



To: Gateway Mortgage Group, LLC Branch Managers, Loan Originators, Underwriters, Closers, and Quality Control Personnel

From: John A. Douglas

Date: December 14, 2009

Re: Outline of MANDATORY RESPA Changes Effective January 1, 2010

The following outline summarizes the changes to RESPA which are effective January 1, 2010. Please note that the format of the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement (HUD-1) will significantly change after January 1, 2010. These revised forms will be applicable to all loans originated after January 1, 2010. Therefore, the current GFE and HUD-1 will still be used for loans that are originated prior to January 1, 2010 but close after January 1, 2010.

I. General

1. Transmittal Methods

- a. Mail
- b. Hand Delivery
- c. Fax (if the applicant consents)
- d. Email (if the applicant consents)

2. Issuance Timelines

- a. A loan originator must issue a GFE to a loan applicant no later than three business days after the loan originator receives an application or information sufficient to complete an application.

3. Mortgage Brokers and Loan Originators

- a. A “loan originator” is defined as a lender or a mortgage broker.
- b. A mortgage broker can provide the GFE to the borrower. However, the lender is ultimately responsible for ascertaining that the GFE was provided to the applicant.
- c. If the lender accepts a GFE issued to an applicant by a mortgage broker, the lender is subject to the loan terms and settlement charges. Charges for the credit or credit for the interest rate chosen and the origination charge may not change (zero tolerance) once the lender has accepted the GFE.
- d. If a lender agrees to proceed with a transaction for which a mortgage broker has provided the GFE to the applicant, the lender may provide a revised GFE.

II. Application

1. An application is not considered to be complete under RESPA until the following 6 items of information are received by the lender:
 - a. Borrower name
 - b. Social security number
 - c. Gross monthly income
 - d. Property address
 - e. An estimate of the value of the property
 - f. Mortgage amount sought
2. An originator is not responsible for sending a Good Faith Estimate (GFE) to a borrower until all of the above information is received by the loan originator.

III. GFE

1. Block 1

- a. This block will contain all origination fees charged by the lender, mortgage broker, and any document preparation charges.
- b. Origination fees include the following fees: origination, application, processing, underwriting, funding, document preparation, document processing, administrative, and mortgage broker fee. YSP is also included in the origination charges.
- c. These fees cannot be itemized. The total amount is entered into this block.
- d. This amount is subject to a zero tolerance.

2. Block 2, Box 2

- a. This box is for YSP.
- b. This is shown as a credit to the borrower. This credit reduces the borrower's settlement charges.

3. Block 2, Box 3

- a. This box is for discount points.
- b. This is shown as a charge to the borrower.
- c. RESPA prohibits a loan from containing both a credit and a charge. **THIS MEANS THAT A LOAN CANNOT HAVE BOTH YSP AND DISCOUNT POINTS.**

4. Blocks 3-7

- a. These blocks are for third party settlement providers, title insurance, and government recording charges.
- b. For third party settlement service providers, the lender either can require the provider or permit the borrower to shop for the service. When the loan originator allows a borrower to shop for third party settlement services, at the time the GFE is given to the borrower the loan originator must also provide the borrower with a written list of settlement service providers on a separate sheet of paper.
- c. There is a 10% tolerance applied to the sum of the charges for the settlement services listed in Blocks 3-7. If the borrower selects the service provider, these amounts are not subject to the tolerance.

5. Block 8 – Transfer Taxes

IV. This amount is subject to a zero tolerance.

1. Tradeoff Table

- a. The loan originator must complete the left-hand column of the Tradeoff Table with the information pertaining to the loan as shown on page 1 of the GFE. The loan origination may, but is not required to, complete the remaining sections of this table with the same information showing an alternate loan with a higher interest rate and one with a lower interest rate, if the loan originator has those loans available and would issue a GFE based on the same information provided by the applicant. The alternative loans must use the same loan amount and be identical to the loan in the GFE except for interest rate and closing costs.

