



RESPA RADIO

**COMPLYING
WITH THE FINAL
RESPA REFORM RULE**

HANDOUTS

**HUD's Presentation on
the Final RESPA Rule**

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GFE Process Flowchart

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**Howard Lax Presentation on
New Disclosures**

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**Finally a Final RESPA Rule
by Phil Schulman**

Page 109



The Final RESPA Rule



Principles of RESPA Reform

- Help consumers shop for the best loan
- Shopping leads to greater competition & lower prices



Principles of RESPA Reform

- Key final terms of the loan disclosed to the borrower at closing
- Preserve a competitive market for all settlement service providers



Changes from Proposed Rule



Changes from proposed

- no Closing Script
- shorter GFE
- single application process
- removed volume based discounts
- added 30 day right to cure
- HUD-1 disclosure of key terms



Effective Dates

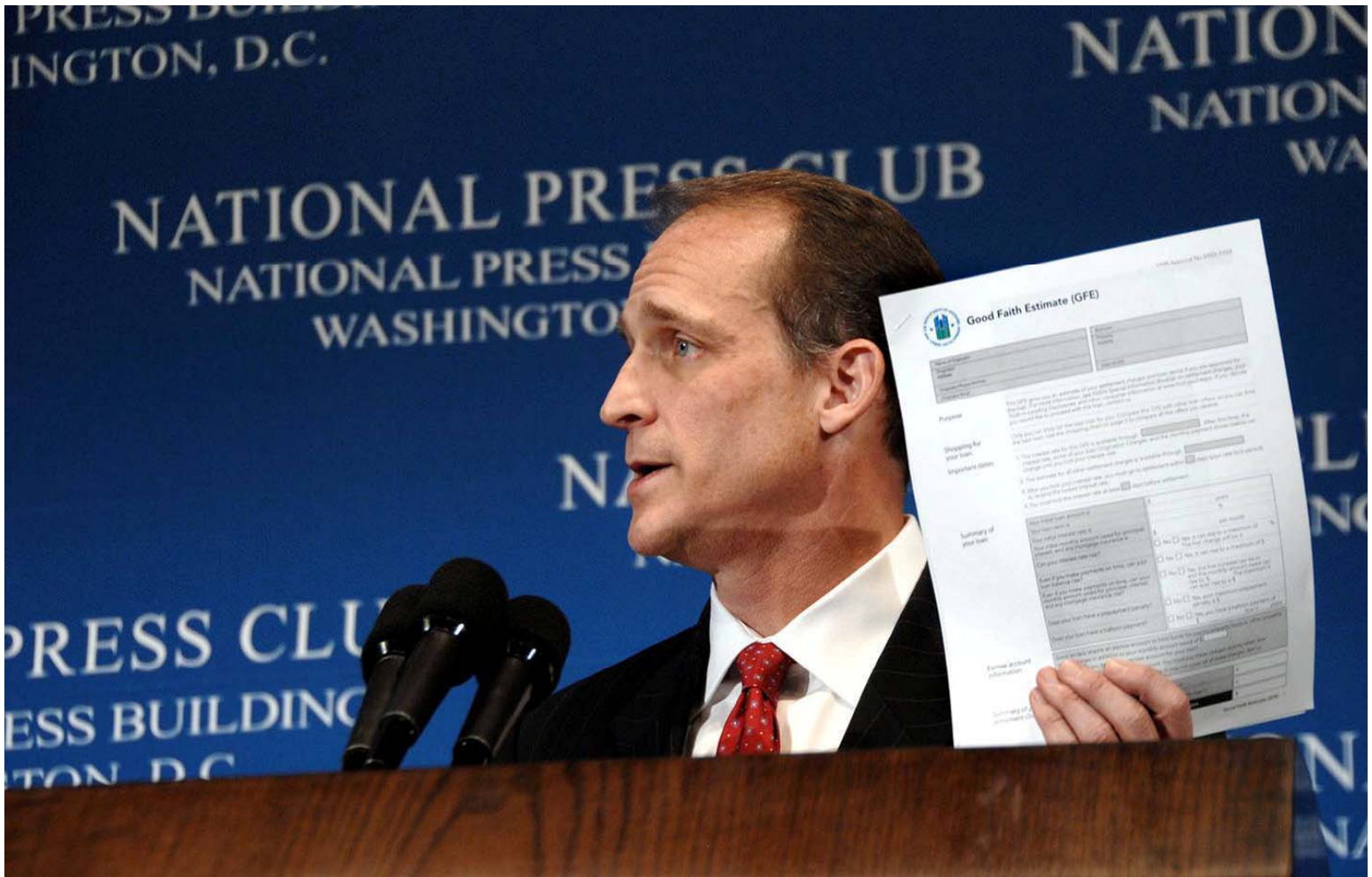
January 16, 2009

- Servicing Disclosure Statement (Section 6)
- required use
- average cost pricing
- technical changes

January 1, 2010

- new GFE
- new HUD-1/1A
- everything else

Good Faith Estimate “GFE”





Good Faith Estimate

- standardized form
- key loan terms & costs
- consolidated charges
- established tolerances
- applied yield spread premiums



GFE Notice Requirements

- provided no later than 3 business days by hand, mail, fax, email
- not required if application denied or withdrawn by borrower
- may be provided by mortgage broker, but lender is responsible



GFE Triggers

- borrower's name
- Social Security number
- property address
- monthly income
- house value or best estimate
- amount of loan



GFE Triggers

- 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



Good Faith Estimate (GFE)

Print Form

Name of Originator	
Originator Address	
Originator Phone Number	
Originator Email	

Borrower	
Property Address	
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.

Summary of your loan

Your initial loan amount is	\$	
Your loan term is		years
Your initial interest rate is		%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$	per month
Can your interest rate rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of % The first change will be in
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$
Does your loan have a prepayment penalty?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ [] .

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges (See page 2.)	\$
B	Your Charges for All Other Settlement Services (See page 2.)	\$
A + B	Total Estimated Settlement Charges	\$



GFE

Page 1

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.

Summary of your loan

Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ per month
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of %. The first change will be in .
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$.
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$.
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$.

Do we require you to have an escrow account for your loan?

- No, you do not have an escrow account. You must pay these charges directly when due.
- Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges <i>(See page 2.)</i>	\$
B	Your Charges for All Other Settlement Services <i>(See page 2.)</i>	\$
A + B	Total Estimated Settlement Charges	\$

Good Faith Estimate (HUD-GFE) 1

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges									
1. Our origination charge This charge is for getting this loan for you.									
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [] for this interest rate of [] %. This credit reduces your settlement charges. <input type="checkbox"/> You pay a charge of \$ [] for this interest rate of [] %. This charge (points) increases your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.									
A Your Adjusted Origination Charges	\$								
Your Charges for All Other Settlement Services									
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Service	Charge							
Service	Charge								
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.									
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.									
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Service	Charge							
Service	Charge								
7. Government recording charges These charges are for state and local fees to record your loan and title documents.									
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.									
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other [] .									
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ [] per day for [] days (if your settlement is []).									
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Policy	Charge							
Policy	Charge								
B Your Charges for All Other Settlement Services	\$								
A + B Total Estimated Settlement Charges	\$								



GFE

Page 2



1. Our Origination Charge

Must contain ALL charges by
ALL loan originators in the transaction

Your Credit or Charge (Block 2)



Check only one:

- Credit or Charge included in
“Our origination charge”
- You receive credit of \$__ for interest
rate (reduces settlement charges)
- You pay charge of \$__ for interest
rate (increases settlement charges)

Example

Your Adjusted Origination Charges

<p>1. Our origination charge This charge is for getting this loan for you.</p>	<p>\$6,250.00</p>
<p>2. Your credit or charge (points) for the specific interest rate chosen</p> <p><input type="checkbox"/> The credit or charge for the interest rate of <input type="text"/> % is included in "Our origination charge." (See item 1 above.)</p> <p><input checked="" type="checkbox"/> You receive a credit of \$ <input type="text" value="3,000.00"/> for this interest rate of <input type="text" value="6.0"/> %. This credit reduces your settlement charges.</p> <p><input type="checkbox"/> You pay a charge of \$ <input type="text"/> for this interest rate of <input type="text"/> %. This charge (points) increases your total settlement charges.</p> <p>The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.</p>	<p>-\$3,000.00</p>
<p>A Your Adjusted Origination Charges</p>	<p>\$ 3,250.00</p>

All Other Settlement Services

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services.		\$4,878.00
<i>Service</i>	<i>Charge</i>	
Appraisal/Credit Report	\$250/\$40	
Tax Service/Flood Certification	\$76/\$12	
Upfront Mortgage Insurance Premium	\$4,500.00	
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.		\$925.00
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.		\$725.00
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.		\$270.00
<i>Service</i>	<i>Charge</i>	
Survey	\$225.00	
Pest Inspection	\$45.00	

All Other Settlement Services

<p>7. Government recording charges These charges are for state and local fees to record your loan and title documents.</p>	<p>\$50.00</p>						
<p>8. Transfer taxes These charges are for state and local fees on mortgages and home sales.</p>	<p>\$1,368.00</p>						
<p>9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input checked="" type="checkbox"/> all property taxes, <input checked="" type="checkbox"/> all insurance, and <input type="checkbox"/> other _____.</p>	<p>\$306.60</p>						
<p>10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ <input type="text" value="50.00"/> per day for <input type="text" value="2"/> days (if your settlement is <input type="text" value="12/30/08"/>).</p>	<p>\$100.00</p>						
<p>11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire.</p> <table border="1" data-bbox="94 1381 1198 1520"> <thead> <tr> <th data-bbox="94 1381 748 1430"><i>Policy</i></th> <th data-bbox="748 1381 1198 1430"><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="94 1430 748 1478" style="text-align: center;">Insure-U</td> <td data-bbox="748 1430 1198 1478" style="text-align: center;">\$600.00</td> </tr> <tr> <td data-bbox="94 1478 748 1520"> </td> <td data-bbox="748 1478 1198 1520"> </td> </tr> </tbody> </table>	<i>Policy</i>	<i>Charge</i>	Insure-U	\$600.00			<p>\$600.00</p>
<i>Policy</i>	<i>Charge</i>						
Insure-U	\$600.00						



