

**Changes to the Real Estate Settlement Procedures Act
And
Other Legislation Regarding Real Estate Closings**

By: Vicki M. Runkle, Support Professional
Reviewed by: William F. Hoffmeyer, Esquire

Within the past two years there have been several pieces of legislation enacted which affect real estate settlements and the process of applying for a mortgage loan. In November 2008, the federal government revised the Real Estate Settlement Procedures Act ("RESPA"). RESPA applies to any federally related mortgage loan for residential property. RESPA does not apply to transactions for commercial real estate or when the purchase of residential real estate is seller financed or a cash purchase.

There are two effective dates under RESPA. The first was January 16, 2009. As of this date, loan originators and settlement providers were allowed to use average charges for third party service charges such as overnight delivery fees. There are strict rules as to how and how often these averages must be determined. The second effective date, which had a bigger impact on the preparation for a real estate settlement, was January 1, 2010. As of this date, all loan originators are required to provide borrowers with a three-page Good Faith Estimate ("GFE") and all settlement providers are required to use a new HUD-1/HUD-1A form which includes a third page that compares the estimates charges of the GFE with the actual charges as set forth on the HUD-1/HUD-1A. (A loan originator is defined under RESPA as a lender or mortgage broker. Throughout this article, the terms loan originator and lender are used interchangeably.)

Under the revised RESPA regulations, a loan originator is not allowed to collect any upfront fees, except for the fee to obtain a credit report, at the time it takes the loan application. Any remaining upfront fees which the bank wishes to collect cannot be collected until after the borrower receives the GFE and indicates an intention to proceed with the loan as set forth in the GFE.

The GFE must be provided to an applicant (also known as the borrower throughout this article) within three business days of the taking of the application. An application is considered to have been made or taken when the loan originator receives the following information: (1) the borrower's name, (2) the borrower's monthly income, (3) the borrower's social security number, (4) the property address, (5) an estimate of the value of the property and (6) the loan amount. A loan originator may require other information for the application. If a GFE has been issued and the borrower decides to proceed with the loan, it is presumed that the lender received all six required pieces of information prior to issuing the GFE. If the transaction involves both a lender and a mortgage broker, either may issue the GFE to the borrower, but it is the lender's responsibility to ascertain whether or not the GFE has been provided by the mortgage broker, and if not, the lender must provide the GFE to the applicant within three days of the application. If, however, the applicant withdraws the application or the lender denies the application prior to the expiration of this three day time period, the lender is not required to issue a GFE.

The fees or charges set forth in the GFE cannot change, unless there are "Changed Circumstances." RESPA defines "changed circumstances" as (1) acts of God, war, disaster or

other emergency; (2) information particular to this borrower or transaction that was relied upon in providing the GFE has changed or has been found to be inaccurate after the GFE was provided to the borrower, this may include information about the credit quality of the borrower, the amount of the loan, or the estimated value of the property; (3) new information particular to the borrower or the transaction that was not relied on in providing the GFE; or (4) other circumstances particular to the borrower or the transaction, including boundary line disputes, the need for flood insurance or environmental problems. The information collected by the loan originator may not be the basis for a “changed circumstance,” unless the loan originator can prove this information has changed or was inaccurate. If a revised GFE is provided to the borrower, it must be provided within three business days of receiving the information which establishes the changed circumstance. Also, only the terms or charges on the GFE affected by the specific circumstance may be changed on the revised GFE.

The **first page** of the GFE contains various dates and terms related to the loan. All of the quoted loan terms and prices set forth in the GFE, except the interest rate, charges related to the interest rate, and the per diem interest, **must** be available to for at least ten business days from the date the GFE is given to the loan applicant. If the applicant does not express an intent to continue with the application within this ten day timeframe, the GFE expires and the lender is no longer bound by the terms of the GFE.

The **second page** of the GFE sets forth all charges in connection with the loan. These charges are divided into three categories or “buckets”. The first bucket contains those charges which cannot change between the GFE and the HUD-1/HUD-1A. These charges are considered to have “zero tolerance,” and include all lender charges for taking, underwriting and processing the application; points, which are also known as the yield spread premium (“YSP”); and all real property transfer taxes. The next bucket includes those items which cannot increase by more than 10% from the amounts quoted in the GFE. Items in the 10% bucket include lender required settlement services where the lender selects the provider or where the borrower selects the provider from the lender’s list of approved service providers; title services and title insurance, if the lender selects the provider; and any governmental recording fees. Any charges set forth in the final bucket are subject to unlimited change. The charges include those for services where the borrower chooses a service provider that is not on the lender’s list of approved service providers; any amounts collected for an escrow account; the per diem interest collected; and the homeowner’s insurance. The written list of providers mentioned in this section must be provided to the borrower at the time the GFE is given to them. If no list is given, then the 10% tolerance bucket automatically applies to a service provider of a settlement service that is required by the lender.

