

**FDIC Dallas/Memphis Region
Bankers Outreach Call
December 15, 2010
RESPA – Compliance 2010**



Overview

1. Present an overview of the changes and features of the new forms.
2. Discuss common errors and types of violations identified.
3. Give tips on how to achieve your bank's optimal compliance performance.
4. Provide responses to commonly asked questions.
5. Respond to questions you may have.

RESPA – Major Changes

- New Definition of Application
- New Good Faith Estimate (GFE) and HUD forms effective January 1, 2010. Sections 3500.7 & 3500.8
- Introduction of “Average Charge” Method
- Revised Mortgage Servicing Disclosure Statement effective January 16, 2009. Section 3500.21
- New Settlement Cost Booklet effective January 1, 2010.
- Changed Circumstance

Application Defined

- The borrower's name;
- The borrower's monthly income;
- The borrower's social security number;
- The subject property address;
- An estimate of property's value;
- The requested loan amount;
- Any other information deemed necessary by loan originator.

Features of new GFE Form

- The new GFE is the “centerpiece” of RESPA reform.
- Allows consumers the ability to shop for and compare prices for origination and third-party settlement fees.

Features of new GFE Form (cont'd)

Will clearly answer five key questions for consumers.

1. What's the term of the loan?
2. Interest Rate fixed or can it change?
3. Prepayment penalties?
4. Is there a balloon payment?
5. What are total closing costs?

Additional Features of new GFE

To increase the value of the GFE as a shopping document, revisions make the GFE and HUD-1 easier to compare by:

- Comparing GFE estimates and HUD-1 charges and advising borrowers if tolerances have been met or exceeded;
- Verifying that loan terms match those in loan documents, including the note;
- Providing additional information on the terms and conditions of the mortgage; and
- Adding page 3 to the HUD-1, a comparison page of GFE and HUD-1 actual charges.

Overview of new GFE Form

- Requires banks to use the model form **without** modification.
- Provides much more information.
- Revised GFEs (Changed Circumstances).

Specifics of new GFE Form

- The new GFE provides much more information than the 30 year old previous form, requires use without modification, other than providing additional lines either vertically or horizontally to Blocks 3, 6, and 11.
- Additional lines may be added to the HUD-1. However, additional pages or addendums may not be added to the GFE. This prohibits adding signature lines.
- Banks must develop practices and procedures to document the consumer's acknowledgement of receipt of the GFE.

Specifics of new GFE Form (cont'd)

- Loan originators may not refuse to provide a GFE based upon a consumer's refusal to acknowledge receipt of the GFE. The acknowledgement by the consumer is not evidence of any intention to proceed with the loan covered by the GFE.
- If there is more than one potential borrower, additional lines may be added to the GFE.

Specifics of new GFE Form (cont'd)

- In addition, the loan originator may not require the applicant to sign consents to verify employment, income or deposits prior to issuing a GFE without violating 3500.7(a)(5)'s prohibition on requiring the applicant to submit supplemental documentation to verify information provided on the application.

Specifics of new GFE Form (cont'd)

- If the information provided by the applicant changes, and that change results in higher costs for any settlement services, and these new costs exceed the tolerance for that charge, these “changed circumstances” require the issuance of a revised or new GFE.

The new GFE and “POC”

Question: Can the bank list items as “Paid Outside of Closing” or “P.O.C.” on the new GFE?

Answer: No. The totals in the column on page 2 must be the sums of the prices or fees, by category, for all settlement services that are required to be shown on the GFE.

The new GFE and “POC”(cont’d)

- The standardized GFE form does not allow information to be included on any part of the totals that would be paid outside of closing.

The new GFE and “POC”(cont’d)

Question: So how do we handle charges paid by third parties?

Answer: The loan originator must list all required third party services on the GFE and HUD-1 regardless of whether the charge is paid by the borrower, seller, loan originator or any other party (except for administrative and processing services).

GFE and Denials

No GFE required when:

- (i) The lender denies the application within 3 business days; or
- (ii) The applicant withdraws the application within 3 business days.

FAQ

- Question: What happens if a GFE is not provided to a borrower?
- Answer: The loan originator is required to provide a GFE to the borrower. Failure to provide a GFE as required is a violation of Section 5 of RESPA.

The new GFE – The required written list of service providers

- Must be a separate document
- Service providers on list
- 10 percent rule
- Mortgage broker rule
- No guidance on how many providers of each type

The required written list of service providers (cont'd)

If the applicant chooses a settlement service provider not on the loan originator's list:

- The fee is not subject to a tolerance.

If the bank permits a mortgage broker to issue the GFE and the written list of providers:

- The bank is subject to the tolerances.

The required written list of service providers (cont'd)

What you should know:

- No guidance on the number of each type of settlement service providers the bank must disclose; and
- At least one provider listed for each shoppable settlement service.

