned Fees</p> <p>Ensure that the prohibition against kickbacks and unearned fees with regard to settlement services is accurately reflected in the policy statement and is adhered to by all personnel involved in the origination and/or processing federally-related mortgage loans.</p> <ul style="list-style-type: none"> • No referral fees. • No splitting charges except for actual services performed. <p>(See Section 3500.14)</p> <p>Note regulatory exemptions for:</p> <ol style="list-style-type: none"> 1. Fees, salaries, or other consideration as described in the regulation. 2. Affiliated Business Arrangements (defined in Section 3 of RESPA) if three specific conditions are met: <ol style="list-style-type: none"> (i) Separate written disclosure using the format in Appendix D specifying the nature of the relationship and estimating charges for the referral; (ii) No requirement to use any particular provider (except that a lender may chose the attorney, credit reporting agency, and/or real estate appraiser); (iii) The only thing of value received other than payments for services actually rendered is a return on an ownership or franchise relationship. <p>(See Section 3500.15)</p>	<p>Continuing</p>	<p>Loan Origination Manuals</p> <p>Loan Operations Manuals</p> <p>Affiliated Business Arrangement Disclosure Statement</p>



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<p>No Fee</p> <p>No fee can be charged by a lender for preparing the HUD-1 or HUD-1A Settlement Statement, escrow account statements, or required Truth-in-Lending disclosures.</p>	Continuing	Loan Origination Manuals
<p>Record Retention</p> <p>Retain copy of completed HUD-1 or HUD-1A and related documents.</p> <p>Retain documents provided pursuant to Section 3500.14 (Prohibition Against Kickbacks and Unearned Fees).</p> <p>Retain documents provided pursuant to Section 3500.15 (Affiliated Business Arrangements).</p> <p>Retain records reflecting the handling of each borrower's escrow account.</p> <p>Retain the applicant's acknowledgment of the Servicing Disclosure Statement as part of the loan file for every settled loan.</p> <p>Although not specified in the regulation, maintenance of other notices and disclosures such as the Servicing Transfer Notice and the Good Faith Estimate is recommended.</p>	<p>Five years after settlement.</p> <p>Five years from the date of execution.</p> <p>Five years after the date of execution.</p> <p>Five years after servicer last serviced the escrow accounts.</p> <p>Five years after the date of the settlement.</p> <p>Five year period.</p>	<p>HUD-1, related documents</p> <p>Section 3500.14 documentation</p> <p>Affiliated Business Arrangements documentation</p> <p>Escrow account documentation</p> <p>Signed Acknowledgment</p> <p>Record Retention Guidelines</p>
<p>Training</p> <p>Provide training to employees involved in the origination or processing of federally related mortgage loans or whose duties are otherwise impacted by the requirements of RESPA and Regulation X.</p>	Continuing	<p>Loan Origination Manuals</p> <p>Loan Operations Manuals</p>



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<p>Updating</p> <p>Update policies, procedures, disclosures, and notices as necessary to reflect changes in the regulation or changes in equipment or internal operations/ processes as appropriate. Ensure effective communication and distribution of updated notices and disclosures.</p>	<p>Continuing</p>	<p>All affected documentation</p>
<p>Internal Review</p> <p>Conduct an internal review at least annually to assess compliance with the regulation and conformity of an institution s practices with its policies and procedures.</p>	<p>Annual (or sooner)</p>	<p>Internal Review Procedures/Reports</p>



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RESPA Summary Requirements by Transaction

<i>Disclosure</i>						
✓ Required NA Not required Transaction	EARLY T-I-L*	GOOD FAITH ESTIMATE w/ SERVICE PROVIDER INFO. *	SPECIAL INFO. BOOKLET*	SERVICING DISCLOSURE *(1)	HUD-1 OR 1A	AFFILIATED BUSINESS ARR.
Home Equity						
• Open End	NA	NA(2)	NA(2)	NA	NA	✓
• Closed End	✓(3)	✓	✓(3)	✓	✓	✓
Purchase						
• Mobile home attached to real estate for primary home	✓	✓	✓	✓	✓	✓
• Mobile home not attached to real estate for primary home	NA	NA	NA	NA	NA	NA
Construction						
• Of primary home with permanent end financing	✓	✓	✓	✓	✓	✓
• Of primary home with no permanent financing	NA	NA	NA	NA	NA	NA
• With purchase of land involving transfer of title	✓	✓	✓	✓	✓	✓
Home Improvement (Closed End)	NA	✓	NA	✓	✓	✓
Purchase Money						
• Primary Home	✓	✓	✓	✓	✓	✓
• Rental Property-individual purpose	NA	✓	✓	✓	✓	✓
• Vacation/second home	NA	✓	✓	✓	✓	✓
Refinance						
• Of primary home at original lender no additional funds advanced	NA	✓	NA	✓	✓	✓
• Of primary home at different lender or additional funds advanced	NA	✓	NA	✓	✓	✓
• Of rental property individual purpose	NA	✓	NA	✓	✓	✓
• Of vacation/second home	NA	✓	NA	✓	✓	✓
<i>When Disclosure Must be Presented</i>	at or within 3 business days of application			available one day prior to, and given at closing	at application or time of referral	

* Not required if loan application is denied within 3-day period.

1 Applies only if the mortgage loan is secured by a first lien.

2 Use of the Reg Z equity line of credit disclosures, if provided, can be substituted for these disclosures.

3 Applies only if the loan proceeds will be used for the acquisition or initial construction of borrower's primary dwelling (purchase money).



Real Estate Settlement Procedures Act

Timing of Certain Disclosures On Residential Real Estate Secured Loans*

Covers:

1. Truth in Lending Act (TILA) - Regulation Z
2. Real Estate Settlement Procedure Act (RESPA) - Regulation X

Timing	TILA 12 CFR 226	RESPA 24 CFR 3500
At or before referral		Affiliated business arrangement disclosure (3500.15).
At or before application	Home equity line of credit booklet and disclosure (226.5b). Adjustable rate booklet and disclosure (226.19b).	
Within three days of application	TILA disclosure (including APR and finance charge) (226.19a).	Special information booklet (3500.6) Good faith estimate (3500.7). Required providers (3500.7). Initial transfer of servicing disclosure (3500.21).
Three days before closing/consummation	Section 32 disclosures (226.32) Reverse mortgage disclosures (226.33)	
One day before closing/consummation		Right to inspect HUD-1 or HUD-1A (3500.10).
At closing/consummation	TILA disclosure (226.18) Rescission notice (226.23)	HUD-1 or HUD-1A (3500.8) Initial escrow account statement (within 45 days of closing) (3500.17).

*Taken from Advance Notice of Proposed Rulemaking on Improvement of Disclosure under RESPA and TILA (61 FR 69055).