**Real Estate Settlement Procedures Act**

**Applicability and Exemptions**
RESPA is applicable to all "federally related mortgage loans" which are defined as any loan (other than temporary financing such as a construction loan) which is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either located, or following settlement, will be constructed using proceeds of the loan, a structure or structures (including a manufactured home) designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit).

The following loans are **exempt** from RESPA:

* A loan for any purpose on property of 25 acres or more, regardless of whether the land is vacant or contains a residential structure;
* An extension of credit primarily for a business, commercial, or agricultural purpose; however, the exemption does not apply to any transaction in which one or more persons acting in an individual capacity place a lien on a one- to four-family residential property, whether used for occupancy or investment;
* Temporary financing such as a construction loan, except certain loans to finance construction of one- to four-family residential property;
* Vacant or unimproved property unless a structure or manufactured home will be constructed or placed on the property within 2 years from the date of settlement of the loan;
* Any assumption in which the lender does not have the express right to approve subsequent borrowers; however, any assumption in which the lender's permission is both required and obtained is covered by RESPA regardless of whether the lender charges a fee for the assumption. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage as long as a new note is not required, even if the lender charges an additional fee for the conversion; or
* A bona fide transfer of a loan obligation in the secondary market.

In general, RESPA contains certain disclosure requirements and restrictions for settlements involving federally related mortgage loans which are briefly described as follows:

* Special Information Booklet-- Regulation 24 CFR § 1024.6 requires lenders to provide a Special Information Booklet (Booklet) by delivering it or placing it in the mail to the applicant not later than 3 business days after the application is received or prepared. However, the lender does not need to provide the Booklet if the borrower's application for credit is denied before the end of the 3-day business period. In addition, the lender is not required to provide a Booklet for refinancing transactions, closed-end loans when the lender takes a subordinate lien, and reverse mortgages.

The intent of the regulation is that the applicant should receive the Booklet at the earliest possible date since the Booklet contains an explanation of the nature and costs of real estate settlement services. While there is no regulatory requirement, institutions should obtain an applicant's signature acknowledging receipt of the Booklet. The receipt provides evidence the institution complied with this particular provision of HUD Regulation X;