GFE

Page 3

Instructions

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> Our origination charge Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate) Your adjusted origination charges (after you lock in your interest rate) Transfer taxes 	<ul style="list-style-type: none"> Required services that we select Title services and lender's title insurance (if we select them or you use companies we identify) Owner's title insurance (if you use companies we identify) Required services that you can shop for (if you use companies we identify) Government recording charges 	<ul style="list-style-type: none"> Required services that you can shop for (if you do not use companies we identify) Title services and lender's title insurance (if you do not use companies we identify) Owner's title insurance (if you do not use companies we identify) Initial deposit for your escrow account Daily interest charges Homeowner's Insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with lower settlement charges, then you will have a higher interest rate.
- If you want to choose this same loan with a lower interest rate, then you will have higher settlement charges.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate ¹	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ more every month	You will pay \$ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$	Your settlement charges will increase by \$
How much your total estimated settlement charges will be	\$	\$	\$

¹ For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

Which charges can increase

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> ■ Our origination charge ■ Your credit or charge (points) for the specific interest rate chosen <i>(after you lock in your interest rate)</i> ■ Your adjusted origination charges <i>(after you lock in your interest rate)</i> ■ Transfer taxes 	<ul style="list-style-type: none"> ■ Required services that we select ■ Title services and lender's title insurance <i>(if we select them or you use companies we identify)</i> ■ Owner's title insurance <i>(if you use companies we identify)</i> ■ Required services that you can shop for <i>(if you use companies we identify)</i> ■ Government recording charges 	<ul style="list-style-type: none"> ■ Required services that you can shop for <i>(if you do not use companies we identify)</i> ■ Title services and lender's title insurance <i>(if you do not use companies we identify)</i> ■ Owner's title insurance <i>(if you do not use companies we identify)</i> ■ Initial deposit for your escrow account ■ Daily interest charges ■ Homeowner's insurance

Tradeoff table

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$ 300,000	\$ 300,000	\$ 300,000
Your initial interest rate ¹	6.0 %	6.25 %	5.75 %
Your initial monthly amount owed	\$ 1,888.58	\$ 1,937.08	\$ 1,793.33
Change in the monthly amount owed from this GFE	No change	You will pay \$ 48.50 more every month	You will pay \$ 95.52 less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$ 1,500.00	Your settlement charges will increase by \$ 1,500.00
How much your total estimated settlement charges will be	\$ 12,472.60	\$ 10,972.00	\$ 13,972.60

Shopping Chart

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	ABC Loan			
Initial loan amount	300,000			
Loan term	30 years			
Initial interest rate	6.0			
Initial monthly amount owed	\$1,888.58			
Rate lock period	30 days			
Can interest rate rise?	no			
Can loan balance rise?	no			
Can monthly amount owed rise?	no			
Prepayment penalty?	no			
Balloon payment?	no			
Total Estimated Settlement Charges	\$12,472.60			



Changed Circumstances



Definition

- Acts of God, war, disaster or other emergency
 - changed or inaccurate information provided by borrower after issuance of GFE
- (e.g. credit quality, loan amount, property value, or other information)



Definition

- new information not previously relied on
- other circumstances
(e.g. boundary disputes, required flood insurance, environmental problems)



Circumstances Affecting...

If circumstances changed affecting settlement costs or loan **MUST**:

- provide new GFE within 3 days
- may reflect only the increased charges



Borrower Requested Changes

Loan originator may provide
new GFE within 3 days

Expired GFE



If borrower does not express intent to accept GFE, after 10 business days (or longer if specified by originator) GFE is considered expired

Interest Rate Offer Expiration



If borrower does not lock interest rate within time period or lock expires a new GFE must be issued

AND...

New Interest Rate Offer



Only the following charges may change:

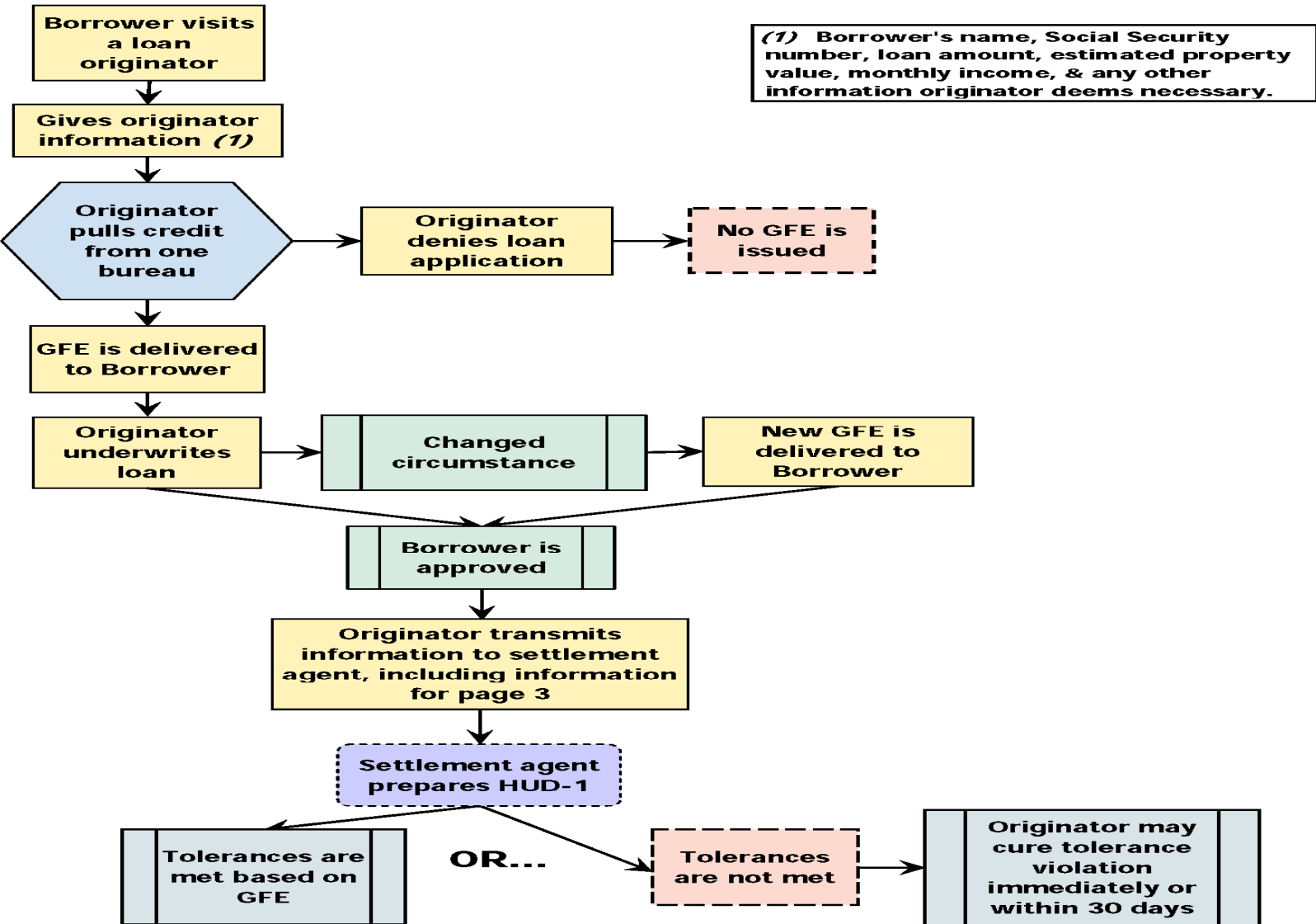
- charge or credit for interest rate chosen
- adjusted origination charges
- per diem interest
- other related loan terms
- all other charges must remain same

New Home Purchases



If settlement is more than 60 days after GFE was provided, originator may disclose that anytime up to 60 days before settlement, a revised GFE could be issued

GFE Process Flowchart





OMB Approval No. 2502-0065

A. Settlement Statement (HUD-1)

B. Type of Loan

1. FHA 2. RHS 3. Conventional
 4. VA 5. Conventional

6. File Number: _____ 7. Loan Number: _____ 8. Mortgage Insurance Case Number: _____

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "p.o.c." were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: _____ E. Name & Address of Seller: _____ F. Name & Address of Lender: _____

G. Property Location: _____ H. Settlement Agent: _____ I. Settlement Date: _____
 Place of Settlement: _____

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amounts Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Seller	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 130)	
302. Less amounts paid by/for borrower (line 200)	()
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions in Amount Due to Seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 400)	
602. Less reductions in amount due seller (line 520)	()
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.



HUD-1 Settlement Statement

In General



- revised to compare with GFE
- categorized - eliminate fee proliferation
- 3rd party charges listed outside column
- added page to HUD-1/1A
- highlights key loan terms

Right-to-cure



Inadvertent or technical errors
not a violation of RESPA Section 4
IF revised HUD-1 is provided within
30 calendar days after settlement



HUD-1

Page 2

L. Settlement Charges					
700. Total Real Estate Broker Fees					
Division of commission (line 700) as follows:					
701. \$		to		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
702. \$		to			
703. Commission paid at settlement					
704.					
800. Items Payable in Connection with Loan					
801. Our origination charge		\$	(from GFE #1)		
802. Your credit or charge for the specific interest rate chosen		\$	(from GFE #2)		
803. Your adjusted origination charges				(from GFE A)	
804. Appraisal fee to				(from GFE #3)	
805. Credit report to				(from GFE #3)	
806. Tax service to				(from GFE #3)	
807. Flood certification				(from GFE #3)	
808.					
900. Items Required by Lender to Be Paid in Advance					
901. Daily interest charges from	to	@ \$ /day	(from GFE #10)		
902. Mortgage insurance premium for months to				(from GFE #3)	
903. Homeowner's insurance for years to				(from GFE #11)	
904.					
1000. Reserves Deposited with Lender					
1001. Reserves or escrow				(from GFE #9)	
1002. Homeowner's insurance	months @ \$	per month	\$		
1003. Mortgage insurance	months @ \$	per month	\$		
1004. Property taxes	months @ \$	per month	\$		
1005.	months @ \$	per month	\$		
1006.	months @ \$	per month	\$		
1007. Aggregate Adjustment				-\$	
1100. Title Charges					
1101. Title services and required title insurance				(from GFE #4)	
1102. Settlement or closing fee				\$	
1103. Owner's title insurance				(from GFE #5)	
1104. Lender's title insurance premium				\$	
1105. Lender's title policy limit \$					
1106. Owner's title policy limit \$					
1107. Agent's portion of the total title insurance premium				\$	
1108. Underwriter's portion of the total title insurance premium				\$	
1200. Government Recording and Transfer Charges					
1201. Government recording charges				(from GFE #7)	
1202. Deed \$	Mortgage \$	Releases \$			
1203. Transfer taxes				(from GFE #8)	
1204. City/County tax/stamps	Deed \$	Mortgage \$			
1205. State tax/stamps	Deed \$	Mortgage \$			
1206.					
1300. Additional Settlement Charges					
1301. Required services that you can shop for				(from GFE #6)	
1302.				\$	
1303.				\$	
1304.					
1305.					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)					

700. Total Real Estate Broker Fees	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:		
701. \$9,360.00 to RE #1		
702. \$9,360.00 to RE #2		
703. Commission paid at settlement		\$16,720.00
704. Earnest money deposit to RE #2 P.O.C.		

