

Summary of HUD's 2004 Rule As Described by HUD at its RESPA Roundtables

At HUD's RESPA Roundtables on July 14 and July 28, 2004, HUD presented a PowerPoint Presentation that described the key components of the 2004 RESPA Rule which was submitted to OMB and then withdrawn by HUD.

Summary

- HUD described the Goals for RESPA Reform as Simplicity, Clarity, Transparency and Greater Certainty of Costs. HUD indicated that under the 2004 rule, both the GFE and MPO forms had been significantly revised to make it easier for consumers to shop and compare loan offers.
- On the GFE, the origination charge and YSP disclosure in particular were significantly modified, the tolerances were simplified and the rule no longer would have provided for rescission if the tolerances were exceeded.
- The Guaranteed Mortgage Package Agreement (GMPA) was renamed the Mortgage Package Offer or MPO, the period for acceptance was shortened from 30 days to 10 days, a nominal upfront fee for the MPO was permitted, and the packager was required to indicate through check marks whether certain specific services were included in the package.
- Packagers would have a right to cure violations of the packaging rules before losing their Section 8 exemption. HUD also would have permitted packaging of HOEPA loans after a one year implementation period.

GFE Form- <http://www.hud.gov/respareform/draft-gfe.pdf>

- As described in the PowerPoint and distributed by HUD, the 2004 GFE form would have included:
- A new first page that could be used as a shopping page and that summarized the information for the loan. The first page:
 - Identified the borrower and property;
 - Explained the use of the GFE;
 - Disclosed the specific conditions of the loan including the loan amount, whether the loan was fixed or adjustable, the loan term, monthly payment, rate lock period and whether the loan included a balloon payment or a prepayment penalty; and

- Provided the total estimated settlement charges for the loan including the adjusted origination charges, charges for other services and total estimated charges.
- The second page of the GFE detailed the charges for loan origination and then the charges for other settlement services. Notably the form did not disclose the payment of a yield spread premium to a mortgage broker until this page. Origination charges including any YSP were described as “Our service charge” and disclosed at the top of the page. In the next block, through checkmarks, the originator, if a mortgage broker, was to disclose the YSP, discount points or whether any credit was included in the rate of the loan. Specifically, the YSP was to be disclosed as a “credit of \$ for this interest rate”, discount points were to be disclosed as “a charge of \$ for this interest rate.” In the first block, a lender could indicate that “the credit or charge for the interest rate chosen is included in “Our service charge.” The “Adjusted Origination Charges” were then to be disclosed adding any discount points and subtracting any credit or YSP from the service charge.
- The second page then would have detailed the charges for other settlement services broken into major categories including required services selected by the lender, title services and lender’s title insurance, required services that the borrower can shop for, taxes and fees, reserves or escrow, daily interest charges, homeowner’s insurance and owner’s title insurance.
- The third page would have described which charges were subject to tolerances; provided a chart to help the borrower understand the trade-off between up-front settlement charges and the interest rate, and explained any application fee and how long the interest rate and points in the GFE would be effective until locked.
- The fourth page of the form would have included a shopping page to allow consumers to compare loan offers in terms of loan amount, interest rate, loan term and monthly payment as well as total estimated settlement charges.

GFE Rules

- HUD stated that the 2004 rule would have simplified the tolerances from those originally proposed in 2002. The originator’s charge would still have had a zero tolerance (It could not vary at settlement.). But other charges-- including required services selected by the originator that includes third party services and titles services and lender’s title insurance and required services the borrower shops for if referred by the originator—

would have a 10% overall tolerance rather than each having a separate 10% tolerance.

The YSP

- HUD pointed out that on the GFE the term for the YSP was changed from an “interest rate dependent payment” to a “credit or charge for the specific interest rate chosen.” HUD also explained that under the 2004 rule HUD would have required brokers to disclose their YSP as a credit to the borrower. Lenders could disclose their YSP as a charge included in the interest rate.