* Good Faith Estimate (LE)-- Regulation 24 CFR § 1024.7 requires lenders to provide a good faith estimate (Loan Estimate or LE where applicable) of settlement charges unless the loan is denied before the end of the 3-day business period by delivering it or placing it in the mail to the applicant not later than 3 business days after the application is received or prepared. The good faith estimate consists of an estimate, as a dollar amount or range, of each settlement charge the borrower is likely to incur in connection with the settlement. Each good faith estimate shall be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement, and it must be based upon experience in the locality of the mortgaged property. As with the Booklet, it is recommended the institution obtain the applicant's signature acknowledging receipt of the good faith estimate or LE. Tolerance restrictions can be found in §1024.7(e).
* Particular Providers of Service-- Regulation 24 CFR § 1024.7(e) stipulates that if a lender requires the use of a particular provider of settlement service, **other than the lender's own employees**, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must clearly state that use of the particular provider is required; that the estimate is based on charges of the designated provider; give the name, address, and telephone number of each such provider; and describe the nature of any relationship between each such provider and the lender. See the regulation for examples of when a relationship exists.
* HUD-1 or HUD-1A Settlement Statements (Closing Disclosure)-- Regulation 24 CFR § 1024.8 requires that each settlement agent use the standard HUD-1 settlement statement (or CD where applicable) in every settlement involving a Federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side only. Alternatively, the HUD-1A (CD) may be used for transactions without sellers. The HUD-1 or HUD-1A must be completed by the person conducting the settlement and must conspicuously and clearly itemize all settlement charges imposed upon the borrower and seller, except those the borrower or seller contracts to pay for separate from the settlement. The HUD-1 or HUD-1A form must also indicate whether any title insurance premium included in the charges covers the lender's interest in the property, the borrower's interest, or both. The copy of the HUD-1 form supplied to the seller need not contain the information relating to the borrower's transaction, nor must the copy supplied to the borrower contain the information relating to the seller's transaction.
* HUD-1 or HUD-1A Settlement Statement Inspection-- Regulation 24 CFR § 1024.10 requires that, upon request from the borrower, the settlement agent must complete the items known to the settlement agent and permit the borrower to inspect the HUD-1 or HUD-1A settlement statement one business day prior to the day of settlement (usually referred to as loan closing).
* Record Retention-- Regulation 24 CFR § 1024.10(e) requires the lender to retain each completed HUD-1 or HUD-1A (or CD) and related documents for 5 years (2 years if settlement occurred before December 2, 1992) after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. However, if servicing is transferred to another owner or servicer, the original HUD-1 or HUD-1A must be forwarded as part of the transfer file and retained by such owner or servicer for the remainder of the original 5-year period.
* Preparation Fees-- Regulation 24 CFR § 1024.12 requires that no fee be imposed or charge made upon any other person, as part of settlement costs or otherwise, by a lender for the preparation and distribution of the HUD-1 or HUD-1A (CD), escrow account statements, or statements required by the Truth in Lending Act.
* Kickbacks and Unearned Fees-- Regulation 24 CFR § 1024.14 states that no person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a settlement servicing involving a federally related mortgage loan shall be referred to any person. In addition, no person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service other than for actual services performed. Section 1024.19 provides that violators of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation. Also, violators shall be jointly and severally liable to the borrower in an amount equal to three times the amount of any settlement charge paid.
* Controlled Business Arrangements-- Regulation 24 CFR § 1024.15 defines a controlled business arrangement as an arrangement where a person is in a position to refer business incident to or a part of a real estate settlement servicing involving federally related mortgage loans, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services. This person directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. A controlled business arrangement is not a violation if the person making each referral has provided to each person whose business is referred a written disclosure in the format of the Controlled Business Arrangement Disclosure Statement in Appendix D of HUD Regulation X. The penalties for violating § 1024.15 are the same as those for violating § 1024.14 above.
* Title Companies-- Regulation 24 CFR § 1024.16 provides “No seller of property, that will be purchased with the assistance of a federally related mortgage loan, shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. Any violations of this section entitle the buyer to an amount equal to three times all charges made for the title insurance from the seller.
* Escrow Accounts—Regulation 24 CFR §1024.17 provides the amount of money the lender can require a borrower to place in an escrow account is limited to the first full payment of taxes, insurance premiums, and other charges, plus 1/6 of the charges to be paid during the following 12 months. A monthly escrow payment can be no larger than 1/12 of the amount anticipated to be paid for such charges during the following 12 months, plus the amount necessary to maintain a balance not to exceed 1/6 of the amount of charges to be paid during that period.
* Mortgage Servicing Transfers-- Regulation 24 CFR § 1024.21 provides that mortgage lenders are required to give applicants information about the likelihood that their mortgage servicing will be transferred. This information must be in a disclosure statement given to and acknowledged by the applicant at the time of application. Before consummation, the lender must have in its files a disclosure statement signed by each applicant. Not less than 15 days before a mortgage servicing transfer becomes effective, the current mortgage servicer must notify all borrowers in writing.

**Examination Objectives**

* Determine that policies, procedures, and internal controls have been established and evaluate their adequacy to provide reasonable assurance of compliance with the requirements of RESPA.
* Determine that disclosures required by RESPA were made on transactions subject to RESPA and that such disclosures were timely and accurate.

**Examination Procedures**

Pursuant to the applicable state law and the National Cooperative Protocol and Agreement, the MMC has specific authority to enforce compliance with Regulation X.

