

BUCKLEY SANDLER_{LLP}

RESPA Rule Implementation

Down to Details



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Transitioning to the New GFE and HUD-1/1A

- n All applications taken on or after 1/1/2010
 - New GFE
- n Applications taken before 1/1/20 – have a choice:
 - Can continue to use old GFE, and old HUD-1
 - Can issue new GFE (with same terms and charges), then use new HUD-1

What Triggers GFE? “Application”

- § Receipt of the following 6 items :
 - Name
 - Social security number (to pull credit report)
 - Property address
 - Monthly income
 - House value or best estimate
 - Loan Amount requested

- n PLUS: Other items required by the loan originator (broker or lender) to issue the GFE
 - This can be the entire 1003 application

- n If issue GFE, deemed to have received 6 items above

- n If borrower not ready to apply but wants info on potential scenarios, may hold back on collecting some data, and issue some other preliminary document, not GFE

No Fee for GFE

- n Reminder: Can't charge a fee before issuing GFE, except for cost of an initial credit report, and then only after the borrower has indicated "intent to proceed"
 - Can be a phone call, or an email, any communication that indicates wish to go forward
- n Can an originator charge fees for a prequalification or preapproval?
 - Risky to charge fees before GFE is issued
 - Makes it difficult to do fully-underwritten preapproval
- n Loan originators are prohibited from conditioning the GFE on applicants providing supplemental information to verify initial information

Disclosing Broker Fees

- n Borrower paid fees to broker – in Block 1 “Our Origination Charge”
 - Combined with any borrower-paid lender charges

- n Lender paid broker fees – add to “Our Origination Charge” – Block 1 and “credited” back to borrower in Block 2 (second box) for interest rate chosen
 - Rule applies for any lender-paid broker fee, YSP, % amount or flat fee
 - This credit reduces the total origination charge

- n Discount Points (a “charge”) paid by borrower are netted against any broker fee credit in Block 2 and shown as net “credit” or “charge” depending upon which is larger

- n A “Credit” and “Charge” cannot both be shown in the same transaction

Example

- n \$100,000 loan with lender paid broker fee of 2 % and borrower paying 1 discount point
- n No other charges
- n Show \$2000 as “Our Origination Charge” in Block 1
- n Show “credit” of \$1,000 in Block 2 (2nd box)
- n Adjusted Origination Charge is \$1,000
- n Remember: Once rate is locked, can't increase charges or reduce credits

Disclosing Processing & Administrative Charges

- n All miscellaneous charges for services that enable the lender to underwrite and approve the loan are P&A charges that go in Block 1
 - Includes doc prep company services, attorney services for doc prep or document review, courier services, that lender hires
 - Block 1 also includes charges for appraisal, credit report, and flood cert services if performed by loan originator
- n All miscellaneous charges that enable title company or closing attorney to settle the loan are P&A charges that go in Block 4

Disclosing “No Cost” Loans

- n Show a credit in Block 2 large enough to offset all other settlement costs payable by borrower
- n Once rate is locked, may not reduce the credit even if actual closing costs go down
 - Borrower gets cash or principal reduction or credit against other items (e.g., per diem interest)

Changes to GFE Form

- n Can't change GFE, but can add lines if needed to Blocks 3, 6, and 11.
- n Can't add signature lines to GFE
- n Can't add additional pages or addendums to the GFE
- n Can add space for additional borrowers

Issuing a Revised GFE

- n When borrower locks the rate
- n When borrower requests change (increased loan amount)
- n When “changed circumstances” occur:
 - New information not collected at application (but not the “required 6”)
 - Review of information collected but not “relied on” in issuing GFE (e.g., for purposes of the GFE not relying on assets even though asset information was collected) (but not the “required 6”)
 - Other post-GFE circumstances—such as boundary disputes, flood insurance, or environmental problems, additional unreleased liens, need for additional service, or upgraded appraisal
 - Changed or inaccurate information
 - Particular facts will determine other changed circumstances
- n May only increase the affected charge

What can change before Rate Lock

- n Interest rate dependent charges, including:
 - Your charge or credit for interest rate chosen (Block 2)
 - Your adjusted origination charge (Line A, p.2)
 - Daily interest charges (Block 10)
 - Interest rate-related loan terms, such as monthly amount owed

What's Not a Changed Circumstance

- n Mortgage broker issues GFE that 1st lender rejects, so placed with 2nd lender
- n If GFE issued without a property address, later identification of property
 - But a change in the property address or property type could be a changed circumstance
- n Borrower initially selects a service provider not on provided "list," but then chooses one on the list