GFE and Fees

The fees a loan originator are allowed to charge prior to providing the GFE are strictly limited:

- To the actual cost (not the lender's fee) of the cost of the credit report
- The lender may not charge additional fees until after the applicant has expressed an intent to proceed.

Completing the new GFE

- Lender Information
 1. Originating institution,
 2. Bank address,
 3. Phone number, and
 4. e-mail address.
- Borrower Information

Important features of the new GFE: Important Dates

1. Interest rate expiration date
2. Settlement charges expiration date
3. Interest rate lock period
4. Number of days prior to settlement that the applicant must lock rate (it does not mean that the interest rate is locked)

Important features of the new GFE: Summary of your loan

LOAN TERMS

- Initial Loan Amount
- Loan Term
- Initial Interest Rate
- Initial Monthly Payment
- Can interest rate increase
- If payments made timely, can monthly amounts or loan balance rise.
- Prepayment Penalty
- Balloon Payment

Important features of the new GFE: Dates (cont'd)

OMB Approval No. 2502-0265



Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	
Originator Email	Date of GFE

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through . After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through .
3. After you lock your interest rate, you must go to settlement within days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least days before settlement.

Important features of the new GFE: Dates (cont'd)

From the previous slide, item #1 must be completed, but it can be any time period the bank selects, including a period as short as one day. Item #2 must be at least 10 business days but can be longer, allowing customer to shop around. It is important to note that #3 and #4 call for the number of calendar days.

GFE Recap – Notice Requirements

- Provided no later than 3 business days by hand, mail, fax, e-mail.
- Not required if the application is denied or withdrawn by the borrower.
- May be provided by the mortgage broker, but lender is responsible.

GFE Triggers

1. Borrower's name
2. Social Security number
3. Property address
4. Monthly income
5. House value or best estimate
6. Amount of loan

Additional GFE Triggers Information

- Any other information deemed necessary.
- May not collect supplemental documentation from borrower or verify at GFE stage.
- Cost of providing GFE limited to credit report.

Changed Circumstances

If circumstances change, as defined by the regulation, which affect settlement costs or loan terms, the loan originator may provide a revised GFE to the borrower.

If the revised GFE is provided, the loan originator must:

- Provide new GFE within 3 business days of when the bank receives information sufficient to constitute a changed circumstance
- Reflect only the increased charges

Changed Circumstances Definition

- Acts of God, war, disaster or other emergency
- Changed or inaccurate information provided by borrower after issuance of GFE
- New information not previously relied on
- Other circumstances (e.g., boundary disputes, required flood insurance, environmental problems)

Interest Rate Offer Expiration

- If the borrower does not lock the interest rate within the time period or the lock expires, a revised GFE must be issued

AND...

New Interest Rate Offer

Only the following charges may change:

- Charge or credit for interest rate chosen
- Adjusted origination charges
- Per diem interest
- Other related loan terms

All other charges must remain the same!

RESPA – Safe Harbor

- Violations of Tolerance Provisions in Section 5 of RESPA
- A loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement.

HUD-1 Settlement Statement changes

- Revised to compare with GFE
- Categorized-eliminated fee proliferation
- 3rd party charges listed outside column
- Added page to HUD-1/1A
- Highlighted key loan terms

Changes to the HUD-1: Introduction of “Average Charge” Method

- Use is optional.
- The settlement agent will state the actual charges paid by borrower and seller on the HUD-1 or by the borrower on the HUD-1A.
- Settlement providers who use third-party services may opt to show an “average charge” rather than an exact amount on the settlement statement.
- Refer to Section 3500.8(b)(2) for guidelines

Servicing Disclosure Statement: Requirements

- Provided within 3 business days by hand, mail, fax or e-mail.
- Not required if the application is denied or withdrawn.
- Format: specific language not required.
 - Appendix MS-1 to Part 3500 (Sample language)

New Settlement Cost Booklet

- Helps in understanding how interest rates, points, balloon payments, and prepayment penalties can affect monthly mortgage payments.
- Provides information about settlement, including how to resolve loan servicing problems with the lender and steps to avoid foreclosure.
- Gives guidance on issues to consider before getting a home equity loan or refinancing.
- Contains contact information to answer any questions.

Banker Question

Question: Due to the costs associated with ordering the new Settlement Cost Booklets, do banks need to order new ones due to the minor change made by HUD in January & August of 2010?

Answer: Any version printed dated December 2009 or thereafter are acceptable for distribution.

Banker Question

- Question: In the “Summary of Your Loan” section in the GFE, is the loan term intended to be the amortization period of the loan or the loan maturity date? (example maturity date 5 years, amortized over 30 years)
- Answer: The actual loan term should be disclosed in the Loan Term box. In example, 5 years should be disclosed.

Newly Issued RESPA FAQs

- Updated as of 04/02/10 by HUD.
- See HUD website for complete copy (www.hud.gov/respa).