2. Seller Paid Items

- a. All charges typically paid by the borrower must be disclosed on the GFE regardless of whether the charges will be paid by the borrower, the seller, or a third party.
- b. Charges that typically would not be charged to the borrower, but would be charged to another party – such as the seller – do not have to be included on the GFE. For charges typically paid by the borrower, GFE instructions provide that those charges are required to be listed regardless of whether the sales contract requires the seller to pay the fee.

3. Timelines

- a. In the “Important Dates” section of the GFE, where it states “[t]he interest rate for this GFE is available through _____”, the loan originator has the option for leaving the interest rate open for any amount of time.
- b. In the “Important Dates” section of the GFE, line 2, the estimate must be available for 10 business days.
- c. With the exception of interest rate-dependent charges and terms, the charges and terms for all settlement services on the GFE must be available for 10 business days from when the GFE is provided, or for such longer period of time as the loan originator provides in item 2 of the “Important Dates” section of the GFE.

- d. The interest rate-dependent charges and terms cannot change before the expiration of the period indicated by the loan originator in item 1 of the “Important Dates” section of the GFE. Between the period of time indicated in item 1 and item 2 of the “Important Dates” section, only interest rate-dependent charges may change until the interest rate is locked. After the expiration of the period indicated in Item 2 of the “Important Dates” section, the loan originator is permitted to change all of the charges and terms on the GFE (assuming that the interest rate is no longer available, as indicated in Item 1 of the “Important Dates” section).
- e. Items 3 and 4 of the “Important Dates” section of the GFE are for the rate lock period. A specific date must be entered in the box for Item 3; a date range cannot be entered here.
- f. If a lender does not offer a rate lock, Lines 3 and 4 of the “Important Dates” section should state “not available” or “NA”.
- g. If a revised GFE is provided due to changed circumstances or a borrower requested changes, the loan originator must complete Line 3 in the “Important Dates” section with the information that was on the proceeding GFE, unless the rate lock period was the basis for the issuance of a revised GFE.
- h. If a revised GFE is provided due to changed circumstances and or an applicant requested the change, it is necessary for the loan originator to complete Line 2 of the “Important Dates” section. The date entered must be at least 10 business days from the date the revised GFE is provided to the borrower.
- i. If a lender accepts a GFE issued by a mortgage broker, the lender may not revise the information contained in the “Important Dates” section on the GFE.

4. Written List of Providers

- a. When a loan originator permits a borrower to shop for third party settlement service providers, the loan originator must provide the borrower with a written list of settlement service providers on a separate sheet of paper at the time the GFE is issued.
- b. If the loan originator permits the borrower to shop for a settlement service provider, a borrower may choose a provider that is not on the written list. The amount paid for that service is not subject to a tolerance.
- c. If the lender allows a mortgage broker to issue the GFE and the written provider list, the lender is subject to the tolerances for the services in which the borrower chooses to use the identified provider.
- d. This list should contain settlement service providers which are likely available to provide the settlement service.

5. Changed Circumstances

- a. Once the GFE is issued, the following can constitute “Changed Circumstances under which the loan terms or changes can include:
 1. *Acts of God*
 2. *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, which information 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.*
 3. *New information particular to the borrower or transaction that was not relied on in providing the GFE.*
 4. *Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.*
 5. *None of the information collected by the loan originator prior to issuing the GFE may later become the basis for a changed circumstance upon which a loan originator may offer a revised GFE, unless the loan originator can demonstrate that there was a change in the particular information or that it was inaccurate, or that the loan originator did not rely on the information issuing the GFE.*
- b. When there is a changed circumstance and the loan originator intends to issue a revised GFE, the loan originator must do so within three business days of receiving the information establishing the changed circumstances.
- c. In issuing a revised GFE due to a changed circumstance, the loan originator may only change those charges and terms that are affected by the specific changed circumstance.
- d. The following are examples of permissible changed circumstances:

1. *GSE, FHA or Mortgage Insurance program changes, if the loan originator lacked notice of the change.*
 2. *The property address provided by the applicant turns out to not be the correct, legal address,*
 3. *After the GFE is issued parties are added to or removed from title or the property is moved into or out of trust.*
 4. *After the GFE is issued, it is determined that a party will be using a POA to sign, which may require additional work and additional fees.*
 5. *Governmental fees such as recording fees or taxes change after the GFE is issued and the loan originator lacks notice of the change.*
 6. *After the GFE, it determined that additional services, such as additional pest, structural or other inspection, upgraded appraisal, certification or survey is required.*
 7. *The borrower's credit score changes.*
 8. *If a borrower has been issued a GFE without the interest rate being locked and the borrower later locks the rate, the loan originator is permitted to provide a revised GFE when the borrower later locks the rate.*
 9. *If a borrower requests a change to the mortgage loan identified in the GFE and that request will change the terms of the loan, the loan originator may provide a revised GFE to the borrower. This includes the borrower requesting a different rate lock.*
- e. The following do not constitute changed circumstances:
1. *If a GFE is issued without a property address, a property address is later identified.*
 2. *A mortgage broker issues a GFE based on one lender's loan products and origination fees, but places the loan with a different lender.*
 3. *Market fluctuations.*

6. Right to Cure and Tolerance Violations

- a. If there is an inadvertent or technical error on the HUD-1, as long as a revised HUD-1 is provided to all parties within 30 days of settlement, a violation of RESPA has not occurred.

- b. The lender is responsible for curing any tolerance violations and making any reimbursements to the borrower. The lender is also responsible for ensuring the settlement agent sends the revised HUD-1 to the borrower.
- c. It is permissible for charges to the borrower to decrease from the GFE to the HUD-1. This is not a RESPA violation.
- d. It is a potential violation of RESPA for the loan originator to pressure a settlement agent (or other settlement service provider) to reduce their charges to bring the costs into compliance with the tolerances as a condition of receiving future referrals of settlement service business.

7. Miscellaneous

- a. The new RESPA rules remove the restriction on FHA origination fees. The restriction of the origination fee to 1% no longer applies.

V. HUD-1

1. 800 Series

- a. Line 801 includes all charges by a loan originator with the exception of points. This includes document preparation charges. The origination charge is not broken down into separate fees.
- b. All payments from a mortgage lender to a mortgage broker (YSP) are shown as a credit to the borrower on line 802. These payments may not be shown as POC on the HUD-1. Discount points are also shown as a charge on line 802.
- c. Line 803 is for the adjusted origination charge.
- d. When the loan originator selects the settlement service provider, fees for third party settlement services that are required by the loan originator are recorded in the 800 series beginning on line 804. These fees most often include appraisals, credit reports, flood searches, and tax service fees. If these are paid to the lender or broker, they are included in the origination charge.

2. 1100 Series

- a. Title company commitment fees, wire fees, and other administrative fees are included as processing and administrative fees that are part of the definition of title services which are included in the charges shown on Line 1101 for the HUD-1. These fees are not be itemized separately. These fees also include title company document preparation, delivery fees, notary fees, and lender's title insurance premium.

- b. The lender's title insurance premium limit is shown on line 1105.
- c. The settlement agent's charge for conducting the settlement is also included on line 1101. Any separate charge to a seller for conducting the settlement is listed in the seller's column in line 802.
- d. The amount listed for line 1107 is for the title agent's portion of the total title insurance premium.
- e. The amount listed on Line 1108 discloses the title underwriter's portion of the total title insurance premium, owner's and lender's title insurance premium and any related endorsements.

3. 1200 Series

- a. Line 1201 is used to record the total government recording charges. Additional items the lender requires to be recorded must be itemized on Line 1206.
- b. Line 1203, Transfer Taxes, is the total of state and local government fees imposed for mortgages and home sales.
- c. If the seller pays the recording charge, that charge is listed in the seller's column of Line 1202.

4. 1300 Series

- a. This series is used to record the charges for settlement services that are disclosed in Block 6 (services that a loan originator allows an applicant to shop for) of the GFE as well as charges that are not disclosed on the GFE. These services include charges for home inspections and home warranties.