- Lines 701 & 702 = commission split
- Line 703 = disbursed commission (e.g. deposit held by agent or broker)
- Line 704 = other charges such as admin fee

800. Items Payable in Connection with Loan			
801.	Our origination charge ABC Loan Originator	\$6,250	(from GFE #1)
802.	Your credit or charge (points) for the specific interest rate chosen	\$-3,000	(from GFE #2)
803.	Your adjusted origination charges ABC Loan Originator		(from GFE A)
804.	Appraisal fee to Appraisal Company		(from GFE #3)
805.	Credit report to Credit Report Company		(from GFE #3)
806.	Tax service to Tax Service Company		(from GFE #3)
807.	Flood certification Flood Certification Company		(from GFE #3)
808.			

Line 801 & 802: listed inside column
Line 803: listed outside column

800. Items Payable in Connection with Loan			
801.	Our origination charge ABC Loan Originator	\$6,250 (from GFE #1)	
802.	Your credit or charge (points) for the specific interest rate chosen	\$-3,000 (from GFE #2)	
803.	Your adjusted origination charges ABC Loan Originator	(from GFE A)	\$3,250.00
804.	Appraisal fee to Appraisal Company	(from GFE #3)	\$250.00
805.	Credit report to Credit Report Company	(from GFE #3)	\$40.00
806.	Tax service to Tax Service Company	(from GFE #3)	\$76.00
807.	Flood certification Flood Certification Company	(from GFE #3)	\$12.00
808.			

Lines 804 thru 808: charges in borrower's column

900. Items Required by Lender to Be Paid in Advance			
901.	Daily interest charges from 12/30/00 to 12/31 @ \$50.00 /day	(from GFE #10)	\$100.00
902.	Mortgage insurance premium for months to FHA	(from GFE #3)	\$4,500.00
903.	Homeowner's insurance for 1 years to Insure-It	(from GFE #11)	\$600.00
904.			

Lines 901 – 904: charges inside column

1000. Reserves Deposited with Lender			
1001. Reserves or escrow		(from GFE #9)	\$306.60
1002. Homeowner's insurance	1	months @ \$50.00	per month \$50.00
1003. Mortgage insurance	1	months @ \$89.93	per month \$89.93
1004. Property taxes	2	months @ \$166.67	per month \$333.34
1005.		months @ \$	per month \$
1006.		months @ \$	per month \$
1007. Aggregate Adjustment			-\$166.67

Line 1001: charges listed inside column

Lines 1002 – 1007: charges listed outside column



Fee Categories – 1100s

Line 1101:

- includes all “Title services and lender’s title insurance” from Box 4 on GFE
- charge listed in borrower’s column
- not to be itemized unless charges by a 3rd party
- 3rd party charges cannot exceed charge by 3rd party provider



Fee Categories – 1100s

“Title services”

Means any service involved
in the provision of title insurance

(Lender’s & Owner’s)



“Title Service”

Includes, but is not limited to...

- title examination & evaluation
- preparation & issuance of commitment
- preparation & issuance of policies

...AND



“Title Service”

...AND

- all administrative services & processing services required to perform these functions

(e.g. document delivery, preparation & copying, wiring, endorsements, & notary)



Summary: Inside Column

Line 1101 – Title services & lender's title insurance

Line 1103 – Owner's title insurance



Summary: Outside Column

Line 1102 – settlement/closing fee

Line 1104 – lender's title insurance premium
& related endorsements

Line 1105 – lender's title policy limit
(coverage)

Line 1106 – owner's title policy limit
(coverage)



Summary: Outside Column

- Line 1107 - \$ of title insurance premium +
endorsements retained by agent
- Line 1108 - \$ of title insurance premium +
endorsements retained by
underwriter
- Line 1109 - title charges paid to 3rd parties
(et seq) identified by name & service
- may add additional lines

1100s Example

1100. Title Charges			
1101. Title services and required title insurance		(from GFE #4)	\$925.00
1102. Settlement or closing fee	\$		
1103. Owner's title insurance		(from GFE #5)	\$725.00
1104. Lender's title insurance premium	\$175.00		
1105. Lender's title policy limit \$300,000			
1106. Owner's title policy limit \$300,000			
1107. Agent's portion of the total title insurance premium	\$720.00		
1108. Underwriter's portion of the total title insurance premium	\$180.00		

1100s with Itemized 3rd Party Fees

1100. Title Charges			
1101. Title services and required title insurance	(from GFE #4)	\$925.00	
1102. Settlement or closing fee	3rd party closing company \$100.00		\$75.00
1103. Owner's title insurance	(from GFE #5)	\$725.00	
1104. Lender's title insurance premium	\$175.00		
1105. Lender's title policy limit	\$300,000		
1106. Owner's title policy limit	\$300,000		
1107. Agent's portion of the total title insurance premium	\$720.00		
1108. Underwriter's portion of the total title insurance premium	\$180.00		

Lines 1201 & 1203: charges listed inside column

1200. Government Recording and Transfer Charges				
1201. Government recording charges			(from GFE #7)	\$50.00
1202. Deed \$25.00	Mortgage \$25.00	Releases \$15.00		\$15.00
1203. Transfer taxes			(from GFE #8)	\$1,368.00
1204. City/County tax/stamps	Deed \$684.00	Mortgage \$		
1205. State tax/stamps	Deed \$684.00	Mortgage \$		
1206.				

Lines 1202, 1204 & 1205: charges listed outside column

1200. Government Recording and Transfer Charges			
1201. Government recording charges		(from GFE #7)	\$50.00
1202. Deed \$25.00	Mortgage \$25.00	Releases \$15.00	\$15.00
1203. Transfer taxes		(from GFE #8)	\$1,368.00
1204. City/County tax/stamps	Deed \$684.00	Mortgage \$	
1205. State tax/stamps	Deed \$684.00	Mortgage \$	
1206.			



Fee Categories – 1300s

Listed inside column

Line 1301 – required services that
you can shop for

* Included is charges in which the
borrower selects the settlement service
provider & is included in GFE Box 6
(e.g. survey, pest inspection, etc.)

1300s: Inside the column charges

1300. Additional Settlement Charges			
1301. Required services that you can shop for	(from GFE #6)	\$270.00	
1302. Survey to Measure-It	\$ 225.00		
1303. Pest Inspection to Rid-A-Bug	\$ 45.00		
1304. Home Warranty to Warranty Company		\$225.00	
1305.			



Fee Categories – 1300s

Lines 1302 et seq – additional itemized services such as structural & environmental inspections, insurance or home warranties

- Amounts must be listed in borrower's or seller's column

1300s: Outside the column charges

1300. Additional Settlement Charges			
1301.	Required services that you can shop for	(from GFE #6)	\$270.00
1302.	Survey to Measure-It	\$ 225.00	
1303.	Pest Inspection to Rid-A-Bug	\$ 45.00	
1304.	Home Warranty to Warranty Company		\$225.00
1305.			

Comparison Chart



- compares charges listed on GFE & actual charges listed on the HUD-1/1A
- identifies tolerance compliance or violation

Chart Categories



Three categories:

- charges that cannot increase
- sum of charges that cannot increase by more than 10%
- charges that can increase

Charges That Cannot Increase

Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges		Good Faith Estimate	HUD-1/1A
Charges That Cannot Increase	HUD 1/1A Line Number		
Our origination charge	# 801	\$6,250.00	\$6,500.00
Your credit or charge for the specific interest rate chosen	# 802	\$3,000.00	\$3,000.00
Your adjusted origination charges	# 803	\$3,250.00	\$3,500.00
Transfer taxes	#1203	\$1,368.00	\$1,368.00

10% Tolerance

Charges That in Total Cannot Increase More Than 10%			
Appraisal	#804	\$250.00	\$295.00
Credit Report	#805	\$40.00	\$40.00
Tax Service	#806	\$76.00	\$76.00
Flood Certification	#807	\$12.00	\$12.00
	#		
	#		
	#		
	#		
Total		\$378.00	\$423.00
Increase between GFE and HUD-1/1A Charges		\$45.00	or 12 %

10% Tolerance

Charges That in Total Cannot Increase More Than 10%			
Appraisal	#804	\$250.00	\$295.00
Credit Report	#805	\$40.00	\$40.00
Tax Service	#806	\$76.00	\$76.00
Flood Certification	#807	\$12.00	\$12.00
	#		
	#		
	#		
	#		
Total		\$378.00	\$423.00
Increase between GFE and HUD-1/1A Charges		\$45.00	or 12 %

10% Tolerance

Charges That in Total Cannot Increase More Than 10%			
Appraisal	#804	\$250.00	\$295.00
Credit Report	#805	\$40.00	\$40.00
Tax Service	#806	\$76.00	\$76.00
Flood Certification	#807	\$12.00	\$12.00
	#		
	#		
	#		
	#		
	Total	\$378.00	\$423.00
	Increase between GFE and HUD-1/1A Charges	\$45.00	or 12 %

Charges That Can Change

Charges That Can Change			
Initial deposit for reserves or escrow	#1001	\$306.60	\$306.60
Daily interest charges	# 901 \$50 /day	\$100.00	\$150.00
Homeowner's insurance	# 903	\$600.00	\$645.00
<input type="text"/>	#		



Seller (or other) Paid Items

- all charges that would go in borrower's column; put in borrower's column
- credit to borrower from seller; put on page 1 to offset charges in borrower's column



Seller (or by other) Paid Items

- credit to borrower – Lines 206 – 209
- credit to borrower from seller,
charge seller on Lines 506 – 509
- credit from party other than seller,
must identify party giving credit on
HUD-1

Seller credit example

200. Amounts Paid by or in Behalf of Borrower		500. Reductions In Amount Due to Seller	
201. Deposit or earnest money	\$2,000.00	501. Excess deposit (see instructions)	\$2,000.00
202. Principal amount of new loan(s)	\$300,000.00	502. Settlement charges to seller (line 1400)	\$16,735.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	\$225,000.00
205.		505. Payoff of second mortgage loan	
206. Seller paid credit	\$2,000.00	506. Seller paid credit	\$2,000.00
207.		507.	
208.		508.	
209.		509.	

