

# Overview of RESPA Reform

**Notice:** This overview has been provided by Southern Abstract Company for your convenience and is not a substitute for knowledge of the current federal regulations regarding the Real Estate Settlement Procedures Act. For additional information or instructions, please consult your attorney or other appropriate professional advisor or the Office of RESPA at the Department of Housing and Urban Development (202-708-0502).

## The Basics

### **What is RESPA**

The Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute first passed in 1974. The purposes of RESPA are (1) to help consumers become better shoppers for settlement services and (2) to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

RESPA applies to all “federally related mortgage loans” and covers loans secured with a mortgage placed on a one-to-four family residential property. These include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit. It does not apply to commercial loans, temporary financing (construction loans), loans on property in excess of 25 acres, vacant land and cash transactions, among others.

### **RESPA Reform**

The final rule, which was issued in November 2008, amends the current regulations to further RESPA’s purposes by requiring more timely and effective disclosures related to settlement costs. The changes are designed to protect consumers from unnecessarily high settlement costs. The final rule includes an improved and standardized GFE to make it easier for a consumer to shop and a revised HUD-1 that includes a comparison of figures shown on the GFE to the final HUD. The use of the new GFE and HUD-1 are mandatory effective January 1, 2010.

### **New GFE**

The new GFE includes 3 pages. Page 1 includes a summary of the loan, escrow account information and charges. Page 2 includes itemized details of settlement charges. Page 3 includes information to help the consumer compare costs between different loan packages and to compare costs between different loan originators (shop). Page 3 also specifies which charges can change from the GFE to the final closing.

### **New HUD-1**

The new HUD-1 includes 3 pages. Page 2 now includes specific references back to the GFE. Page 3 includes a comparison of the costs shown on the GFE to the final costs at closing and indicates which of those changed and by how much. Page 3 also includes details on the loan terms.

## **Key changes**

1. The loan originator must provide the GFE within 3 business days of application.
2. The loan originator must provide the borrower with a written list of settlement service providers at the time of the GFE, on a separate sheet of paper.
3. The fee a loan originator can charge to provide a GFE is limited to the cost of a credit report.
4. The borrower must be given 10 business days after being provided with the GFE to compare and shop.
5. Rather than itemization, the GFE incorporates grouping of fees into 11 categories.
6. Fees now fall into 3 tolerance groups (buckets): those that cannot change (zero tolerance), those that can increase up to 10% (10% tolerance) and those that can change.
7. Each loan transaction, such as a first and second mortgage, requires a separate GFE and a separate HUD-1.
8. Page 2 of the HUD-1 includes specific line-item references to one of the 11 categories on the GFE.
9. The HUD-1 requires grouping of certain fees rather than itemization.
10. The real estate commission % has been removed from Page 2 of the HUD-1.
11. Yield Spread Premiums must now be shown as a credit to the borrower on Page 2 of the HUD-1.
12. Costs traditionally paid by the buyer must be shown as a buyer cost on the GFE and on Page 2 of the HUD-1. Any of those charges that are paid by the seller will be shown as a credit to the buyer and a charge to the seller on Page 1 of the HUD-1. The same would apply for any fee paid by the seller that a loan originator discloses on the GFE as a buyer fee.
13. Page 3 of the HUD-1 includes a comparison of the GFE figures to the actual HUD-1 figures with regard to each tolerance bucket.
14. Page 3 of the HUD-1 includes a section on Loan Terms.
15. A lender must “cure” a tolerance violation by refunding the overage to the borrower within 30 calendar days.

## **The Details**

### **Background**

The Real Estate Settlement Procedures Act (RESPA) was originally passed in 1974 as a consumer protection statute. It requires that borrowers receive disclosures at various times to spell out the costs associated with the settlement, to outline lender servicing and escrow account practices, and describe business relationships between settlement service providers. It also prohibits certain practices that increase the cost of settlement services. Section 8 of RESPA prohibits a person from giving or accepting anything of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. Section 9 of RESPA prohibits home sellers from requiring home buyers to purchase title insurance from a particular company. HUD's Office of RESPA and Interstate Land Sales is responsible for enforcing RESPA.

