

National Settlement Services Summit

RESPA Reform: Legal Considerations and Business Realities

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RESPA Reform Timeline

- July 2002 - HUD introduces a new RESPA Rule.
- June 2004 - HUD discusses proposal with industry and others;
- March 14, 2008 – HUD publishes current proposed rule;
- Comment period scheduled to end May 13, 2008
- Comment period extended to June 12, 2008



HUD's Stated Objectives

To protect consumer from unnecessarily high settlement costs by taking steps to:

1. Improve and standardize the Good Faith Estimate ("GFE") in order to make it easier to shop for a mortgage;
2. Ensure page one of the GFE gives a clear summary of loan terms;
3. Provide more accurate estimates of settlement costs;
4. Improve disclosure of the Yield Spread Premium;
5. Facilitate comparison of the GFE and the HUD-1/HUD-1A.



HUD's Stated Objectives

6. Ensure borrowers are made aware at closing of final loan terms and settlement costs (include closing script);
7. Clarify HUD-1 instructions;
8. Clarify HUD regulations concerning discounts;
9. Expressly state when RESPA permits pricing mechanisms that benefit consumers – permit the use of average cost pricing and discounts, including volume discounts;



How does HUD intend to accomplish this?

1. Introduced a new mortgage application process
2. Created a new "binding" GFE
3. Required disclosure of mortgage broker compensation including any yield spread premium
4. Created a new "Closing Script" to be read by the settlement agent at the closing
5. Provided specific interpretative support for the use of average cost pricing and volume discounts
6. Placed specific restrictions on the use of consumer incentives
7. Addressed specific other matters



Existing Rule/Proposed Rule Comparison

- New rule Creates a standard form GFE where none previously existed.
- New rule Creates a new application process that envisages a "GFE Application" and a "Mortgage Application"
- New form of GFE includes a summary of the key terms of the loan
- Mortgage lender or broker may not charge for the GFE except to collect the cost of providing the GFE.



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Existing Rule/Proposed Rule Comparison

- The GFE must remain open (available for acceptance) for 10 business days.
- The GFE must identify the date through which the initial interest rate is available.
- If a consumer accepts the terms of the GFE, the consumer then submits a mortgage application.
- GFE estimates total settlement charges; also estimates amounts for other required payments – property taxes, homeowner insurance, etc.
- Fee estimates may only change within certain tolerances.



Fee Limitations

1. Fixed fees (absent unforeseen circumstances):
2. Fees with a 10% Tolerance (absent unforeseen circumstances):
3. Unrestricted fees



Yield Spread Premium Disclosure

1. The yield spread premium is required to be identified on the GFE and would appear as a credit to the borrower for the specific interest rate.
2. To the extent a yield spread premium exists, it would be identified as a credit to the borrower (or a reduction of costs).
3. Discount points are disclosed as a charge to the borrower that increases the origination costs to the borrower.



The Closing Script

1. Closing Script is an Addendum to HUD-1 and HUD-1A Settlement Statement
2. Must be provided to borrower at closing and the settlement agent must read the Addendum aloud to the borrower at closing.
3. Settlement Agent must explain:
 - a) Comparison between the loan terms and settlement charges – compare GFE to HUD-1 or HUD-1A;
 - b) Whether the tolerances have been met; and
 - c) The loan terms for the specific mortgage loan as stated in the mortgage note and related settlement information.



Other modifications

- Average cost pricing
- Volume discounts
- Consumer incentives
- Removal of 1% origination fee cap on FHA loans
- The amount stated on the HUD-1 for any consumer paid service may not exceed the amount received by the actual provider of that service unless the difference is the result of the use of average cost pricing
- Required disclosure of title splits between underwriter and agent



Other issues

- Has HUD achieved its objective with these proposed changes in the application process?
- Does the closing script work?
- Do the pricing changes help or hurt?
 - a) Average cost pricing
 - b) Volume discounts
- Limitations on use of affiliates.
- Procedural and other issues.