Loan Terms	
Your initial loan amount is	\$ _____
Your loan term is	_____ years
Your initial interest rate is	_____ %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ _____ includes <input type="checkbox"/> Principal <input type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of _____%. The first change will be on _____ and can change again every _____ after _____. Every change date, your interest rate can increase or decrease by _____%. Over the life of the loan, your interest rate is guaranteed to never be lower than _____% or higher than _____%.
Even if you make your payments on time, can your loan balance rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ _____.
Even if you make your payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ _____. The earliest it can reach this amount is _____.
Does your loan have a prepayment penalty?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____.
Does your loan have a balloon payment?	<input type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years on _____.
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You do have an additional monthly escrow payment of \$ _____. That results in a total initial monthly amount owed of \$ _____. This includes principal, interest, and any mortgage insurance, and any items checked below: <input type="checkbox"/> Property taxes <input type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____



Loan Terms

Loan Terms



- ensures borrowers that they received loan applied they applied for
- highlights key loan terms

Loan Terms

Loan Terms	
Your initial loan amount is	\$ 300,000
Your loan term is	30 years
Your initial interest rate is	6%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	<p>\$ 1,888.58 includes</p> <p><input checked="" type="checkbox"/> Principal</p> <p><input checked="" type="checkbox"/> Interest</p> <p><input checked="" type="checkbox"/> Mortgage Insurance</p>
Can your interest rate rise?	<p><input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % . Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than % .</p>

Loan Terms

<p>Even if you make your payments on time, can your loan balance rise?</p>	<p><input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ [REDACTED].</p>
<p>Even if you make your payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?</p>	<p><input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ [REDACTED]. The earliest it can reach this amount is [REDACTED].</p>
<p>Does your loan have a prepayment penalty?</p>	<p><input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ [REDACTED].</p>
<p>Does your loan have a balloon payment?</p>	<p><input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ [REDACTED] due in [REDACTED] years on [REDACTED].</p>
<p>Total monthly amount owed including escrow account payments</p>	<p><input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.</p> <p><input checked="" type="checkbox"/> You do have an additional monthly escrow payment of \$ 216.67 [REDACTED]. That results in a total initial monthly amount owed of \$ 2,105.25 [REDACTED]. This includes principal, interest, and any mortgage insurance, and any items checked below:</p> <p><input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's insurance</p> <p><input type="checkbox"/> Flood insurance <input type="checkbox"/> [REDACTED]</p> <p><input type="checkbox"/> [REDACTED] <input type="checkbox"/> [REDACTED]</p>

Miscellaneous



- Servicing Disclosure Statement
- eliminated 1% cap on FHA origination fees (2.5% - new construction)
- updated reserve/escrow account language
- allowed for ESIGN applicability

APPENDIX MS-1 TO PART 3500

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]



Servicing Disclosure Statement



Requirements

- provided 3 business days by hand, mail, fax, email
- not required if application denied or withdrawn
- format: specific language not required

Servicing Disclosure Statement

SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

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[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]



Average Charge

Average Charge



- calculations based on specific class of transactions
- during a specific time period
 - not less than 30 days
 - not more than 6 months
- for a specific geographical area



Average Charge

- charge may not exceed average calculation
- charge may not exceed TOTAL price paid to 3rd party provider
- originator must retain all documentation determining accuracy of pricing method for at least 3 years

Average Charge



- may not average on charges based on loan amount or property value
(e.g. transfer taxes, interest charges, escrow reserves & all insurances including title insurance)



Required Use

Required Use: Definition



“a situation in which a person’s access to some distinct service, property, discount, rebate, or other economic incentive, or the person’s ability to avoid an economic disincentive or penalty, is contingent upon the person using or failing to use a referred provider of settlement services”

...however

Required Use – AfBA Exemption



...may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate or other economic incentive) lower than sum of the market prices of individual settlement services...

Miscellaneous



- eliminated 1% cap on FHA origination fees (2.5% - new construction)
- updated reserve/escrow account language
- allowed for ESIGN applicability

For More Information

Department of Housing and Urban
Development

Office of RESPA & Interstate Land Sales

Room 9154

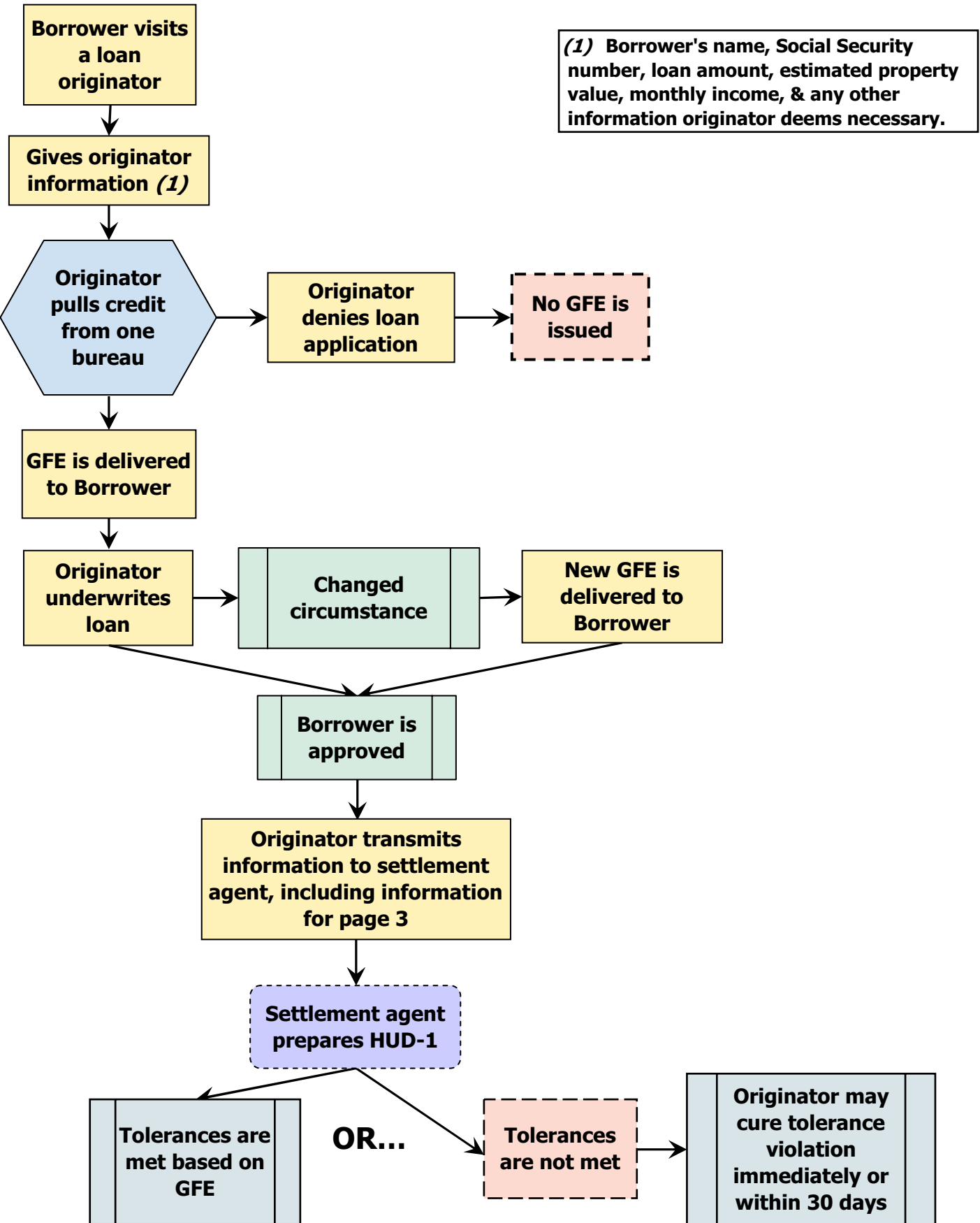
451 7th Street SW

Washington DC 20410

(202) 708-0502

hsg-respa@hud.gov

GFE Process Flowchart



GFE Page 1 – Important Dates

- The GFE must be received by the borrower within 3 business days after receipt of an application. The rule presumes that the GFE is received three days after mailing. Hence, a GFE must be mailed the same day that the application is received if on Monday or Tuesday. The GFE may be mailed the next day if the application is received Wed., Thurs. or Fri.
- The rates and fees quoted must be available until at least ten days after receipt by the borrower. This is 13 business days after mailing.

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.

GFE Page 1 – Summary of Loan Terms

- No lender is going to let a broker lock the lender into an interest rate and other loan terms, period.
- No Broker will want to pay the borrower any overage.

Summary of your loan

Your initial loan amount is	\$	
Your loan term is	years	
Your initial interest rate is	%	
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ per month	
Can your interest rate rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be in .
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$. The maximum it can ever rise to is \$.
Does your loan have a prepayment penalty?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, your maximum prepayment penalty is \$.
Does your loan have a balloon payment?	<input type="checkbox"/> No	<input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.

GFE Page 1 – Summary of Loan Terms

- As a result, the mortgage broker is not going to take an “application” for the lender.
 - Applications must contain six terms: borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought
 - If any required item is missing, you do not have an “application” that requires production of a GFE
- Lenders are happy to let the broker take an information sheet and process that instead of an application.
 - Lenders cannot charge extra fees and ask for additional information, e.g. requiring an appraisal before the GFE is provided
 - Brokers can charge extra fees and require additional information if an application is not taken.

GFE Page 1 – Escrow Charges

- Brokers cannot prepare an accurate GFE
 - Taxes (from the title commitment) and insurance charges (from the Dec. page) are not known until just before closing.
 - Brokers do not have software to calculate the escrow payments.
- Escrow estimates are rarely accurate, but tolerances do not apply.
- Escrow payment must be disclosed even when there is no escrow account

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$.

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

GFE Page 2 – Origination Charges

- Lenders do not know what brokers charge, and vice versa.
- The origination charges must be locked in except when there are “changed circumstances.”
 - This disclosure forces the originator to contract for its fees up front – there is no authority in RESPA to require up front services contracts.
 - Changed circumstances will not occur often
- A recent FRB study shows that consumers do not understand lender paid broker fees. HUD’s YSP disclosure makes no sense.

