



Revised Summary of HUD's Final RESPA Rule

November 14, 2008

- **Background** – Although the Department of Housing and Urban Development's (HUD's) Final rule on the Real Estate Settlement Procedures Act (RESPA) is not expected to be published in the *Federal Register* until next week, late on November 12, 2008, HUD made available copies of a 341 page Final RESPA Rule and an accompanying 571 page Regulatory Impact Analysis on its web site, www.hud.gov. These documents followed HUD's release earlier in the day of the new Good Faith Estimate (GFE), HUD-1 settlement statement (HUD-1) and an initial summary. This document summarizes key points in the rule based on the preamble discussion and the forms. It therefore is more robust and complete than the Preliminary Summary MBA issued November 12, 2008, based only on the forms and the initial HUD summary. Considering the length of the rule and the extensive regulatory language, MBA anticipates providing additional summary materials and will conduct a *CampusMBA* call on this subject for members shortly.
- **Highlights** – The rule: (1) establishes a standard three-page GFE form that includes a first page of information and a summary of the specific loan terms and charges, a second page disclosing settlement charges as subtotals for eleven categories of costs, and a third page of tolerance rules, information on the trade-off between rate and settlement costs as well as a shopping chart; (2) foregoes its original proposal to establish a new "GFE application" and instead provides that a GFE may be provided after the originator receives the information that it regards as necessary in a single application; (3) limits the fee to obtain a GFE to the cost of a credit report; (4) imposes tolerances to limit any increases in originator charges and credits (after locking in the rate) and transfer taxes and also impose tolerances to limit charges required, selected or identified by the loan originator to a total increase of 10 percent; (5) provides "changed circumstances" that result in increased settlement costs so that the tolerances are exceeded or that affect the borrower's eligibility for the loan offered are a basis for providing a revised GFE; (6) continues to require disclosure of mortgage broker fees as "the credit or charge for the interest rate chosen" but also requires lenders to indicate, without disclosing particular amounts, that credits or charges are part of "our origination charge;" (7) establishes a three-page HUD-1 and a new two-page optional HUD-1A with a last page to compare estimated charges from the GFE and final charges from the HUD-1 and to list loan terms; (8) omits provisions originally proposed permitting volume discounts but indicates such discounts passed on to the consumer may not violate RESPA; (9) permits disclosure of average prices on the GFE and HUD-1; (10) redefines "required use" in the context of affiliated business arrangements so that "economic disincentives that are used to improperly influence a consumer's choices are as problematic under RESPA as are incentives that are not true discounts;" and (11) makes several technical changes to conform the transfer of mortgage servicing disclosure to statute, to remove outdated escrow accounting provisions and to clarify that RESPA disclosures are subject to the Electronic Signatures in Global and National Commerce Act (ESIGN); (12) makes some provisions of the rule including required use, average charge and technical amendments effective as of the effective date of the rule, anticipated to be January 16, 2009; and (13) requires implementation and use of the new forms by January 1, 2010.

Specific Provisions –

- **Good Faith Estimate** – Use of a new three page *standard* GFE form that discloses on the first page : (1) identifying information such as name and address of the originator and borrower; (2) that the GFE is an estimate of settlement charges and loan terms and

references TILA disclosures and HUD's website for further information; (3) only the borrower can shop for the best loan and that the borrower should compare loan offers using the shopping chart on the third page of the GFE; (4) important dates such as the effective dates of the rate and estimated charges as well as rate lock period information; (5) a summary of loan terms 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 and a balloon payment (Notably, the form includes the interest rate rather than the APR although the APR will be provided to the borrower under TILA at the same time the borrower receives the GFE and the HUD-1);(6) escrow account information including whether the loan includes a monthly escrow payment for taxes and insurance; and (7) the sum of the adjusted origination charges and the settlement charges.