The **third page** of the GFE contains three charts and/or tables. The top of the page is titled “Understanding which charges can change at settlement.” This chart contains three columns. One column describes the charges included in each of the three tolerance buckets. The middle of the page is a “tradeoff table.” Here, the lender must complete the first column with information for the current loan being offered. The second and third columns are not required to be completed. However, lenders may complete these columns if they offer the same loan with lower settlement charges (the second column) or with a lower interest rate (the third column). The final chart on

this page is called a “shopping chart.” This chart can be used by the borrower to compare multiple GFEs received from various lenders.

RESPA also requires all lenders and mortgage brokers to give a special information booklet published by the U.S. Department of Housing and Urban Development titled “Shopping for Your Home Loan HUD’s Settlement Cost Booklet” to all loan applicants within three days of applying for a mortgage loan. The lender is not required to give this booklet if the applicant withdraws the application or the lender denies the application prior to the expiration of this three day time period. This booklet discusses the various stages of the home buying process including (1) items to consider before buying a home, (2) items to consider while shopping for a home, (3) items to consider while shopping for a loan, (4) items to consider while shopping for settlement services, (5) the settlement process and the HUD-1, and (6) the loan after settlement. The booklet also contains information relating to home equity loans and refinancing. Also, included is contact information for various federal agencies that may assist in the home buying process and a glossary of terms used within the booklet as well as descriptions of the different types of loan products available.

There are also several changes involving the HUD-1/HUD-1A, also known as the Settlement Statement. The HUD-1 is used for all purchases and can also be used for refinances. Use of the HUD-1A is optional for refinances, as it is basically an abbreviated version of the HUD-1. However, the HUD-1A cannot be used if the loan originator or other third party gives a credit to the borrower. Historically, the HUD-1 has consisted of two pages. With the changes to RESPA, it is now a minimum of four pages. The design or set-up of all pages has changed. However, the content of the **first page** has not changed. This page still contains a summary of all charges and credits to the buyer and/or seller.

The **second page** has changed significantly. The layout of this page has changed to include references to the lines where charges can be found on the GFE and some of the line descriptions have changed. Of major significance is that disclosure of every charge and payee is no longer required. Instead of individually listing all charges, many charges are now lumped, grouped or bundled together into what is now called a “roll-up line.” These roll-up lines contain a total for all the charges that are grouped together. Sometimes the individual charges can still be seen to the left of the borrower’s column in the area now known as “outside the column.” Also of significance is that extra lines can now be added to the various sections of the HUD-1 as needed. Previously, if you did not have enough lines, you would place the information on the empty lines in the 1300 Series of the HUD-1. Therefore, all like charges can be found in the appropriate section of the HUD-1.

The **700 Series** of the HUD-1 now contains the total of all real estate broker fees, not just the commission. Previously, this series states the real estate commission as a percentage of the purchase price. This is no longer shown on the HUD-1. Instead the amount due to the agent(s) is set forth outside the column and the total amount of the commission, less any amount retained by the agent(s), is shown “inside the column.” This series can now be expanded to include any administrative fees of the agent(s).

The **800 Series** includes “Items Payable in Connection with Loan.” Any fees for an appraisal, a credit report, a tax service provider for information on the real estate property taxes, and for a flood certification are found on specific lines in this series. Other items that can be included on the additional lines in this series are fees for any third party services that are required by the lender. These are the fees where the lender selects the service provider. The first two lines in the 800 Series are shown outside the column. Line 801 includes all charges, except an additional charge for points, received by the loan originator. The fees include those typically set forth on the HUD-1 as fees for the administration and/or processing of the loan, and include any charges performed by the lender and/or the mortgage broker. Line 802 sets forth any amount charged for the interest rate (a/k/a points) or any credits given by the lender. The total amount of these two lines is then shown inside the column on line 803 as “Your adjusted origination charges.”

All items that the lender requires to be paid in advance are set forth in the **900 Series**. These items include the per diem interest, mortgage insurance and homeowner’s insurance.

The **1000 Series** contains any reserves or escrows paid to the lender. The reserves or escrows typically paid include real property taxes and homeowner’s insurance. The items are set forth outside the column on the individual lines in this series starting with Line 1002. The last item in this series must be the Aggregate Adjustment. This number is determined by a calculation set forth in RESPA. The adjustment is used to make sure that lenders only collect the maximum amount allowed by law for any reserves or escrows. The total of all the reserves or escrows collected less the Aggregate Adjustment is set forth inside the column on Line 1001.