Understanding your estimated settlement charges

Your Adjusted Origination Charges	
1. Our origination charge This charge is for getting this loan for you.	
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [] % is included in “Our origination charge.” (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [] for this interest rate of [] %. This credit reduces your settlement charges. <input type="checkbox"/> You pay a charge of \$ [] for this interest rate of [] %. This charge (points) increases your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	
A Your Adjusted Origination Charges	\$

GFE Page 2 – Service Charges

- Section 3 includes all approved and required providers.
 - Three lines for appraisal, tax cert, flood cert, well & septic, credit report, survey, MIP, etc., is insufficient. Spaces cannot be added, and 4 point type is necessary.
 - It is confusing to treat a provider chosen by the borrower from an approved list as a required provider.
- These fees are subject to an aggregate 10% tolerance.
 - Brokers and lenders will estimate these fees very high
 - Tolerances are imposed even in no fee loans – excess fees need to be refunded to the borrower

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services.		
<i>Service</i>	<i>Charge</i>	
_____	_____	
_____	_____	

GFE Page 2 – Title Services

- Title Services includes the closing fee.
 - Junk title agent fees are not allowed
 - Title services are subject to the 10% tolerance if the title company is approved by the lender
 - It is not clear whether the lender subjects itself to the 10% tolerance if the lender chooses the title agent because the borrower did not shop.
- Do you disclose the full basic rate or a discounted rate for the owner's title premium?

4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.	

GFE Page 2 – Shopping for Services

- Section 6 has too few spaces also, with no way to expand the table
 - This is only used when the borrower insists on using his own service provider.
 - No tolerances imposed on these fees
 - Are mortgage taxes recorded here? Is the lender/borrower split shown?
- Are environmental database fees and tax check fee a govt. fee?
- Transfer taxes must be accurate (this will only happen by chance). Recording fees have a 10% tolerance (1 page).

6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 50%;"><i>Service</i></th> <th style="text-align: left; width: 50%;"><i>Charge</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Service</i>	<i>Charge</i>					
<i>Service</i>	<i>Charge</i>						
7. Government recording charges These charges are for state and local fees to record your loan and title documents.							
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.							

GFE Page 2 – Miscellaneous Items

- The escrow account deposit (item 9) must be disclosed even when there is no escrow account.
- The odd days interest (item 10) cannot be known at application, but the tolerance does not apply.
- Homeowners insurance (item 11) cannot not be known at application since this depends on an inspection of the property and the borrower's credit score.

GFE Page 3 – Tradeoff Table

- The broker and lender are only required to complete the first column. Nobody is going to complete the other columns. Why bother including the other columns? How do you explain a tradeoff when there is none?

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate ¹	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ more every month	You will pay \$ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$	Your settlement charges will increase by \$
How much your total estimated settlement charges will be	\$	\$	\$

¹ For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

HUD-1 Page 2 – Title Services

- Title agents and underwriters will get over the requirement to disclose the split of fees – real estate brokers reveal their split and their fees have gone up, not down.
- There is no closing fee disclosure – this has to be added with the title insurance premium. The closing will not be included in insurance premiums since escrow services are not regulated in most states.
- Title agency junk fees are not disclosed separately – these need to be folded into the title services fee.

1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	
1102. Settlement or closing fee	\$		
1103. Owner's title insurance		(from GFE #5)	
1104. Lender's title insurance	\$		
1105. Lender's title policy limit	\$		
1106. Owner's title policy limit	\$		
1107. Agent's portion of the total title insurance premium	\$		
1108. Underwriter's portion of the total title insurance premium	\$		

HUD-1 Page 2 - Shopping

- The 1300 Section is for items shopped for by the borrower. HUD seems to think that seller paid items, such as a home warranty, are disclosed in this area.
- NEW! - The buyer inspection fee must be disclosed.

1302			
1304			
1303	\$		
1305	\$		
1301	Required services that you can shop for	(from GFE #)	
1300. Additional Settlement Charges			

HUD-1 Page 2 – Additional Issues

- An additional page may be added to the HUD-1 only to show additional parties. Charges disclosed on the HUD-1 are broken out into separate items on the HUD-1 only if required.
- An additional page may be added to the HUD-1A to show additional charges and itemizations.
- Payoffs go on page 1 of the HUD-1 in whatever space is available. If you are paying off a lot of credit cards, you have a problem.

HUD-1 Page 2 – Additional Issues

- The lender or broker provide all figures that go in the settlement statement.
 - Title agents no longer confirm payoff amounts. This contradicts the MBA's proposed closing instructions.
 - The title agent is no longer responsible for collecting tax information – the lender or broker must do this.
 - The lender or broker tell the title agent what charges are paid for title services. This will put the title agent and underwriter in a bind, since they can only charge the borrower and seller what the lender says the borrower and seller will pay.
- The lender and broker may fight over what charges go in the HUD-1. Both have equal responsibility to tell the closing agent what to charge for each service.

HUD-1 Page 3 – Issues

- Remember that the borrower cannot be charged for preparing the HUD-1, including this chart.
- Preparing this chart for a construction/perm loan will be deceiving (principal and payments will increase).
- HUD expects someone (who?) to refund amounts that exceed tolerances.
 - No authority under law to require this.
 - Is one originator responsible if the other goes out of business?
 - Can the lender make the closing agent responsible for refunding the overage through the closing instructions?
 - Can the lender selectively switch to cost averaging if a loan is out of tolerance?

Authors:**Phillip L. Schulman**

+1.202.778.9027

phil.schulman@klgates.com

Holly Spencer Bunting

+1.202.778.9853

holly.bunting@klgates.com

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Finally a Final RESPA Rule

After five months and 12,000 public comments on the proposed rule to reform the Real Estate Settlement Procedures Act (“RESPA”), the U.S. Department of Housing and Urban Development (“HUD” or “Department”) published its final RESPA rule on Monday, November 17, 2008. While the lion’s share of comments from trade associations, settlement service providers, and even some consumers and federal agencies were negative, ultimately HUD held firm to the core principles it espoused in the proposed rule. For example, the Good Faith Estimate (“GFE”), reduced from four pages to three, still contains those pesky tolerances. And, the HUD-1 Settlement Statement (“HUD-1”), though minimally modified, now includes a third page to accommodate an explanation of the loan terms that HUD holds so dear. It is clear that the Department believes its forms will assure a more transparent settlement transaction. Accordingly, this client alert summarizes the most significant provisions of the final rule, compares those provisions to HUD’s proposals, and provides our initial observations as to how the settlement service industries are likely to view the new RESPA rule.

I. Good Faith Estimate

The GFE is the signature piece of the final RESPA rule. HUD did not budge from the proposed look of the form, the use of certain charts to give comparative information to consumers, and the imposition of tolerances regarding the change in settlement charges at closing. But, in response to public comments, the Department did shorten the form and alter certain language. We describe the final GFE document in more detail below.

A. Standardized GFE Form

Although HUD shortened a four-page standardized GFE form to a three-page form, little of the proposed content was removed in the final rule. Effective January 1, 2010, HUD will require mortgage lenders and mortgage brokers to provide consumers with the standard GFE form within three days of receiving an “application.”¹ Attached to this client alert is a copy of the final GFE. Like the proposed form, the final GFE form includes a summary of the key terms of the loan, as well as an estimate of total settlement charges, which HUD expanded and reorganized in certain instances.²

(i) The key loan terms include the following:

- the initial loan amount;
- the loan term;
- the initial interest rate;
- the initial monthly mortgage amount owed for principal, interest and any mortgage insurance;
- whether the interest rate, the loan balance and the monthly payment may rise;
- whether the loan has a prepayment penalty and balloon payment.

For the final GFE form, HUD created a new section for the summary of monthly escrow obligations. These items, along with important dates and instructional statements, appear on page one of the form.

(ii) The final GFE also provides for the estimate of **total settlement costs** in the following 11 categories:

- the origination charge, which will include any lender processing and underwriting fees;
- a credit or charge (points) for the interest rate chosen;
- required services selected by the lender, such as appraisal and flood certification fees;
- title service fees and the cost of lender's title insurance;
- owner's title insurance;
- other required services for which the consumer may shop;
- government recording fees;
- transfer tax charges;
- initial deposit for escrow;
- daily interest charges; and
- the cost of homeowner's insurance.³

These settlement charges are disclosed on page two of the GFE. Note that HUD created separate categories for government recording fees and transfer taxes and reshuffled the order of these settlement costs on page two. Much to the relief of the title industry, the Department also removed the word "optional" from owner's title insurance.

Like HUD's proposed GFE, the final rule requires a mortgage lender or broker to keep the GFE's stated settlement costs open for 10 business days to allow the consumer to comparison shop with other loan originators.⁴ With regard to the initial interest rate, the GFE must identify that the rate is available until a specified date. Until that rate is locked, however, the initial interest rate may continue to float.

Page three of the final GFE form provides space for a lender or broker to present a borrower with two additional loan options in a chart format – one with a higher interest rate and one with a lower interest rate. The purpose of the comparison is to demonstrate how a higher interest rate could reduce up-front settlement costs and a lower interest rate could increase the

charges a consumer would pay at the closing table. However, unlike the proposed rule, HUD now makes completion of the chart optional for the lender, which is explicitly stated on the face of the GFE.⁵

Finally, because HUD's goal from the beginning was to create a GFE form that allows consumers to shop for a mortgage loan, the Department salvaged a blank chart from page four of the proposed form that would allow consumers to write in the loan terms of four lenders' offers of credit.⁶ This "shopping chart" now appears at the bottom of page three. This means, therefore, that HUD eliminated the remaining items from page four that were not otherwise incorporated into the final GFE, including estimates for property taxes and homeowner's insurance.

B. Tolerances

Related to the estimate of settlement charges on the GFE, HUD did not alter its proposal to create three separate categories of settlement charges and subject them, absent "changed circumstances,"⁷ to different tolerances.⁸ The first category of fees is subject to a zero tolerance standard, meaning the fees estimated on the GFE may not be exceeded at closing.

• **Zero tolerance** fees would include: (1) the lender or broker's own origination charge (i.e., processing and underwriting fees); (2) the credit or charge to the borrower for the interest rate chosen (i.e., yield spread premium or discount points); and (3) transfer tax charges. Note that HUD listened to both the concerns of the mortgage and title insurance industry that government recording fees cannot be precisely determined at the GFE stage. As a result, HUD removed government recording fees from the zero tolerance category into the 10% tolerance category below.

HUD will subject the sum of the fees in the second category to a 10% tolerance. While each individual fee may increase or decrease, the sum of the total increases may not exceed 10% at closing.

• **10% tolerance** fees include: (1) lender-required settlement services where the lender selects the third party provider (i.e., appraisal fees and tax search fees); (2) lender-required services where the borrower selects a third party provider recommended by the lender (i.e., title and closing services and lender's title insurance); (3) owner's title insurance when the borrower uses a provider identified by the lender; and (4) government recording charges.

The final category of fees is subject to no restriction under the final rule, meaning the Department will not limit the amount of any increase in the fees that may appear on the HUD-1. These fees, therefore, may increase by more than 10% at closing.

- **No restriction** fees include: (1) lender-required services where the borrower shops and selects his or her own third party provider (i.e., title and closing services and lender's title insurance); (2) owner's title insurance where the borrower selects a third party provider; (3) initial escrow deposits; (4) daily interest charges; and (5) the cost of homeowner's insurance.

