

Supplemental Information

On November 17, 2008, HUD issued a final RESPA rule that includes substantive and technical changes to the existing regulations.

Substantive Changes (Effective January 1, 2010):

Standardized Good Faith Estimate Form. The centerpiece of the final rule is the establishment of a standard three-page Good Faith Estimate (GFE) form designed to enhance borrowers' ability to shop for a mortgage loan by comparing settlement costs and loan terms from various loan originators. With limited exceptions, the lender will be bound to the settlement charges and loan terms listed on the GFE. The first page of the GFE includes a summary of loan terms and an estimate of total settlement charges; the second page discloses settlement charges as subtotals for eleven categories of costs; and the third page provides information about which charges may change at settlement, information on the trade-off between the interest rate and the settlement costs, and a shopping chart.

The new GFE form will be required as of **January 1, 2010**. A lender that chooses to provide the new GFE before January 1, 2010, is subject to the tolerances and the other rules applicable to the new form and must ensure the borrower is provided with the new HUD-1 at closing.

Revised Settlement Statement. The rule also substantially revises the HUD-1/1A Settlement Statement form. The new GFE and HUD-1 forms must be used as of January 1, 2010; however, these forms may be used before this date. Note that if a loan originator issues a GFE on the new form, then the settlement agent must use the new HUD-1 form, and the tolerances and other requirements in the revised RESPA regulations will apply to the transaction. To facilitate comparison between the HUD-1 and the GFE, each designated line on the HUD-1/1A includes a reference to the relevant line from the GFE. The revised HUD-1 form also includes a new third page (second page of the HUD-1A) that will allow borrowers to compare the loan terms and settlement charges listed on the GFE with the terms and charges listed on the closing statement. Lenders will have 30 days from the settlement date to repay borrowers for any overcharges. The rule also provides that inadvertent or technical errors on the HUD-1/1A will not be deemed a violation of RESPA if a revised HUD-1/1A is provided to the borrower within 30 days of settlement.

Revised Definition of "Application." The rule provides that a lender may decide what information is necessary from the borrower to provide a meaningful GFE. A lender is assumed to have collected the following items: borrower's name, Social Security number to collect a credit report, gross monthly income, the property address, loan amount sought, and an estimate of the value of the property. A lender will be prohibited from requiring the submission of verification information, such as pay stubs and tax returns before the issuance of the GFE.

No Charge to Issue GFE. The rule provides that a lender is prohibited from charging a borrower any fee before issuing a GFE (except for the cost of a credit report).

Binding GFE. With limited exceptions, the lender is bound to the settlement charges and loan terms listed on the GFE. The lender must indicate on the GFE the period during which the interest rate is available. After that period, the interest rate will float until locked. The estimate for settlement charges and all other loan terms must be available for at least 10 business days from the time the GFE is provided. The charges and terms in the GFE are binding unless a new GFE is provided to the borrower before settlement based on “changed circumstances” as defined in the rule.

“Changed circumstances” affecting *loan terms* and *settlement charges* are defined as: (1) acts of God, war, disaster, or other emergencies; (2) information particular to the borrower or transaction that was relied on in providing the GFE, that changes or is found to be inaccurate after the GFE has been provided (e.g., information about the borrower’s credit worthiness, the amount of the loan, the estimated value of the property); (3) new information particular to the borrower or transaction that was not relied on in providing the GFE; or (4) other circumstances particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems. A revised GFE may be provided within 3 business days of receiving information sufficient to establish changed circumstances.

Tolerances. The final rule establishes “tolerances” or limits on the amount certain settlement charges can vary at closing from the amounts stated on the GFE. The rule establishes three categories of settlement charges. The first category of charges is subject to a “zero tolerance” standard, meaning the amounts estimated on the GFE cannot vary at closing (absent “changed circumstances”). The second category is subject to a 10 percent tolerance standard, meaning the *total* of those charges may not exceed a 10 percent increase at settlement from the *total* of those charges stated on the GFE (absent “changed circumstances”). The third category is subject to no restriction, meaning the total can change at closing. If a lender exceeds the tolerances at closing, the rule provides that the lender may cure the tolerance violation by reimbursing the borrower the amount of any overcharge within 30 days of the settlement date.

Disclosure of Yield Spread Premium/Points. If a mortgage lender will pay a yield spread premium to a broker for the loan set forth in the GFE, the payment must be disclosed as a “credit” to the borrower for the particular interest rate. Conversely, if the borrower chooses to pay points to lower the interest rate of the loan, the amount of the points must be disclosed as a “charge” to the borrower. The credit is subtracted or the charge is added to the “origination charge” to arrive at the “adjusted origination charge.” The term “yield spread premium” is not used on the GFE or the HUD-1.

Elimination of FHA Origination Fee Limitation. Under current Federal Housing Administration (FHA) regulations, the origination fee on an FHA-insured loan is limited to 1 percent of the loan amount. HUD has removed this limitation with the final RESPA rule. Effective January 1, 2010, FHA-approved mortgagees may collect any fee to

compensate it for expenses incurred in originating and closing a loan, subject to RESPA policy statements limiting lenders to paying mortgage brokers reasonable compensation for goods, facilities or services.

Definition of “Mortgage Broker.” The definition of “mortgage broker” has been modified. Under the revised definition, a mortgage broker includes an “exclusive agent” of a lender who is not an employee of the lender, but who renders origination services and serves as an intermediary between the lender and the borrower. The revised definition also clarifies that an FHA loan correspondent is a mortgage broker for RESPA purposes.

Average Charge. As of January 16, 2009, all settlement service providers, including lenders, are permitted to list the “average charge” for a settlement service rather than the exact cost for that service on the GFE and the HUD-1. The method of determining the average charge is left to the discretion of the settlement service provider. The provider must recalculate the average charge at least every six months. The average charge is permitted only for third-party vendor charges and not for a provider’s own internal charges. The average charge also cannot be used where the charge is based on the loan amount or value of the property. When the average charge for a service is quoted, the regulations prohibit charging more than the calculated average charge; however, discounting or waiving a charge to a borrower is permitted.

Volume-Based Discounts. The final rule does not include provisions as originally proposed explicitly permitting “volume-based discounts.” However, the preamble to the final rule states HUD’s position remains that discounts negotiated between loan originators and other settlement service providers, where the discount is ultimately passed on to the borrower in full, is not, depending on the circumstances of a particular transaction, a violation of Section 8 of RESPA.

Technical Changes (Took Effect January 16, 2009):

Servicing Disclosure Statement Streamlined. The rule revised the mortgage servicing disclosure requirements in the current regulations to be consistent with statutory changes by shortening the initial servicing disclosure statement provided to loan applicants.

Escrow Account Regulations Updated. The rule eliminated outdated provisions in the escrow account regulations regarding the phase-in period for aggregate accounting.

ESIGN Applicability to RESPA Disclosures. The rule clarifies that electronic disclosures permitted pursuant to the Electronic Signatures in Global and National Commerce Act (ESIGN) apply to all disclosures provided for in RESPA regulations.