The following procedures are provided to facilitate an evaluation of an institution's compliance with RESPA. Consistent with risk-based examination principles, examiners should add, delete, or modify procedures based on the particular circumstances of the institution.

|  | *MMC Real Estate Settlement Procedures Act Exam Procedures*  |
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|  | **Examination Procedures** | **Yes** | **No** | **Examiner Notes** [Document supporting evidence and note determinations and findings made.] |
| 1 | Coordinate compliance examination activities with other members of the examination team and the examiner-in-charge (EIC). Emphasize identifying violations of law and regulation; integrate those findings with the examination; and conclude on management's compliance with laws and regulations. |  |  |  |
| 2 | Review and evaluate the adequacy of policies, procedures, and internal controls to ensure the identification of applicable applicants and compliance with the requirements of RESPA. |  |  |  |
| 3 | Determine whether the institution provides an applicant with a copy of the Booklet within 3 business days after receiving a written application for a federally related mortgage loan. |  |  |  |
| 4 | Ascertain whether the institution provides an applicant with a Good Faith Estimate (LE) of settlement costs within three business days following the written application. |  |  |  |
| 5 | Determine whether Good Faith Estimates (LE) provided to applicants bear a reasonable relationship to the charges the applicant will likely be required to pay or the applicant has incurred at settlement. |  |  |  |
| 6 | Where the institution requires that a particular individual, firm, or institution be used to provide legal services, title examination services, or title insurance, or to conduct settlement, and requires the borrower to pay for any portion of the cost of such services, determine whether the Good Faith Estimates (LE):a. Clearly indicate which estimated charge is to be provided by each designated provider;b. State the name, address, and telephone number of each designated provider and the fact the institution's estimate for the services is based upon the charges of the designated provider andc. State whether or not each designated provider has a business relationship with the institution. |  |  |  |
| 7 | Ascertain whether the person conducting settlement also prepares the HUD-1 or HUD-1A settlement statement or Closing Disclosure where applicable. |  |  |  |
| 8 | Determine whether the institution permits the borrower, upon request, to inspect the HUD-1 or HUD-1A (CD) one business day prior to the day of settlement. |  |  |  |
| 9 | Determine whether the institution prepares the HUD-1 or HUD-1A (CD) in accordance with Appendix A of the regulation. |  |  |  |
| 10 | Unless waived or exempt, determine whether the HUD-1 or HUD-1A (CD) was delivered or mailed to the borrower and seller or their agents at or before settlement. |  |  |  |
| 11 | Determine whether the institution retains a copy of the HUD-1 or HUD-1A (CD) for 5 years from the date of settlement. |  |  |  |
| 12 | Determine whether the institution refrains from charging a fee for the preparation and distribution of the HUD-1 or HUD-1A settlement statement or documents required under the Truth in Lending Act. |  |  |  |
| 13 | Determine whether the institution provides applicants information about the likelihood that their mortgage servicing will be transferred. |  |  |  |
| 14 | Determine whether the institution notifies borrowers in writing not less than 15 days before a mortgage servicing transfer becomes effective. |  |  |  |
| 15 | Determine whether the institution is aware of and in compliance with the prohibitions against kickbacks and unearned fees. |  |  |  |
| 16 | If the institution owns the property being sold, ascertain whether it requires title insurance or gives the impression that title insurance is required from a particular institution. |  |  |  |
| 17 | Conclude whether the institution is adequately complying with RESPA. If not, ascertain whether the conclusion of noncompliance is supported by adequate documentation of the specific noncompliance. |  |  |  |
| 18 | Utilize discussions with institution managers as needed to gather information and discuss procedures and practices followed by institution’s personnel to ensure compliance with laws and regulations. |  |  |  |
| 19 | Discuss items of concern, scope of work performed, and conclusions with the EIC. |  |  |  |
| 20 | Organize and compile, if necessary, violations of law and regulation into a Violation Summary Sheet. |  |  |  |

**Real Estate Settlement Procedures Act Exemption Flow Chart**