C. Disclosure of Yield Spread Premiums/ Backend Fees

In what appears to be a defeat for the mortgage brokers, HUD did not alter its proposed disclosure of yield spread premiums as a "credit or charge (points) for the specific interest rate chosen."⁹ Despite numerous comments from settlement service industries that consumers will not understand that a "credit" signifies that a mortgage broker is being compensated in the transaction, HUD will require that a "credit" field be used to disclose the presence of a yield spread premium and a "charge" field be used to denote the presence of discount points on the GFE.

To accomplish this, the rule requires a mortgage originator to disclose all internal origination fees on page two of the GFE as "our origination charge." If a mortgage lender will pay a broker a fee, like a yield spread premium, on the loan, the mortgage broker is required to disclose the premium as "a credit of \$ _____ for this interest rate of ___%" and subtract it from "our origination charge" to arrive at the "adjusted origination charge."¹⁰ Conversely, if a borrower elects to pay discount points to reduce the interest rate on the loan, the amount of the discount points should be added to the "our origination charge" to arrive at the "adjusted origination charge." Just like the proposed rule, this disclosure covers any charge a lender pays a broker, and nowhere on the new GFE form does HUD label the disclosure with the terms "yield spread premium." How HUD thinks this will simplify or clarify the process for consumers remains a mystery.

D. GFE Fees

In the proposed rule, HUD stated its preference that mortgage lenders and mortgage brokers not impose any charges for a GFE. The Department, however, followed the lead of the Federal Reserve Board and

its restrictions on fees related to the Truth in Lending disclosure. The final rule, therefore, limits the fee a mortgage originator may charge for the GFE to the cost of a credit report.¹¹ A lender or broker is not permitted to charge, as a condition of providing a GFE, any fee for an appraisal, inspection, or similar settlement service. Again, where HUD gets the authority to dictate lender fees in this instance is unclear from a plain reading of the statute.

E. FHA Origination Fees

Finally, under current FHA regulations, the Department limits the amount of an origination fee a mortgagee may collect on an FHA-insured loan to 1% of the loan amount. As the Department believes more competition in the marketplace will drive down lenders' origination fees, HUD has removed this limitation with the final RESPA rule. Effective January 1, 2010, FHA-approved mortgagees may collect any fee to compensate it for expenses incurred in originating and closing the loan. The FHA Commission, however, is still free to establish limitations on the amount of any such origination fee.¹²

II. HUD-1 Settlement Statement

Unlike the Department's modifications to the GFE, HUD does not change the format of the current HUD-1; in fact, the first page of the HUD-1 is nearly identical to the document currently in use. However, HUD does generally adopt its proposed form, which alters page two of the HUD-1 to allow consumers to directly compare the fees identified on the GFE to those fees charged at closing.¹³ The final HUD-1 also identifies the settlement charges using the same terms as the GFE (i.e., "our origination charge" for lender fees and "owner's title insurance"), and the Department includes parenthetical text next to most itemized fees that identifies the section of the GFE where a consumer will find the estimated charge.¹⁴ For instance, the appraisal fee and credit report fee will be estimated in Item 3 of the GFE form. To allow a consumer to compare these fees with those reflected on the HUD-1, the new HUD-1 will include "(from GFE #3)" next to the itemized entry for the appraisal and credit report in the 800 series of the HUD-1. These modifications appear to be a direct result of public comments that criticized the proposed HUD-1's lack of synchronization with the GFE. Attached to this client alert is a copy of the final HUD-1.

In addition, while the current HUD-1 requires a lender or mortgage broker to itemize their internal origination charges, such as processing fees and document preparation fees, the new HUD-1 form will require only the lender's bundled "origination charge" to be disclosed at closing.¹⁵ Similarly, rather than itemize fees for certain title services, such as the title search, title examination, and title binder, to name a few, the final HUD-1 provides for a single "title services and lender's title insurance" fee to be disclosed in Line 1101 of the document.¹⁶ This category of fee matches that on the final GFE form. The Department, however, has maintained a separate line item for the settlement or closing fee, which is a change from the proposed rule.

Despite the single fee for "title services and lender's title insurance," HUD appears to have heard the comments of the title industry, which argued that the disclosure of a bundled fee for title services could hinder a consumer's ability to know what he or she is paying for and shop for the best price. In the instructions to the final HUD-1, the Department states, "The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title, . . . [but] [d]isbursements to third parties must be broken out in the appropriate lines or in blank lines in the [1100] series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101 (title services and lender's title insurance)."¹⁷ Thus, while Line 1101 will disclose a bundled fee, it appears that HUD will still require fees paid to third parties in connection with the issuance of a title policy to be separately itemized. For instance, in those cases where the title insurance company engages a third party to perform the title search, the name of the title search vendor should be separately itemized in the 1100 series of the new HUD-1.

The final HUD-1 also retains the proposed disclosure of the title agent's portion and title underwriter's portion of the total title insurance premium. In Lines 1107 and 1108 of the final form, the dollar amount of the premium paid to both the title agent and title underwriter must be separately disclosed, despite comments from the title industry against this disclosure.¹⁸ In addressing these comments, HUD merely states that "it is HUD's view that this breakdown will help consumers better understand their title charges."¹⁹ This may or may not be true, but one thing is certain – this change will give title underwriters heartburn.

III. Closing Script

In the proposed rule, HUD planned to create a new addendum to the HUD-1, or a closing script, and task the settlement agent with preparing it, reading it aloud to the consumer at closing, and providing it in hard-copy format to obtain the consumer's written acknowledgment. In the final rule, while HUD agrees to abandon the idea of the closing script, the Department still felt compelled to get the closing script information to consumers. HUD, therefore, developed a new page three to the HUD-1 that crams a scaled-down version of the information proposed for the closing script into a single page.²⁰ Notably, the top half of page three includes a chart for the comparison of the GFE fees and the final charges on the HUD-1. This chart is identical to the one included in the proposed closing script. In addition, the second half of page three includes a summary list of the loan terms.²¹ The format for this list is nearly identical to the summary of loan terms appearing on page one of the GFE.

In response to the proposed closing script, the title and settlement industries raised a number of concerns and issues with HUD's plan to require the settlement agent to read aloud and explain settlement charges and loan terms to the borrower, including a concern that an explanation of the loan terms could subject settlement agents to unauthorized practice of law concerns. Again, HUD appears to have listened to these concerns. Although settlement agents still will be tasked with preparing the new page three to the HUD-1, the Department includes a specific mandate for lenders to provide the settlement agent with sufficient information to complete page three. With regard to the GFE and final settlement charges, Section 3500.8 of RESPA's regulation has been revised to state that "the loan originator must transmit to the settlement agent all information necessary to complete the HUD-1."²² Moreover, the newly revised instructions to the HUD-1 provide that the loan terms 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."²³ Arguably, therefore, as long as mortgage lenders provide settlement agents with copies of the GFE or otherwise complete the summary of loan terms, the

settlement agent should have enough information to complete the new page three. Moreover, in response to the public comments of the title and settlement industries, if the consumer has questions about the information disclosed on page three, HUD added a statement to the form, which directs the consumer to contact the lender.²⁴

IV. Average Charges and Negotiated Discounts

Although the revised GFE and HUD-1 are HUD's primary components to the final rule, HUD also proposed to allow lenders and mortgage brokers to use average cost pricing for settlement services, rather than charge the consumer the exact cost in every circumstance.²⁵ Initially, HUD would have allowed a lender to determine the average cost by using the actual average cost of a settlement service over the previous six-month period or a tiered pricing approach. In the final rule, HUD revises this proposal and uses the term "average charge" in place of "average cost pricing."²⁶ Most importantly, the use of an average charge is no longer restricted to loan originators; HUD clarifies in the final rule that any settlement service provider that is able to calculate an average charge for a service is permitted to use an average charge for that service.²⁷ Note, however, that if a lender uses average charges, it still will be held accountable for those charges by the tolerance limitations.

HUD also retreats from its plan to prescribe a particular method for calculating average costs. The final rule provides that "an average charge may be used for any settlement service, provided that the total amounts received from borrowers for that service for a particular class of transactions²⁸ do not exceed the total amounts paid to the providers of that service for that class of transactions."²⁹ This leaves the method of determining the average charge up to the discretion of the settlement service provider. The provider must recalculate the average charge at least every six months, and if an average charge is used in any class of transactions defined by the provider, then it must be used for every transaction within that class.³⁰ Note, however, that the final rule prohibits the use of average charge for settlement services where the charge is based on the loan amount or the value of the property (*i.e.*, title insurance, daily interest charges). The average charge also appears to be permitted only for third party vendor charges and not a settlement service provider's own internal charges.

Finally, HUD proposed to amend the definition of "thing of value" to exclude discounts negotiated by settlement service providers in the price of a third party settlement service, as long as no more than the discounted price is charged to the borrower and disclosed on the HUD-1. The Department, however, acquiesced to the concerns of the real estate broker and title industries and declines to incorporate such a change into the final rule. In response to numerous comments suggesting negotiated discounts could have a substantial adverse impact on small businesses' ability to offer discounts and compete with larger providers, HUD does not finalize the proposed amendment to the definition of "thing of value." Instead, HUD states that it "has decided to give further consideration beyond this rulemaking to a regulatory change that explicitly allows negotiated discounts, including volume based discounts, between loan originators and other settlement service providers."³¹ That being said, HUD makes its intentions clear and emphasizes that "discounts negotiated between loan originators and other settlement service providers, or by an individual settlement service provider on behalf of a borrower, where the discount is ultimately passed on to the borrower in full, is not, depending upon the specific circumstances of a particular transaction, a violation of Section 8 of RESPA."³²

V. Required Use

HUD's proposed rule planned to modify the current definition of "required use" to make four primary changes. First, the definition would include both economic incentives and disincentives that are contingent on a borrower's use or failure to use a particular provider of settlement services. Second, the proposed rule would have allowed only borrowers to receive discounts under the revised definition. Third, with regard to affiliated business arrangements, HUD's proposal would have prohibited a provider from offering a discount or incentive to a consumer and linking the discount to the consumer's use of affiliate companies. The provider's affiliate companies, however, would be allowed to offer their own discounts. For example, a parent real estate broker that wholly owns both a mortgage banker affiliate and a title agency affiliate could not tie its incentives to use of its affiliated mortgage and title companies. HUD's concern was that such a practice would lead the real estate broker

in this example to steer consumers to its own affiliates (when the affiliates may not offer the best prices) or to raise prices to cover the real estate broker's incentives. The affiliated mortgage company and title agency, however, could offer the consumer direct discounts on their mortgage products and title services. Finally, HUD proposed to limit this ability to offer discounts to "settlement service providers," which excluded homebuilders.

