

## **Amended RESPA Regulations take effect January 1, 2010 New GFE Forms and HUD-1 Settlement Statements to be mandatory**

In November 2008, HUD issued a Final Rule amending Regulation X relating to the Real Estate Settlement Procedures Act of 1974 (RESPA).

Several of these changes were implemented in 2009, but the majority of changes, including the mandatory use of the new Good Faith Estimate (GFE) and modified HUD-1 Settlement Statement will go into effect January 1, 2010.

With the implementation date fast approaching, it is imperative that Realtors understand how these new RESPA Rules will affect their clients' HUD-1 Settlement Statements and possibly their closings.

### **Purposes of new GFE and HUD-1**

HUD's earliest attempts at RESPA reform date back to 2002, and its goals for reform have always been the same: to provide more simplicity, clarity, transparency, and certainty of mortgage costs for consumers.

In a nutshell, the new regulation mandates changes concerning when and how loan information is disclosed to the client. These new forms and procedures are intended to make it easier for borrowers to understand the costs and terms of their loan transaction.

According to HUD's news release, these new forms are designed to help consumers shop for the lowest cost mortgage and avoid costly and potentially harmful loan offers.

HUD will require, for the first time ever, that lenders and mortgage brokers provide consumers with a standard Good Faith Estimate (GFE) that clearly discloses key loan terms and closing costs.

HUD estimates that by improving upfront disclosures in the GFE and limiting the amount estimated charges can change,

the new procedures may save the borrower hundreds of dollars in junk fees and hidden costs.

### **New Mandatory GFE Form**

Currently, loan originators are required to deliver a GFE to borrowers in all RESPA-related transactions, but the specific language is not mandated. The new standardized GFE used as of January 1, 2010, is three pages long and must contain the exact language specified by HUD.

HUD says the new GFE will "consolidate closing costs into major categories to prevent junk fees and display total settlement costs prominently on the first page so the consumer can easily compare loan offers. HUD will specify the closing costs that can and cannot change at settlement. If a fee changes, HUD will limit the amount it can change."

The Final Rule specifies which types of charges can change, which charges cannot increase by more than 10%, and which charges cannot change at all.

The lender or mortgage broker must provide the borrower with the GFE within 3 business days of loan application.

With the exception of the credit report, no other fees can be charged until after the applicant receives the GFE.

The new GFE must state dates and terms related to the loan, including loan amount, term, rate, rate lock date, requirements for impounds, pre-payment penalties, balloons, adjustments, and all charges associated with the loan including loan origination, appraisal, credit report, etc.

The terms and prices quoted (except for the interest rate and charges related to the interest rate) must be available for at least

10 days following issuance of the GFE. If certain information or circumstances change after the GFE is issued, a new GFE may be required.

### Tolerances in the GFE

Quoted costs in the GFE are subject to “tolerances,” which are defined as the maximum amount by which the charge for a category or categories of settlements may exceed the amount of the estimate on the GFE. There are three tolerance categories:

- **Zero Tolerance:** There may be no variance in fees quoted. This applies to lender charges for taking, underwriting, and processing the application, including points, origination fees, and yield spread premium.
- **10% Tolerance:** These fees cannot vary more than 10% in any given category. Categories include settlement services where the lender selects the provider, settlement services where the borrower selects the provider from the lender’s list, title services and title insurance if the lender selects the provider, and recording fees.
- **Unlimited Tolerance:** Variance in these items is allowed without limitation, including services where the borrower can choose providers, like escrow and title insurance, impounds for taxes, per diem interest, and the cost of homeowners insurance.

The final page of the GFE also contains worksheet-like charges to compare different loans and terms that the borrower can use to shop pricing.

### New HUD-1 Settlement Statement

The most significant changes to the new HUD-1 Settlement Statement were made with the intention of having consumers be able to easily compare their settlement charges on the GFE with those on the HUD-1.

Here are some of the major changes to the new HUD:

- All fees customarily paid by the buyer that will be paid by the seller must now be disclosed in the borrower’s column on the HUD and offset with a credit from the seller to the buyer on page 1 of the HUD. The premium for the owner’s title policy (even

though customarily paid by the seller) must also be disclosed in the buyer’s column and offset with a credit on page 1, since it now appears on the buyer’s GFE.

- Real estate commission percentages are no longer disclosed on the HUD. The total amount of the commission to each agent or broker must be shown on line 701 and 702, and the total commissions disbursed must be shown as a seller (or buyer) charge on line 703.
- All loan origination charges (underwriting, processing, etc.) are included in one bundle on line 801 called “our origination charge” and are not itemized separately on the HUD.
- The charge to the buyer for “title services” and “lender’s title insurance” is disclosed as one lump sum on line 1101. Any title fees paid to third party providers must be itemized. Additionally, the premium split between the title agent and title underwriter must be disclosed on lines 1107 and 1108.
- Finally, the charges reflected on the GFE and the HUD-1 are compared on the page 3 of the new HUD-1 to determine if the totals fall within the permitted tolerances.

### What does this mean for your closing?

If there is a difference between the costs quoted on the GFE and the final numbers on the HUD-1, RESPA’s Final Rule provides a unique solution. The loan originator has the opportunity to “cure” any violation of the tolerance by reimbursing the borrower any amounts by which tolerances were exceeded, either at the closing or within 30 days of settlement. (HUD deems a payment timely if it is placed in the mail by the loan originator within 30 calendar days of the closing.)

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