Title Charges are set forth in the **1100 Series**. This section has changed dramatically and it now includes roll-up lines. Line 1101 contains an amount for all charges for title services and lender’s title insurance. Title services include an examination and evaluation of the chain of title, the preparation and issuance of a title commitment, clearance of any underwriting objections, the preparation and issuance of any title policies, and all processing or administrative functions necessary to perform these functions. Some examples of processing or administrative fees due in connection with these functions are overnight delivery fees, wire fees, notary fees, and/or document retrieval fees. In addition to these amounts, Line 1101 also includes the portion of the title insurance premium attributable to the lender’s title insurance policy including any required endorsements and the insured closing letter. If a settlement or closing fee would be charged by a third party, that amount is set forth in Line 1102. Since Pennsylvania is an all-inclusive title insurance state, there would not normally be any fee listed on this line. Line 1103 sets forth the fee for the issuance of an owner’s title insurance policy. This includes the fee for the policy itself and any endorsements. The remainder of the lines in this section contains information outside the column. This includes the policy limit for both the lender’s policy and the owner’s policy, along with the portion of the title insurance premium retained by the title agent and the underwriter.

The **1200 Series** includes all governmental recording charges and transfer taxes.

Finally, the **1300 Series** contains “Additional Settlement Charges.” This section contains all the charges for the lender required services for which the borrower can choose the provider. It also includes the charges for services that were not required by the lender, such as pest inspections or home warranties. The items that were required by the lender are set forth outside the column

with the total of all these items rolled-up and set forth inside the column on line 1301. All other items are set forth inside the column.

Brand new for the 2010 HUD-1 is the **third page**. The top of this page contains a comparison chart for the charges of the GFE and those on the HUD-1. The chart references the HUD-1 Line Number where the charges are located. Then there are two columns, one containing the amounts as set forth on the GFE and one containing the amounts as set forth on the HUD-1. This chart also contains three sections, one for each of the tolerance “buckets.” The second section regarding the items that may not, in total, increase by more than 10% contains a line totaling all the items set forth in this category. This category also sets forth the total change between the figures used for the GFE and those found on the HUD-1 as both a numerical amount and as a percentage. Remember, the amounts in this bucket may decrease by any amount, but they may not increase as a total by more than 10%. The 10% tolerance **does not** apply individually to the items contained in this bucket, but instead applies to the total of all charges set forth in this bucket. If the charges have increased by more than 10% for this bucket, or if the charges in the first bucket have increased by any amount, the lender is responsible for curing the tolerance violation and reimbursing the borrower within 30 days from the date of the settlement. The lender should advise the settlement agent once the borrower has been reimbursed, so that the settlement agent can provide a revised HUD-1 to all parties involved in the loan transaction. The bottom of the third page contains the loan terms. In the special information booklet published by the U.S. Department of Housing and Urban Development, the borrower is instructed to contact their lender immediately before signing any loan documents if the loan terms provided on the HUD-1 do not match the loan terms as set forth on the GFE.

The **fourth page** of the HUD-1 is now the signature page. Additional pages may need to be added if there are not enough lines for all charges that must be contained on the HUD-1, or if there is not enough space on page one to list the names and address for all of the sellers.

Other legislation of importance that was effective in 2009 is the Home Valuation Code of Conduct (“HVCC”) and the Housing and Economic Recovery Act (“HERA”). The HVCC was effective as of May 1, 2009. It states that a borrower must receive any **appraisals** performed within three business days prior to the closing in order to give the borrower time to review the appraisal. The borrower does have the discretion to waive this three day review period for any reason. An appraisal is considered received three days after it has been mailed to the borrower. HERA amends the Truth in Lending Act (“TILA”). As of July 30, 2009 a Truth in Lending Disclosure (“TIL”) must be delivered to the borrower three business days after the loan application is received and at least seven days before the date of the settlement or closing. If the Annual Percentage Rate (“APR”) set forth in the TIL increases by more than 1/8% (0.125%) the lender must provide a revised TIL to the borrower at least three days prior to the closing. The borrower may waive the seven day or three day waiting period if there is a financial emergency. In order to waive the waiting period, the borrower(s) must provide a signed written statement to the lender describing the emergency and specifically modifying or waiving the waiting period. For the waiver or modification of one or both of the waiting periods, the lender must provide a final TIL to the borrower(s) at or before the time of the waiver or modification.

Given all of the changes with RESPA, HVCC and HERA, the time frame in which a settlement may occur from the time the application is taken has potentially extended. Remember that RESPA sets strict time lines for when the lender must provide a GFE to a borrower and what can or cannot change between the GFE and the HUD-1.

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