HUD largely finalized these four proposals regarding required use with some modifications in the language used to define the term, as well as the way discounts can be tied to affiliated business arrangements. In addition to making "it clear that economic disincentives that are used to improperly influence a consumer's choices are problematic under RESPA,"³³ effective January 16, 2009, the definition of "required use" is as follows:

Required use means a situation in which a person's access to some distinct service, property, discount, rebate, or other economic incentive, or the person's ability to avoid an economic disincentive or penalty, is contingent upon the person using or failing to use a referred provider of settlement services. In order to qualify for the affiliated business exemption under §3500.15, a settlement service provider may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate, or other economic incentive) lower than the sum of the market prices of the individual settlement services and will not be found to have required the use of the settlement service providers as long as: (1) the use of any such combination is optional to the purchaser; and (2) the lower price for the combination is not made up by higher costs elsewhere in the settlement process.³⁴

Under the final rule, HUD expanded the language of the definition to apply to a "person," instead of a "borrower," in response to a number of public comments. Accordingly, both buyers and sellers are eligible to receive discounts under the final definition. Moreover, with regard to affiliated business arrangements, HUD modified the rule to allow the owners of affiliated companies (*i.e.*, the parent real estate broker in the example above) to offer discounts and incentives to consumers and link those discounts to the consumers' use of affiliate companies (*i.e.*, the wholly-owned mortgage and title companies in the example above). In other words, the parent real

estate broker could offer the buyer a cash incentive if the consumer chooses to obtain a mortgage from the broker's affiliate lender. However, the final rule still limits these discounts to "settlement service providers." Despite public comments highlighting the exclusionary effect of this language on homebuilders and their ability to offer consumer incentives, HUD is adamant in restricting the ability of builders to offer discounts and other incentives to encourage the use of their affiliate companies.³⁵ Although HUD's core value for the required use change is to promote competition and lower consumer prices, it is difficult to understand how precluding only builders from offering these customer incentives satisfies HUD's goal.

VI. Effective Dates

Although the final rule generally gives lenders and settlement agents one year to adapt to the use of the new GFE and HUD-1 forms, the final rule provides for varying effective dates. Notably, the following components of the final rule become effective **January 16, 2009**: (1) the revised definition of required use; (2) the use of average charges; and (3) the rule's miscellaneous modifications regarding escrow accounts, servicing transfer notifications and the applicability of ESIGN.³⁶

The remaining following components of the final rule become effective **January 1, 2010**: (1) use of the new GFE, including disclosure of yield spread premiums and the tolerance restrictions; (2) use of the new HUD-1; and (3) all revised definitions (except required use) in Section 3500.2 of RESPA's regulation.³⁷ While a lender or settlement agent may use the new forms prior to the 2010 effective date, such use will subject the lender or settlement agent to all new requirements under the final rule (*i.e.*, tolerance restrictions).

VII. Industry Reaction

Although the above discussion is a mere summary of the changes HUD made to the GFE and HUD-1 disclosures, the use of average charges and the definition of required use in the final rule, these changes are getting heated reactions from the settlement service industries affected by this rule. And, as with any regulatory actions, there are both perceived winners and losers.

A. Mortgage Industry

With regard to the lending industry, although HUD did loosen some of its proposed standards on loan originators, the Department generally was unwilling to compromise on many aspects of the rule affecting lenders. First, it is no secret that the mortgage industry strongly pushed for a collaborative effort between HUD and the Federal Reserve Board to produce consistent and uniform disclosures. Yet, HUD did not wait on or initiate this collaboration. Instead, the Department expressed its belief that GFE and HUD-1 reform must happen now, particularly given the current state of the housing market. Second, other than moving government recording fees from the “zero tolerance” category to the “10% tolerance” category, the Department made no changes to its proposed tolerances. Under the final rule, mortgage lenders will be subject to certain tolerances on the settlement charges they estimate and disclose to consumers on the GFE. If the lenders exceed the applicable tolerances, the final rule deems the excess to be a violation of Section 5 of RESPA. Although neither Section 5 nor RESPA’s regulations provide consumers with a private right of action to pursue lenders for violations associated with the GFE, consumers still could bring claims for tolerance violations under state unfair and deceptive trade practice laws. However, in a break from the proposed rule, HUD will now give lenders a 30-day period following settlement to cure any excess tolerances. This should remove some of the pressure on mortgage originators to accurately estimate settlement charges at the GFE stage.

Third, although HUD did not remove the statement from the last page of the GFE regarding a lender’s possible sale of the loan in the secondary market, HUD did soften this language. This is in contrast to the Department’s decision to leave the disclosure of yield spread premiums as proposed, despite strong criticism from mortgage brokers, as well as other industry groups that argued consumers would not understand the “credit” to be an actual payment from the lender to a mortgage broker. Fourth, HUD abandoned its plan to impose a two-tiered application system, one which triggered the GFE and another which allowed the lender to proceed with a loan application. Under the final rule, lenders appear to have more discretion in collecting borrower information and deciding on

the appropriate time to give a consumer the GFE form. The lenders, however, will be allowed to collect only a credit report fee to cover their services in providing the GFE. As RESPA is not a rate-setting statute, there is still a legal argument that such a restriction is not appropriate. Finally, HUD modified its definition of “changed circumstances” to expand the situations under which a lender or broker is justified in giving consumers newly revised GFEs. Arguably, these modifications will aid mortgage lenders and brokers in complying with the final rule, including the tolerance requirements.

However, the costs to the lending industry of creating new software, new forms and training its staff will be staggering (at a time when the industry can least afford it). Understandably, lenders wanted HUD to coordinate these disclosures with future changes the Federal Reserve Board will make to the Truth in Lending disclosure, thereby requiring a single retooling rather than double duty. And, HUD’s insistence on holding lenders to a 10% tolerance on services they require or recommend means additional liability and potential lawsuits. So, while the mortgage bankers reaped some rewards in this final version of the rule, a strong measure of frustration and disappointment still remains.

B. Title Insurance Industry

The title insurance and settlement industries received a number of concessions from the Department. Based on the public comments submitted by the American Land Title Association and other title insurance providers, the industry strongly opposed HUD’s proposed closing script, the allowance of negotiated discounts, which could create anti-competitive markets, the labeling of owner’s title insurance as “optional,” and the disclosure of the title agent’s and the title underwriter’s portions of the title premium on the HUD-1. HUD listened and ultimately declined to allow negotiated discounts as part of the final rule, and the Department removed the word “optional” from any reference to owner’s title insurance. HUD also abandoned its plan to create a new closing script, and even though certain “closing script” information is now included on page three of the HUD-1, the Department explicitly obligates mortgage lenders to supply settlement agents with sufficient information to complete page three without any reference to the borrower’s loan documents. It is

still possible that the new page three will extend the time required for closing, which could increase costs to consumers, but HUD made a concerted effort to address many of the title and settlement industries' concerns with the responsibilities imposed by the proposed closing script. In fact, page three of the HUD-1 now includes language directing the consumer to contact their lender (rather than the closing agent) with questions regarding final settlement charges and loan terms.

All that said, HUD declined to remove the disclosure of the title agent's and title underwriter's portions of the title premium from page two of the final HUD-1. The title industry had argued that such a disclosure was a matter of private contract and had no effect on the prices paid by consumers for title insurance. HUD responded to these comments by stating that the disclosure will help consumers better understand their title charges. Ultimately, the disclosure of the split in title premium will likely raise questions from consumers about the payment of premium to two parties, which should give the title industry the opportunity to educate consumers on the services performed by title insurance agents in connection with the issuance of title insurance policies. Moreover, given that other states already require the split in title premium to be disclosed to consumers (i.e., Massachusetts), this aspect of the final rule appears to be inevitable.

C. Real Estate Brokers and Agents

The real estate industry shared many of the concerns of the title and mortgage industries and strongly encouraged HUD to collaborate with the Federal Reserve Board to produce consistent and easy-to-follow consumer disclosures. The National Association of Realtors® also raised objections to the Department's proposals for negotiated discounts out of concern that large settlement service providers would negotiate prices for bundled services and disadvantage small providers unable to compete with the discounted prices. Although HUD did not ultimately collaborate on a uniform disclosure with the Federal Reserve Board, the Department did attempt to rewrite certain language on the GFE to make it easier to understand. HUD also decided to forego negotiated discounts with this rulemaking. Thus, while no settlement service provider is likely to be satisfied with the final RESPA rule, the real estate brokerage industry may well see enough compromises in the final rule to live with its results.

D. Homebuilders and Affiliated Business Arrangements

The biggest hit seems to have been taken by the homebuilders and their affiliated business arrangements. On the one hand, HUD modified its proposed definition of "required use" to ensure any person, not just borrowers, can take advantage of discounts and rebates. The Department also emphasized that any provider can offer to discount its own services. However, in order to qualify for the affiliated business exception to RESPA, the definition continues to refer only to "settlement service providers," which arguably excludes builders.

As you may recall, HUD proposed to alter the definition of required use in response to complaints that homebuilders were offering substantial discounts on the prices of their homes to those consumers that selected the builders' affiliate companies for mortgage and title insurance services. HUD suggested that such discounts effectively operated like economic disincentives that punished the consumer with a higher home price if he or she selected unaffiliated mortgage and title providers. The Department, therefore, amended the definition of "required use" to indicate that economic disincentives are problematic under RESPA. This language remains in the final rule's definition. But, HUD took it a step further. Despite judicial decisions holding that builder discounts tied to the use of affiliate companies are permitted under RESPA (as long as the discount is optional and is a true discount), the Department appears to see the economic disincentive claims strictly as a builder issue and, thus, has restricted the final rule accordingly.

As it relates to affiliated business arrangements, the final rule directs that "settlement service providers" may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate, or other economic incentive) lower than the sum of the market prices of the individual settlement services. Since HUD takes the position that builders do not qualify as settlement service providers under RESPA, this provision effectively means that builders are not allowed to offer direct incentives to their customers tied to the use of affiliate companies. Yet, mortgage lenders, title companies, real estate brokers and any other entities that explicitly qualify as settlement service providers may offer direct discounts and incentives to their customers for the use of affiliate companies, as long as the total price for an affiliate's services is lower than the market price

of the services, the use of the affiliate is optional, and the lower price is not made up by higher costs in the settlement process. Without the ability to offer these same customer incentives, homebuilders believe the final rule will substantially disadvantage their efforts to operate successful affiliated businesses, as well as harm consumers that will not have access to discounted prices.