- Discloses on the second page, the estimated charges for loan origination and all other settlement services consolidated as subtotals in eleven cost categories including: (1) lender and mortgage broker total charges known as "our origination charge;" (2)"your credit or charge for the specific interest rate chosen with the following sub items in three blocks including: (a) a check box for lenders that are required to indicate the "credit or charge for the interest rate of ___ is included in our origination charge" (b) disclosure of a mortgage broker's YSP as "credit of ___ for the interest rate of ___%" and (c) points to the lender as "a charge of ___ for the interest rate of ___%;" (Note these credits and charges are totaled on the form to arrive at A. "Your Adjusted Origination Charges"),(3) required services selected by the originator; (4) title services and lender's title insurance; (5) owner's title insurance; (6) required services the borrower can shop for; (7) government recording and transfer charges; (8) transfer taxes; (9) initial deposit for the escrow account; (10) daily interest charges depending on settlement date; and (11) homeowner's insurance.
- Identifies on the third page, which charges can change at settlement (see the discussion on tolerances discussed below); the relationship between the interest rate and the borrower's settlement costs along with a table comparing two other loans to the loan in the GFE, one with lower settlement charges and one with a lower interest rate, with only the descriptions of the two other loans made optional; and a shopping chart comparing loan terms and total estimated settlement charges. Also, an item on the third page specifies some lenders sell loans after settlement and "Any fees lenders receive in the future cannot change the loan you receive or the charges paid at settlement."
- **Application** – Does not require the proposed "GFE application" that was limited to six items of borrower information to obtain a GFE, that would to be followed with a more complete "mortgage application" after the borrower chose to pursue a particular GFE. Instead, adopts a single application approach where a creditor may establish what information the originator regards as necessary to obtain a GFE and a mortgage. The rule assumes the six items of information will be included in an application and prohibits lenders from requiring back-up, supporting information until the borrower pursues the application beyond the GFE.
- **Limited Fee for GFE** – Limits the fee to obtain GFE to the cost of a credit report. The Federal Reserve's recent Home Ownership and Equity Protection Act (HOEPA) rule, similarly limited the cost of obtaining a Truth in Lending Act (TILA) disclosure given at the same time to a credit report's cost and HUD cited this fact in its determination.
- **Expiration of Interest Rate and Settlement Cost Estimate in GFE** – Informs the borrower that the interest rate and rate related information will be available to the borrower only as long as the originator determines until the rate is locked. Requires the settlement cost estimate to be open for at least 10 days from the time the GFE is provided or for such longer period as the originator may determine.

- **GFE Tradeoff Table** – Requires a tradeoff table - to provide the borrower information on the trade-off between settlement costs and interest rate that rule requires by filled out only with information on the loan offered in the GFE. Makes optional filling out the middle column for a loan with a lower interest rate or the right hand column for a loan with lower settlement costs but originator must fill out the table for the loan in the GFE.
- **Tolerances** – Provides that the following charges cannot increase at settlement from the estimates on the GFE, absent “changed circumstances” including: (1) our origination charge, characterized as “our service charge;” (2) YSP characterized as the “credit or charge (points) for the interest rate chosen “after the borrower locks their interest rate and points characterized as a “charge of \$__ for this interest rate of__ %;” (3) “adjusted origination charges,” also once the rate is locked; and (4) transfer taxes. Would prohibit the total of all other settlement services subject to tolerances, including those that are required, selected or identified by the originator including lender’s title insurance, owner’s title insurance if identified by the originator, government recording charges from increasing by more than 10 percent overall at settlement. “Changed circumstances” includes acts of G-d, war, disaster or other emergencies and also circumstances that change or are found to be different after the GFE is provided, for example, circumstances affecting the borrower’s credit quality or a change in the loan amount. “
- **Revised GFE** – Defines “changed circumstances” that can result in increased settlement costs that would cause the tolerances to be exceeded or that would affect the borrower’s eligibility for the loan offered and that would provide a basis for giving the borrower a revised GFE. A revised GFE may also be provided where a borrower requests a change in the loan terms. A revised GFE may also be provided in the case of new home construction as long as the originator clearly and conspicuously discloses to the borrower that a revised GFE will be provided up to 60 days prior to closing. The basis for providing a revised GFE must be documented and retained by the originator for three years.
- **Disclosure of Mortgage Broker Fees and Mention of Lender Credits and Charges** – Requires the mortgage broker and/or lender to disclose total charge for getting the loan in the first block as “Our origination charge,” in the second block disclose a YSP as a “credit or charge for the interest rate of ___% is included in ‘Our origination charge’” and include any discount points as a “charge of \$__ for this interest rate of__ %.” Notably, lenders are to indicate by a check box that the “credit or charge for the interest rate of ___ is included in “Our origination charge,”” without requiring disclosure of any specific amounts.
- **Definition of “Mortgage Broker”** – Changes definition of mortgage broker to include “exclusive agents” of lenders who are not employees of lenders. HUD believes these individuals and the Federal Housing Administration (FHA) loan correspondents are essentially mortgage brokers. Also, “mortgage broker” means a person or entity that serves as an intermediary between a lender and borrower to provide origination services.
- **FHA Fee Limits Repealed** – The rule repeals the limit under the FHA regulations on the charge that a mortgagee may charge a mortgagor for originating an FHA loan. The preamble states that FHA retains the authority to restrict these fees.
- **New HUD-1** – Requires a new *standard* three-page HUD-1 and establishes a new optional two page HUD-1A for transactions without sellers. The first page of the HUD-1 covers the borrower’s and seller’s transaction and the HUD1-A omits that page.
- The second page of the HUD-1 and the first page of optional HUD 1-A lists settlement charges by categories including: 700 “Total Real Estate Broker Fees” (omitted on HUD-1A); 800 “Items Payable in Connection with Loan,” that include origination charges and the credit or charged for the interest rate chosen, adjusted origination charges and other third party fees, such as the appraisal; 900 “Items Required by Lender to Be Paid in Advance” such as daily interest charges; 1000

