


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Tuesday, July 12, 2011

HUD: Updates RESPA

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On July 11, 2011, the Department of Housing and Urban Development (HUD) issued updates to the Real Estate Settlement Procedures Act (RESPA).

This is a final rule (Rule) which makes technical corrections and certain clarifying amendments to HUD's RESPA regulations promulgated by a final rule published on November 17, 2008.

The majority of the regulations promulgated by the November 17, 2008, and became applicable on January 1, 2010.

Effective Date: August 10, 2011.

SALIENT AMENDMENTS



Good Faith Estimate (GFE) and Intent to Proceed

The applicant borrower must express an intent to continue with the application process.

The Rule amends § 3500.7(a)(4) and (b)(4) to provide that the applicant borrower must indicate an **intention to proceed** with the loan covered by the GFE received by the applicant borrower from the lender or mortgage broker before the lender or mortgage broker may charge additional fees.

Good Faith Estimate (GFE)

Tolerances

Currently the applicable provision states that a loan originator is bound "within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a [revised] GFE is provided prior to settlement consistent with this paragraph (f)."

However, the introductory paragraph inadvertently omits that **the GFE does not remain binding indefinitely but expires 10 business days after the GFE is provided to the borrower if the borrower does not express an intent to continue** with an application provided by the loan originator that provided the GFE, or expires after such longer period as may be specified by the loan originator pursuant to § 3500.7(c).

Although the expiration period of the GFE is clearly stated in paragraph (f)(4) of § 3500.7(f), HUD finds that clarity is enhanced by also adding this language to the introductory paragraph of § 3500.7(f).

Changed Circumstances

Currently the applicable provision addresses changed circumstances affecting settlement costs, provides that the revised GFE may increase charges for services listed on the GFE but only to the extent that the changed circumstances actually resulted in higher charges.

However, the currently the applicable provision, which addresses borrower-requested changes, inadvertently omits that **the revised GFE may increase charges listed on the GFE only to the extent that changed circumstances affecting the loan, or the borrower's requested change, actually increased those charges.**

This rule therefore adds language that clarifies this limitation.

Locked Interest Rate

HUD clarifies that whenever the borrower's interest rate is locked, a revised GFE must be provided to the borrower showing the revised interest rate-dependent changes and terms within 3 business days.

Construction Loans

In revising § 3500.7(f)(6) of RESPA, HUD is adding the word "construction" to the phrase "new home purchases" so that it reads "new construction home purchases."

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HUD believes that the content of this paragraph is clear that new home purchases refers to purchases of newly constructed homes, not simply any home that is new to a borrower. This interpretation is supported by the preamble to the November 17, 2008, final rule in which this regulatory provision was discussed.

While HUD believes the meaning of paragraph (f)(6) is clear, to remove any possibility of ambiguity the word "construction" is inserted between the words "new" and "home purchases."

HUD-1 or HUD-1A Settlement Statements

Appendix: HUD-1 Instructions for Page 3

The instructions for the HUD-1, found at 73 FR 68243 of the November 2008 final rule, provide that the HUD-1 form is to be used as a statement of the actual charges and adjustments. If the borrower, or a person acting on behalf of the borrower, does not purchase a settlement service that was listed on the GFE (e.g., owner's title insurance), there should be no amount entered for that service in the corresponding line on Page 2 of the HUD-1, and the estimate of the charge from the GFE should not appear on the comparison chart on Page 3 of the HUD-1.

HUD has determined that the current instructions are not sufficiently clear on this point. Allowing loan originators to include on Page 3 of the HUD-1 charges from the GFE for settlement services that were not purchased could both induce loan originators to discourage consumers from purchasing settlement services (e.g., owner's title insurance) in order to gain padding in the 10 percent tolerance categories, and encourage loan originators to pad the 10 percent tolerance categories on the GFE with estimates of services that the consumer will not need in the transaction. HUD has previously addressed and clarified this issue in informal guidance.

Therefore, HUD is revising the first paragraph of the instructions for [Page 3](#) of the HUD-1 to clarify that the amounts to be inserted in the comparison chart are those for the **services that were purchased or provided** as part of the transaction, and that no amount should be included on [Page 2](#) of the HUD-1 for any service that was listed on the GFE, but which was not obtained in connection with the transaction.

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HUD: Real Estate Settlement Procedures Act (RESPA)
Technical Corrections and Clarifying Amendments
Federal Register - Vol. 76, No. 132
Monday, July 11, 2011



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