Packaging

- HUD pointed out that its 2004 rule it would have provided a safe harbor from Section 8 if the packager provided a guaranteed price for most settlement services necessary to close the loan and the interest rate was fixed or only changed in accordance with posted pricing.
- The 2004 rule made several changes from the proposed rule. The 2004 rule would have changed the name of the guaranteed package from a Guaranteed Mortgage Package Agreement (GMPA) to a Mortgage Offer (MPO), shortened the period the guaranteed package must be open for acceptance by the borrower from 30 days to 10 days, permitted a nominal upfront fee for the MPO, and required the packager to indicate through check marks whether certain services were included in the package.

MPO Form- <http://www.hud.gov/respareform/draft-mpo.pdf>

- The first page of the form was essentially the same as the first page of the GFE form. It also included borrower and property information, how to use the MPO, a summary of loan terms and a summary of total estimated charges.
- The second page first described in general terms the items that may be included in the guaranteed mortgage package and the charge for the package. The form would have next disclosed any charge (discount points) or credit for the interest rate chosen. We understand that the MPO form would not have required disclosure of a YSP but rather any credit by an originator for the rate chosen. The form then listed the charges that were outside the package including reserves or escrow, daily interest charges, homeowner’s insurance and optional owner’s title insurance along with the total amount estimated charges for settlement services outside the package.

- The bottom of the second page would have identified through check marks whether a property appraisal, credit report, pest inspection, survey, closing services, title search, title examination and lender's title insurance were included in the package.
- The third page of the MPO form like the GFE would have included a chart showing the effects of a higher or lower interest rate on settlement charges and explained how an MPO could be accepted.
- The fourth page of the form like the GFE would have constituted a shopping page to allow consumers to compare different loan officers.

Packaging Rules

- In describing the rules accompanying the MPO, HUD pointed out that the 2004 rule would have permitted the interest rate guarantee to be implemented using "posted pricing" as well as through a publicly available index.
- HUD would have provided relief from a packaging guarantee if in final underwriting there was a material change in the borrower's qualifications.
- Industry would have been permitted to offer a Settlement Services Package to be used in conjunction with a GFE or MPO. The SSP would have included Title Services, Government Recording Fees and Transfer Charges, other lender required settlement services that a borrower could choose, and owner's title insurance for a separate charge.
- An SSP could be offered by anyone including, real estate firms, title insurers, mortgage brokers, lenders or anyone else.
- An SSP provider could offer the SSP to consumers or to MPO packagers. If offered to a consumer directly, the SSP packager was required to provide the consumer a notice of 30 days to shop, a guaranteed lump sum price for the services within the SSP, and an itemized list of the services contained in the SSP.
- HUD would not have required lenders or other packagers to use an SSP.
- If a lender accepted an SSP for use in conjunction with a GFE there would be a zero tolerance on the SSP price and the SSP provider would be responsible for providing all the services contained in the SSP.
- If a lender accepted an SSP for inclusion in an MPO package, the price of the SSP would be paid by the MPO packager, not separately by the consumer.

HOEPA Loans

- HUD's rule would have permitted packaging for loans with total fees or a rate covered by the Home Ownership and Equity Protection Act (HOEPA) one year after the effective date of any final rule. There was also some indication that HUD considered requiring counseling before a HOEPA borrower accepted a package offer.

Remedies

- MPO - Unlike the 2002 proposal, under which any violations of the rule would have resulted in a loss of the Section 8 safe harbor, HUD's 2004 rule would have provided that a packager would not lose its safe harbor if violations were cured within specified time frames. If, however, a packager failed to cure, HUD indicated the packager would be subject to Section 8 sanction by HUD, a private section 8 action and/or a private contract action.
- GFE – Unlike the 2002 proposal, which would have allowed the borrower to withdraw his or her application and receive a full refund for violation of tolerances, the 2004 rule would have removed this provision. HUD indicated that a failure to meet the tolerances may constitute an unfair practice under state law.