“Reserves Deposited with Lender” such as the initial deposit for the escrow 1100, “Title Charges,” 1200 “Government Recording and Transfer Charges;” 1300 “Additional Settlement Charges” that appears to cover required services the borrower can shop for and 1400 “Total Settlement Charges.” Provides references in the line items on the second page of the HUD-1 and page 1 of HUD 1-1A to corresponding categories on the GFE.

- The third page (Second page of HUD-1A) includes a comparison of GFE and HUD-1 charges grouped by “Charges that Cannot Increase,” “Charges that In Total Cannot Increase More Than 10%,” and “Charges that Can Change” instead of the “Closing Script” originally proposed. Also includes a description of loan terms including loan amount, term, initial interest rate, initial monthly amount for principal, interest and any mortgage insurance, whether your interest rate can rise, even if payments are made on time, whether the loan balance or monthly payment rise, whether the loan has a balloon payment, a prepayment penalty and the total monthly amount owed.
- **Enforcement and Cure** – Violations of the rule’s GFE requirements and tolerances are considered violations of Section 5 of RESPA and violations of the HUD 1/1A provisions are considered violation of Section 4. RESPA itself does not provide HUD enforcement authority for such violations but other financial regulatory agencies may undertake enforcement actions in these cases. Where requirements or tolerances are violated, lenders and settlement service providers will have 30 days from the date of closing to correct errors or violations and repay consumers any overcharges. Inadvertent or technical errors in the HUD1/1A will not be deemed a violation of RESPA if a corrected HUD 1/1A is provided within 30 days. HUD has indicated that it will make legislative recommendations to increase its enforcement authority under RESPA.
- **Volume Discounts** – Does not include provisions as originally proposed explicitly legalizing “volume discounts” under Section 8 of RESPA. However, the preamble states that HUD will give further consideration to explicitly recognizing such discounts. The preamble also states at p.117 “it remains HUD’s position, 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. If the borrower fully benefits from the discount, these types of mechanisms that lower consumer costs are within RESPA’s principal purposes.” Also says, HUD will consider other avenues for providing guidance on negotiated discounts, including through the issuance of statements of policy.
- **Average Cost Pricing/Average Charge** – Permits average cost pricing so that an average charge may be used as the charge for any settlement service, provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to the providers of that service for that class of transactions. Settlement service provider may define a class of transactions based on the period of time, type of loan, and geographic area and must recalculate the average charge at least every six months. Also, provides if an average charge is used in any class of transactions defined by the settlement service provider, the provider must use the same average charge for every transaction within that class and prohibits the use of average charges for settlement services where the charge is based on the loan amount or the value of the property. Notably, the rule indicates that unless an average charge is used, the amount stated on the HUD-1 cannot exceed the amount received by the provider of the service. This effectively codifies HUD’s approach in its regulation that Section 8(b) of RESPA prohibits mark-ups of settlement charges.
- **Required Use** – Includes changes to the definition of “required use” so that economic disincentives that are used to improperly influence a consumer’s choices are as problematic under RESPA as are incentives that are not true discounts. The preamble claims the change to the definition of “required use” will not eliminate the ability of anyone to offer

legitimate consumer discounts. However, the preamble also indicates that this final rule limits tying such a discount to the use of an affiliated settlement service provider. Provides that settlement service providers can 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." Considering the conflicting signals at briefings and in this rule, MBA will analyze these particular provisions further to provide additional information on this subject going forward.

- **Technical Amendments** – Makes several technical changes including (1) revising the mortgage servicing disclosure requirements in 24 CFR 3500.21 to be consistent with statutory changes included shortening the up-front disclosure provided consumers; (2) eliminating outdated provisions regarding the phase-in period for aggregate accounting for escrow accounts; and (3) clarifying that the electronic disclosures permitted in accordance with ESIGN apply to all disclosures provided for in HUD's RESPA regulations.
- **Implementation Period** – The rule establishes a 12-month implementation period for the new forms. During this time originators may provide either type of form during that time. If the choice is to use the new forms originators are subject to the tolerances and other rules attendant to the forms. HUD indicates it will provide guidance to assist implementation. Note, however, that the "average charge" and "required use provisions" as well as technical amendments, are effective on the effective date of the rule which is anticipated to be January 16, 2009.

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