Moreover, given the January 16, 2009 effective date of the final “required use” definition, builders will have little time to make the necessary adjustments to their day-to-day business operations to comply with this rule. For instance, many homebuilders that offer discounts to consumers who elect to use their affiliate companies have pre-printed sales contracts governing these discounts. As of January 16, 2009, these contract provisions are invalid, which will leave builders scrambling to re-print contracts that comply with the final rule. Accordingly, if any provision of the final rule has the potential to cause continued controversy with the current Administration and the next, we expect the final “required use” definition to be it.

VIII. Conclusion

Ultimately, HUD stuck to its proposed blueprint for RESPA reform. Sure HUD modified the floor plan a bit, and even changed the color of the drapes, but essentially the Department left its initial structure in place. The final GFE and HUD-1 forms are substantially the same as those proposed, and the Department made only minor modifications to its plans to allow average charges and further restrict the definition of required use. At the end of the day, after dispensing with a few goodies to the settlement service industries, HUD stuck to its vision of what consumers need to achieve transparency, clarity and increased shopping opportunities.

Where do we go from here? Don’t count on HUD extending the rule’s effective date beyond January 16, 2009 – their bags are packed and the moving vans are waiting. It remains to be seen whether the industry will have the stomach to file a lawsuit, and one would think the Obama Administration’s immediate priority at HUD will be keeping families in their homes, rather than scaling RESPA’s slippery slopes. So, this final rule will govern RESPA for now, but, it’s doubtful we’ve heard the last word on RESPA reform.

If you have any questions about the final RESPA rule or would like a more detailed explanation of its changes, please contact Phillip L. Schulman (202) 778-9027 / phil.schulman@klgates.com or Holly Spencer Bunting (202) 778-9853 / holly.bunting@klgates.com.

Endnotes:

- 1 “Application” is defined as “the submission of a borrower’s financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator.” 73 Fed. Reg. 68204, 68239 (Nov. 17, 2008). In the proposed rule, HUD would have required a mortgage originator to provide a GFE upon the receipt of a “GFE application.” Then, once a borrower decided to proceed with the loan, the loan originator could require the borrower to provide additional information through a “mortgage application.” HUD decided to pursue a single application process and allow the mortgage originator to decide how much borrower information is required before it issues a GFE. Id. at 68211.
- 2 See id. at 68208-68210, 68253-68258.
- 3 The GFE requires the lender or broker to total the estimated settlement charges and include them in a summary section prominently displayed on the first page of the GFE. See id. at 68253, 68256.
- 4 See id. at 68240.
- 5 73 Fed. Reg. at 68210, 68254, and 68258. Note that a lender or broker is required to complete the first column in the chart, which summarizes the terms of the loan presented in the GFE. The lender is not required to complete the remaining columns with alternative loan terms.
- 6 See id. at 68210.
- 7 “Changed circumstances” are defined as (1) (i) acts of God, war, disaster, or other type of 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. Id. at 68239. If any of these changed circumstances result in increased costs for any settlement service such that the costs at settlement would exceed the tolerances, the loan origination may provide a new GFE to the borrower. Similarly, if changed circumstances result in a change in the borrower’s eligibility for the loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. The lender or broker must document these changed circumstances to be deemed in compliance with RESPA. Id. at 68241.
- 8 Id. at 68218-68219, 68240.
- 9 See id. at 68225.
- 10 See 73 Fed. Reg. at 68226.
- 11 See id. at 68213.
- 12 See id. at 68227.
- 13 See id. at 68249.
- 14 See id.
- 15 See 73 Fed. Reg. at 68228, 68249.
- 16 Id.
- 17 Id. at 68245.
- 18 See id. at 68245, 68249.
- 19 Id. at 68229.
- 20 See 73 Fed. Reg. at 68230.
- 21 See id. at 68250.
- 22 Id. at 68241.
- 23 73 Fed. Reg. at 68246.
- 24 See id. at 68250.
- 25 See id. at 68232, 68241.
- 26 If a settlement service provider uses the average charge for settlement services, the final rule maintains the recording keeping requirements. The provider must keep all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used. See id. at 68242.
- 27 73 Fed. Reg. at 68234.
- 28 The final rule provides that a settlement service provider may define a class of transactions based on the period of time, type of loan, and geographic area. For example, a settlement service provider might calculate an average charge for all purchase money mortgages in the states of Georgia and South Carolina in a specified period of time. Id. at 68234. Alternatively, a settlement service provider could establish the class of transactions in which it would use a single average charge broadly (i.e., all transactions it engages in for a period of time, regardless of loan type or location). Id.
- 29 Id. at 68234.
- 30 Id.
- 31 Id. at 68232.
- 32 Id.
- 33 73 Fed. Reg. at 68236.
- 34 Id. at 68239-68240 (emphasis added).
- 35 In addition to the changes to the definition of “required use,” HUD finalized each of its proposals with regard to transfer of servicing requirements, escrow accounts, and the applicability of ESIGN. With regard to transfer of servicing, HUD made some revisions to the language on the model transfer of servicing disclosure to provide a more accurate description of the functions performed by loan servicers. HUD also eliminated the phase-in period for aggregate accounting for escrow accounts as proposed, and clarified the applicability of ESIGN to RESPA disclosures. Id. at 68237.
- 36 See id. at 68239.
- 37 Id.

K&L Gates' Mortgage Banking & Consumer Finance practice provides a comprehensive range of transactional, regulatory compliance, enforcement and litigation services to the lending and settlement service industry. Our focus includes first- and subordinate-lien, open- and closed-end residential mortgage loans, as well as multi-family and commercial mortgage loans. We also advise clients on direct and indirect automobile, and manufactured housing finance relationships. In addition, we handle unsecured consumer and commercial lending. In all areas, our practice includes traditional and e-commerce applications of current law governing the fields of mortgage banking and consumer finance.

For more information, please contact one of the professionals listed below.

LAWYERS

Boston

R. Bruce Allensworth	bruce.allensworth@klgates.com	+1.617.261.3119
Irene C. Freidel	irene.freidel@klgates.com	+1.617.951.9154
Stephen E. Moore	stephen.moore@klgates.com	+1.617.951.9191
Stanley V. Ragalevsky	stan.ragalevsky@klgates.com	+1.617.951.9203
Nadya N. Fitisenko	nadya.fitisenko@klgates.com	+1.617.261.3173
Brian M. Forbes	brian.forbes@klgates.com	+1.617.261.3152
Andrew Glass	andrew.glass@klgates.com	+1.617.261.3107
Phoebe Winder	phoebe.winder@klgates.com	+1.617.261.3196

Charlotte

John H. Culver III	john.culver@klgates.com	+1.704.331.7453
--------------------	-------------------------	-----------------

Los Angeles

Thomas J. Poletti	thomas.poletti@klgates.com	+1.310.552.5045
-------------------	----------------------------	-----------------

Miami

Paul F. Hancock	paul.hancock@klgates.com	+1.305.539.3378
-----------------	--------------------------	-----------------

New York

Philip M. Cedar	phil.cedar@klgates.com	+1.212.536.4820
Elwood F. Collins	elwood.collins@klgates.com	+1.212.536.4005
Steve H. Epstein	steve.epstein@klgates.com	+1.212.536.4830
Drew A. Malakoff	drew.malakoff@klgates.com	+1.216.536.4034

San Francisco

Jonathan Jaffe	jonathan.jaffe@klgates.com	+1.415.249.1023
Erin Murphy	erin.murphy@klgates.com	+1.415.249.1038

Seattle

Holly K. Towle	holly.towle@klgates.com	+1.206.370.8334
----------------	-------------------------	-----------------

Washington, D.C.

Costas A. Avrakotos	costas.avrakotos@klgates.com	+1.202.778.9075
Melanie Hibbs Brody	melanie.brody@klgates.com	+1.202.778.9203
Eric J. Edwardson	eric.edwardson@klgates.com	+1.202.778.9387
Anthony C. Green	anthony.green@klgates.com	+1.202.778.9893
Steven M. Kaplan	steven.kaplan@klgates.com	+1.202.778.9204
Phillip John Kardis II	phillip.kardis@klgates.com	+1.202.778.9401
Rebecca H. Laird	rebecca.laird@klgates.com	+1.202.778.9038
Laurence E. Platt	larry.platt@klgates.com	+1.202.778.9034

Phillip L. Schulman	phil.schulman@klgates.com	+1.202.778.9027
H. John Steele	john.steele@klgates.com	+1.202.778.9489
Ira L. Tannenbaum	ira.tannenbaum@klgates.com	+1.202.778.9350
Nanci L. Weissgold	nanci.weissgold@klgates.com	+1.202.778.9314
Kris D. Kully	kris.kully@klgates.com	+1.202.778.9301
Morey E. Barnes	morey.barnes@klgates.com	+1.202.778.9215
David L. Beam	david.beam@klgates.com	+1.202.778.9026
Emily J. Booth	emily.booth@klgates.com	+1.202.778.9112
Holly Spencer Bunting	holly.bunting@klgates.com	+1.202.778.9853
Krista Cooley	krista.cooley@klgates.com	+1.202.778.9257
Elena Grigera	elena.grigera@klgates.com	+1.202.778.9039
Melissa S. Malpass	melissa.malpass@klgates.com	+1.202.778.9081
David G. McDonough, Jr.	david.mcdonough@klgates.com	+1.202.778.9207
Stephanie C. Robinson	stephanie.robinson@klgates.com	+1.202.778.9856
Kerri M. Smith	kerri.smith@klgates.com	+1.202.778.9445
David Tallman	david.tallman@klgates.com	+1.202.778.9046

DIRECTOR OF LICENSING

Washington, D.C.

Stacey L. Riggin	stacey.riggin@klgates.com	+1.202.778.9202
------------------	---------------------------	-----------------

REGULATORY COMPLIANCE ANALYSTS

Washington, D.C.

Dameian L. Buncum	dameian.buncum@klgates.com	+1.202.778.9093
Teresa Diaz	teresa.diaz@klgates.com	+1.202.778.9852
Jennifer Early	jennifer.early@klgates.com	+1.202.778.9291
Robin L. Gieseke	robin.gieseke@klgates.com	+1.202.778.9481
Allison Hamad	allison.hamad@klgates.com	+1.202.778.9894
Joann Kim	joann.kim@klgates.com	+1.202.778.9421
Brenda R. Kittrell	brenda.kittrell@klgates.com	+1.202.778.9049
Dana L. Lopez	dana.lopez@klgates.com	+1.202.778.9383
Patricia E. Mesa	patty.mesa@klgates.com	+1.202.778.9199
Jeffrey Prost	jeffrey.prost@klgates.com	+1.202.778.9364

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