



## Preliminary Review of HUD's Forthcoming Proposed RESPA Rule

February 29, 2008

- **Background** – HUD's long-awaited Proposed RESPA rule is in its required Congressional review period. Although the proposal is anticipated to be published in the *Federal Register* late next week, copies of the proposal became available this week and media outlets began reporting on it.
- **Summary** – Based on a preliminary review of an extensive document, with further information to follow, the proposal would: (1) establish a four-page standard Good Faith Estimate (GFE) form; (2) impose tolerances to limit increases in GFE estimates at closing; (3) revise requirements for disclosure of mortgage broker fees as "the charge or credit for the interest rate chosen;" (4) make changes to the HUD-1 to facilitate comparison between GFE and HUD-1 charges; (5) establish a new script to be read to borrowers at settlement concerning final loan terms and settlement costs; (6) revise regulations to permit certain average-cost pricing and volume discounts; (7) clarify "required use" requirements to restrict disincentives to use of non-affiliates; and (8) make technical amendments to the RESPA rules. The proposal also announces that HUD will seek legislative proposals to increase enforcement authority, including injunctive authority, under RESPA concerning the GFE and HUD-1, servicing, Section 8, title insurance and escrow accounts. The proposal currently would invite public comment for 60 days from the date of *Federal Register* publication.

### Specifically, the proposal would –

- **Good Faith Estimate** – Require the use of a new *standard* GFE form that would disclose: (1) in summary form, the loan details including the loan amount, term, interest rate, initial payment, rate lock period, whether the amounts for principal, interest and mortgage insurance can increase during the mortgage, whether the loan has a prepayment penalty, a balloon payment and whether the loan includes a monthly escrow payment for taxes and insurance; (2) the costs in ten cost categories including (a) lender and mortgage broker charges known as "our service charge;" (b) the YSP or points as "credit or charge for the interest rate chosen," and then "adjusted origination charges," (c) required services selected by the originator; (d) title services and title insurance; (e) required services the borrower can shop for; (f) government recording and transfer charges; (g) reserves or escrow; (h) daily interest charges; (i) homeowner's insurance; and (j) optional owner's title insurance; (3) Advise the borrower of the relationship between the interest rate and the borrower's settlement costs; and (4) other information for borrowers including how to apply for the loan, using the included shopping chart, estimated taxes, and flood and property insurance premiums. In addition, it would provide in the regulations for a new "GFE application" containing limited information including name, social security number, property address, gross monthly income and borrower information on the house price or property value to elicit a GFE; allow a loan originator at its option to charge a fee for providing the GFE; and require that settlement costs offered in the GFE be open for 10 days.
- **Tolerances** – Provide, absent unforeseeable circumstances, that the following charges could not increase at settlement from the GFE: (1) loan originators' charges, characterized as "our service charge;" (2) mortgage broker fees, characterized as the "charge or credit for the interest rate chosen "after the borrower locks their interest rate; (3) "adjusted origination charges," also once the rate is locked; and (4) government recording and transfer charges. Would prohibit the sum of all other settlement services subject to tolerances, including those that are selected or suggested by

the originator and owner's optional title insurance, from increasing by more than 10 percent overall at settlement, absent unforeseeable circumstances. Unforeseeable circumstances include acts of god and other circumstances that could not be reasonably foreseen when GFE was given such as a change to the property price or environmental problems. Where an originator cannot perform or meet the tolerances because of unforeseeable circumstances, originator must document the costs occasioned by them and charge the borrower only the increased costs caused by such circumstances. Also, the originator is not bound by tolerances if borrower requests a change in the loan but originator must provide new GFE. If an originator offers a borrower a new loan, the originator must provide a new GFE subject to new tolerances.

- **Disclosure of Mortgage Broker Fees** – Require mortgage broker to disclose all fees from the borrowers and the lender in block 1 as “our service charge,” in block 2 disclose an YSP as any credit “for the interest rate of \_\_\_%” and subtract it from the “service charge” to arrive at the “adjusted origination charge.” Lender must disclose all fees received from borrowers in block 1 and, while lender need not disclose any “charge or credit for the interest rate chosen,” lender must check a box on the form indicating that the credit or charge is “included in the service charge.” Also, any discount points must be included in block 2 and added to the “service charge” to arrive at the “adjusted origination charge.” Under the rule, HUD also proposes to remove the specific limits on origination charges for Federal Housing Administration (FHA) loans.
- **GFE HUD-1 Comparison** – Modify current HUD-1/1A to include on relevant lines a reference to corresponding blocks on the GFE. Accompanying rules clarify which services must be separately itemized, generally including services of third parties but not those of the loan originator or third parties employed by them. Some title services are to be separately itemized and some are not.
- **New Script for Closing Use** – Include an addendum to the HUD-1 that the settlement agent would be required to read and provide to the borrower at settlement that would: compare the loan terms and settlement charges estimated on the GFE with those on the HUD-1; advise whether or not the tolerances have been met; and state the loan terms as contained in the mortgage note and related settlement information.
- **Average Cost Pricing and Negotiated Discounts** – Permit disclosure of average cost prices on the HUD-1 in accordance with specified computation methods. Also, would amend HUD's rules to make clear that it is permissible for settlement service providers to negotiate discounts in the prices of settlement services as long as borrowers are not charged more than the discounted prices.
- **Revisions to Prohibition Against Requiring the Use of Affiliates** – Change the definition of “required use” so an economic disincentive that a consumer can only avoid by purchasing a settlement service from an affiliated provider would be as problematic under RESPA as an incentive contingent on a consumer's choice of a particular provider. The proposal indicates that it is at least in part directed to homebuilder affiliates but covers other affiliate situations.
- **Technical Amendments** – Conform RESPA's mortgage transfer of servicing rules to statutory changes and explicitly recognize the applicability of the ESign Act to RESPA disclosures.
- **Enforcement** – Provide that charging a fee in excess of tolerances or other failures to follow GFE requirements constitute a violation of Section 5 of RESPA. Solicits comments whether the industry should have a period of time to remedy an overcharge without violating this provision.

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