FAQ

- Question: If a loan originator contracts loan document preparation to a third party, is this a separate charge on the GFE and the HUD-1?
- Answer: No, loan document preparation is a processing and administrative service in the origination of a loan and is included in Block 1 of the GFE and it should not be separately itemized.

FAQ

- Question: If a borrower pays some of the origination charge prior to closing, how should it be disclosed on the HUD-1?
- Answer: The charge for origination must be shown on Line 801 of the HUD-1 to the left of the borrower's column in the 200 series.

FAQ

- Question: If state law requires further itemization of title services, title insurance related fees, or title policy endorsements, how should these fees be listed on the HUD-1?
- Answer: Those fees may be itemized on blank lines in the 1100 series – charge outside the borrower's column. Endorsements may be listed in lines 1103 & 1104 – charge outside the borrower's column.

FAQ

- Question – If a borrower selects an attorney to represent the borrower’s personal interests at settlement, where is this attorney’s fee disclosed on the HUD-1?
- Answer – May be separately listed on a blank line in the 1100 series in borrower’s column with the name of the attorney & type of service provided.

Section 8 RESPA

Under RESPA, it is a felony to give or accept any fee, kickback, or thing of value under any agreement or understanding for the referral of a real estate settlement service or to receive any portion of the charge for a settlement service other than for services actually performed.

Section 8 RESPA Prohibits

- Giving of “thing of value” for the referral of business
- Fee Splitting
- Unearned Broker Fees
- Sham Controlled Business Arrangements

RESPA Section 8 Violations

- Giving of “thing of value” for the referral of business
 - Includes money, discounts, trips, payment of expenses, special or unusual banking terms, lease or rental rates, etc. based on number or volume of referrals
 - For additional information on items that are considered things of value, visit the HUD website at the following addresses:

<http://www.hud.gov/offices/hsg/rmra/res/settleservices.pdf>

<http://www.hud.gov/offices/hsg/rmra/res/faqsjuly16.pdf>

RESPA Section 8 Violations

- Fee Splitting
 - Violation to accept a fee where services are not performed
- Unearned Broker Fees
- Section 8 requires
 - For payment of fees to be permissible, sufficient services must be performed, and
 - Amount of total compensation must be reasonable

RESPA Policy Statement

- FIL 21-99 incorporates HUD's policy statement
 - Identifies 14 services normally performed in the origination of a loan
 - Generally satisfied if origination work performed by broker included taking application information and performing 5 additional items on the list
 - If only counseling type services, make sure bank is not steering applicants to only one lender

RESPA Section 8 Violations

- Sham Controlled Business Arrangements
 - New entity performs little, if any, real settlement services
 - Is merely a shell for passing referral fees
 - New entity provides settlement services that are actually provided by a pre-existing entity that otherwise could have received direct referral of the business

Sham Controlled Business Arrangements

- HUD Policy Statement details 14 factors to help determine whether an entity is a bona fide provider
- Access the statement at the following address

<http://www.hud.gov/offices/hsg/rmra/res/res0607c.cfm>

Section 8 RESPA Violations

- Consequences of Section 8 Violations
 - Restitution to affected borrowers
 - Civil Money Penalties
 - Referral to HUD

Common Violations

- Failure to provide a copy of the special information booklet.
- Failure to provide the good faith estimate (GFE), within 3 business days.
- Errors in accurately completing the GFE.
- Errors in the HUD-1.
- Tolerance violations not adjusted at closing
- Failure to cure tolerance violations.
- Changing cost estimates/issuing a revised GFE without valid changed circumstance.

Optimizing Your Compliance Management System (CMS)

1. Have written policies and procedures been updated to reflect regulation changes?
2. Have lending and compliance personnel received training on amended regulation?
3. Have monitoring or audit procedures been implemented to ensure compliance with new requirements?
4. Has an appropriate recordkeeping system been implemented?

Tolerances Cure

- If the tolerance in the “Total” line for the HUD-1 exceeds the amount entered in “Total line for the GFE by more than 10 percent, the lender is responsible for refunding such excess.” For example, if the amount entered in “Total” line for the HUD-1 is \$2,300, and the amount entered in the “Total” line for the GFE is \$2,000, the lender is responsible for refunding the \$100 to the borrower.
- This refund is noted as a credit in the 200 series lines of the HUD-1.

Key Changes to Remember

1. Know that the GFE cannot be modified, with only these exceptions:
 - Additional lines to the borrower block to include all potential borrower names.
 - Expansion of Blocks 3, 6, and 11.

Other than these two exceptions, no other changes can be made.

Key Changes to Remember (cont'd)

2. Know what is a “Changed Circumstance”.

- Regulation defined
- Requires documentation
- Separate record retention
- Charges and terms limited to specific changes.

Key Changes to Remember (cont'd)

3. Know how to cure a violation.
 - At settlement or
 - Within 30 calendar days after settlement.

Questions