It applies to all “federally related mortgage loans” which includes any loan (other than temporary financing) that 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 a 1-4 family dwelling or a manufactured home and which is:

1. made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;
2. made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other officer or agency of the Federal Government;
3. is intended to be sold to FNMA, FHLMC or GNMA or its successors;
4. Is made in whole or in part by a “creditor” (not an agency or instrumentality of a State) that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year’
5. is originated either by a dealer or mortgage broker
6. is a Home Equity Conversion Mortgage (HECM) also frequently called a “reverse mortgage;”

It does not apply to:

1. construction loans (construction-to-perm loans are subject to RESPA)
2. loans on commercial property
3. loans on property greater than 25 acres
4. loans on vacant land
5. loan modifications or assumptions
6. transactions on which there is no loan (cash transactions)

RESPA first proposed the current rule on March 14, 2008. Following a period of public comment and further considerations of certain issues of HUD, the final rule was issued November 17, 2008. The effective date of the rule was January 16, 2009 although some aspects of the rule were effective at later dates including the use of the new GFE and new HUD-1/HUD-1A which are applicable commencing January 1, 2010.

During the public comment period, HUD received comments from homeowners, prospective homeowners, organizations representing consumers and numerous industry organizations involved in the settlement process, including lending institutions, mortgage brokers, real estate agents, lawyers, title agents, escrow agents, closing agents and notaries, community development corporations, and major organizations representative of key industry areas such as bankers, mortgage bankers, mortgage brokers, realtors, and title and escrow agents, as well as from state and federal regulators.

### ***Summary of the new rule***

The Real Estate Settlement Procedures Act (RESPA): Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs (24 CFR Parts 203 and 3500):

This final rule amends HUD’s regulations to further RESPA’s purposes by requiring more timely and effective disclosures related to mortgage settlement costs for federally related

mortgage loans to consumers. The changes made by this final rule are designed to protect consumers from unnecessarily high settlement costs by taking steps to:

- improve and standardize the Good Faith Estimate (GFE) form to make it easier to use for shopping among settlement service providers;
- ensure that page 1 of the GFE provides a clear summary of the loan terms and total settlement charges so that borrowers will be able to use the GFE to identify a particular loan product and comparison shop among loan originators;
- provide more accurate estimates of costs of settlement services shown on the GFE;
- improve disclosure of yield spread premiums (YSPs) to help borrowers understand how YSPs can affect borrowers' settlement charges;
- facilitate comparison of the GFE and the HUD-1/HUD-1A Settlement Statements;
- ensure that at settlement borrowers are aware of final costs as they relate to their particular mortgage loan and settlement transaction;
- clarify HUD-1 instructions;
- expressly state that RESPA permits the listing of an average charge on the HUD-1; and
- strengthen the prohibition against requiring the use of affiliated businesses.

### ***Definitions (Section 3500.2)***

**Application** means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include:

1. the borrower's name,
2. the borrower's monthly income,
3. the borrower's social security number to obtain a credit report,
4. the property address,
5. an estimate of the value of the property,
6. the mortgage loan amount sought,
7. and any other information deemed necessary by the loan originator.

An application may either be in writing or electronically submitted, including a written record of an oral application.

**Changed circumstances** means:

(1)

- (i) Acts of God, war, disaster, or other emergency;
- (ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;
- (iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or
- (iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

- (i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought,

- and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or
- (ii) Market price fluctuations by themselves.

**NOTE: See also GFE—"Changed circumstances" FAQs**

**Good faith estimate** or **GFE** means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in § 3500.7 and prepared in accordance with the Instructions in Appendix C to this part.

**Loan originator** means a lender or mortgage broker.

**Mortgage broker** means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction. A loan correspondent approved under 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

**Origination service** means any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, and the underwriting and funding of the loan, and the processing and administrative services\*\* required to perform these functions.