When Must GFE be Reissued

- n Within 3 business days of receiving information (by either the lender or the mortgage broker) that is sufficient to establish the changed circumstance
- n Requires close communication between broker and lender
- n Lenders are putting provisions in broker agreements requiring brokers to provide this information and to reimburse losses if fail to do so

Tolerances

- n Zero tolerance for:
 - Block 1 - “Our Origination Charge”
 - Block 2 - “The credit or charge for interest rate chosen,” once rate is locked
 - Line A - “Your adjusted origination charges,” once rate is locked
 - Block 8 - Transfer taxes (charges based on sale price or loan amount)

- n Aggregate 10% tolerance
 - Block 3 - Required services that loan originator select
 - Block 4 – Title services and lender’s title insurance, if borrower uses listed providers
 - Block 5 – Owners title insurance, if borrower uses listed providers
 - Block 6 – Required services borrower may shop for, if borrower uses listed providers
 - Block 7 – Government recording charges (charges not based on sales price or loan amount)

- n No tolerance
 - Block 6 – Required services borrower may shop for, if borrower doesn’t use listed providers
 - Block 4 – Title services and lender’s title insurance, if borrower doesn’t use listed providers
 - Block 5 – Owners title insurance, if borrower doesn’t use listed providers
 - Block 9 – Initial deposit for escrow account
 - Block 10 – Daily interest charges
 - Block 11 – Homeowners insurance (incl. hazard, flood, earthquake insurance)

GFE Page 3: 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 | \$ | \$ | \$ |
| 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.

- n The rate/cost “tradeoff table” shows the subject loan amount and rate requested compared with alternative loans with the same loan amount and terms, but showing (i) a loan with a lower interest rate; and (ii) a loan with lower settlement charges.
- n For ARM loans, the initial rate only may be shown.
- n Completing columns two and three of the tradeoff table is optional.
- n But states may require it ??

HUD-1/1A

- n Modified slightly to allow comparison with charges on the GFE
- n Lines in Section L reference corresponding “Block” numbers on the GFE
- n Terminology modified to be more consistent with GFE terminology
- n 3rd party charges paid by borrower listed outside columns
- n Still itemizes services and shows the names of third parties ultimately receiving payment
- n Opportunity to “cure” an inadvertent or technical error within 30 calendar days after settlement

HUD-1/1A Itemization

- n Seller paid charges
- n Charges typically paid by seller need not shown as borrower charge on GFE (but lender's and owner's title insurance always required on GFE)
 - In that case, charge should be listed in seller's column
- n If seller-paid charge originally included in buyer's GFE:
 - Charge should be listed in borrower's column
 - Offset charge by listing a credit in that amount to the borrower on lines 204-209 and by a charge to the seller in lines 506-509
- n Other party paid charges
- n If originally included in buyer's GFE:
 - Charge should be listed in the borrower's column on page 2 with an offsetting credit on page 1 identifying the party paying the charge
- n IRS reportable points may be designated on p. 2 as parenthetical or footnote to Line 801

HUD-1/1A

HUD-1/1A Itemization Highlights Cont'd

- n Where “no cost” encompasses third party fees as well as the upfront payment to the loan originator (presumably by the lender):
 - The third party services covered by the “no cost” provision must be itemized and listed in the borrower’s column with the charge for the third party service
 - Itemized charges must be offset with a negative adjusted origination charge on line 803 and recorded in the columns

- n The amount of title insurance premiums, including endorsements retained by the title agent must be separately disclosed outside of the columns in line 1107

- n If a party other than title company listed on line 1101 of the HUD-1 provides services that are separate from providing title insurance (i.e., attorney and settlement or escrow agent services) the title company should separately itemize those services with the total amount paid, outside of the columns

How to Cure

n HUD provides two options:

- If tolerance will be exceeded, direct settlement agent to reduce charge to the borrower in the columns on p. 2 and 3 of the HUD-1 as appropriate
- List a corresponding P.O.C. charge payable by lender “to meet tolerance” outside the columns
- Alternatively, the cure may be listed as a credit to the borrower on p. 1 of the HUD-1 in the 200 series, with notation “Cure for (zero or 10%) tolerance category”
- The borrower must always receive the tolerance correction

Miscellaneous

- n Eliminates the 1% (2.5% for new construction) cap on FHA origination fee—Effective January 1, 2010
 - But, rule states FHA Commissioner “may establish limitations” on charge
 - FHA Handbook and several Mortgagee Letters currently limit the FHA origination fee to 1%--raises question of whether these authorities are overturned by the rule change and Commissioner must act again versus whether these authorities previously issued by the Commissioner are still effective

Questions & Answers

**Today's Power Point presentation will also be available on the BuckleySandler website at:
www.buckleysandler.com/resources/presentations/**