**Third party** means a settlement service provider other than a loan originator.

**Title service** means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services\*\* required to perform these functions. The term also includes the service of conducting a settlement.

**Tolerance** means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

\*\**Administrative services* can include document preparation, document delivery, copying, notarization, wiring, lender inspection, loan handling, courier/overnight delivery fees and other miscellaneous fees.

### ***Good Faith Estimate of GFE (Section 3500.7)***

Not later than 3 business days after a lender or mortgage broker receives an application, or information sufficient to complete an application (see definition of **Application** above), either the lender or mortgage broker must provide the applicant with a GFE. The lender or mortgage broker must provide the GFE to the loan applicant by hand delivery, by

placing it in the mail, or, if the applicant agrees, by fax, e-mail, or other electronic means. The lender is responsible for ascertaining whether the GFE has been provided. The lender or mortgage broker is not required to provide the applicant with a GFE if before the end of the 3-business-day period: (i) the mortgage broker or lender denies the application; or (ii) the applicant withdraws the application.

The mortgage broker or lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker or lender may, at its option, charge a fee limited to the cost of a credit report. (This limitation is consistent with the Federal Reserve Board's recently finalized rule limiting the fees that consumers can be charged for the delivery of TILA disclosures). The mortgage broker or lender may not charge additional fees until after the applicant has received the GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). (5).

**NOTE: See also GFE-General FAQ#10 and GFE-Important Dates FAQ #8**

The mortgage broker or lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, In order to prevent overburdensome documentation demands on mortgage applicants, and to facilitate shopping by borrowers, the final rule specifically prohibits the loan originator from requiring an applicant, as a condition for providing a GFE, to submit supplemental documentation to verify the information provided by the applicant on the application. They can, however, require applicants to provide such verification information after the GFE has been provided, in order to complete final underwriting. In addition, the rule does not bar a loan originator from using its own sources before issuing a GFE to independently verify the information provided by the applicant.

The estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement:

- the interest rate,
- charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen,
- the adjusted origination charges,
- and per diem interest.

The estimated interest rate will be available until a date set by the loan originator, and is not required by HUD to be any specific period of time. However, the estimate for all other settlement charges and loan terms must be made available for 10 business days from when the GFE is provided, but could remain available longer if the loan originator chooses to extend the period of availability.

## **GFE Form**

The GFE form is set out in Appendix C of the rule. The loan originator must prepare the GFE in accordance with the requirements in Section 3500.7 and the Instructions in Appendix C. The instructions allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format. All charges typically paid by the borrower must

be disclosed on the GFE regardless of whether the charges will be paid for by the borrower, the seller, or other party.

**NOTE: See GFE–Seller Paid Items FAQ #1 & #2**

The new GFE contains three pages.

1. Page 1
  - a. Loan originator information, borrower information and property information
  - b. Statement about the purpose of the GFE
  - c. Information on how to shop for a loan offer
  - d. Important dates
  - e. Summary chart of the loan
  - f. Escrow account information
  - g. Summary of settlement charges
2. Page 2
  - a. Listing of estimated origination charges
  - b. Listing of all other settlement services charges
  - NOTE: See HUD-1 FAQ #9 with regard to surveys**
  - c. Total estimated settlement charges
3. Page 3
  - a. Information to assist in understanding which charges can change at settlement.
  - b. Table comparing costs of different loans
  - c. Shopping cart
  - d. Lender disclosure regarding the sale of the loan

## **Tolerances for amounts included on the GFE**

The new rule includes three levels of tolerance (generally referred to as “buckets”).

1. **Zero tolerance**. The actual charges at settlement may not exceed the amounts included on the GFE for:
  - (i) The origination charge (Block 1);
  - (ii) While the borrower’s interest rate is locked, the credit or charge for the interest rate chosen (Block 2);
  - (iii) While the borrower’s interest rate is locked, the adjusted origination charge (Block A); and
  - (iv) Transfer taxes (Block 8)
2. **10% tolerance**. The sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:
  - (i) Lender-required settlement services, where the lender selects the third party settlement service provider (Block 3);
  - (ii) Lender-required services, title services and required title insurance, and owner’s title insurance, when the borrower uses a settlement service provider identified by the loan originator (Block 4, Block 5 and Block 6);
  - (iii) Government recording charges (Block 7).
3. **Can change**. The amounts charged for all other settlement services included on the GFE may change at settlement (Block 9, Block 10 and Block 11).

## Revised GFEs

The loan originator is bound, within the tolerances shown above, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement consistent with the situations listed below. If a loan originator provides a revised GFE, they must document the reason that a new GFE was provided and must retain documentation of any reasons for providing a new GFE for no less than 3 years after settlement.

**NOTE: See GFE–Important Dates FAQ #12**

1. **Changed circumstances.** If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges OR if changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.
2. **Borrower-requested changes.** If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request.
3. **Expiration of original GFE.** If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) above, the loan originator is no longer bound by the GFE.
4. **Interest rate dependent charges and terms.** If the interest rate has not been locked by the borrower, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate-dependent charges and terms. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in this list of situations.
5. **New home purchases.** In transactions involving new home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in this list of situations.

The GFE is not a loan commitment. The issuance of a GFE or revised GFE shall not be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

## **Violations**

A loan originator that violates the requirements of Section 3500.7 shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the 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. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

## ***HUD-1/HUD-1A Settlement Statement (Section 3500.8)***

The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and seller. For transactions in which there is a borrower and no seller, such as a refinance or subordinate lien, the HUD-1 may be used, using only the borrower's side, or form HUD-1A may be used. Either the HUD-1 or the HUD-1A shall be used for every RESPA-covered transaction. NOTE: the use of the HUD-1 and HUD-1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act (TILA) and Regulation Z.

If the borrower is taking out two loans then each loan requires a separate GFE and a separate HUD-1 or HUD-1A.

The settlement agent shall complete the HUD-1 and HUD-1A in accordance with the forms and instructions set out in Appendix A of the rule. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.

## **HUD-1 and HUD-1A (Pages 1 and 2)**

1. The settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A.
2. The settlement agent must separately itemize each third party charge paid by the borrower and seller.
3. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge (800 Section).
4. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge (1100 Section).
5. The new rule allows for the use of an average charge.
6. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge.
7. Many items listed on Page 2 of the HUD-1/1A now have a specific reference back to the related GFE line.
8. Certain types of costs, which were previously itemized, are now grouped.
9. New terms related to the display of charges on Page 2 include "in the column" and "outside the column."

## **HUD-1 and HUD-1A Page 3**

The HUD-1 and HUD-1A includes a new Page 3 containing the following:

1. Comparison of GFE and HUD-1/1A Charges
  - (i) **Charges That Cannot Increase** This section includes a line-by-line comparison of the charges which cannot increase (Zero Tolerance Bucket). The HUD-1/1A column must include any amounts shown on Page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.
  - (ii) **Charges That Cannot Increase More than 10%** This section includes a cumulative comparison of the charges which cannot increase more than 10% (10% Bucket). The amounts shown in the GFE and HUD-1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the GFE column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line
  - (iii) **Charges That Can Change** This section is for a list of any third party settlement services for which the borrower selected a provider other than one identified by the loan originator and on which the amount of the charges can change (Can Change Bucket). The HUD-1/1A column must include any amounts shown on Page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.
2. Loan Terms - This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

## Helpful Links

- Southern Abstract Company:  
[www.southernabstract.com/links.html](http://www.southernabstract.com/links.html)
- Office of RESPA:  
[http://www.hud.gov/offices/hsg/ramh/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm)
- American Land Title Association:  
<http://www.alta.org/respa/index.cfm>
- National Association of REALTORS®:  
[http://www.realtor.org/government\\_affairs/respa](http://www.realtor.org/government_affairs/respa)