

***MBA REGULATORY COMPLIANCE CONFERENCE
JW MARRIOTT HOTEL
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***Alphabet Soup Panel—Federal Regulatory Developments
RESPA Reform***

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I. RESPA REFORM—JULY 2002

A. Key Dates for 2002 Original Proposed Rule:

1. The proposed rule is published in the *Federal Register* July 29, 2002.
2. Comments were due October 28, 2002.
3. HUD submits final rule to Office of Management and Budget (OMB) for review on December 16, 2003.
4. HUD withdraws proposed rule from OMB consideration on March 22, 2004.

B. Three Main Components of 2002 Original Proposed Rule:

1. ***Mortgage Broker Compensation.***
 - a. Existing disclosures restructured to provide for the disclosure as a single sum of the mortgage broker origination charges received from the lender and the borrower, and to show all payments by a lender based on a higher interest rate (e.g., a yield spread premium) as a payment by the lender to the borrower.

2. ***“Firm” Good Faith Estimate.***

- a. The Good Faith Estimate requirement is retained but would be radically changed. Only limited variances from disclosed costs would be permitted.
- b. The Good Faith Estimate would need to be open for acceptance by the borrower for at least 30 days.
- c. No fee could be collected from the borrower “beyond that which is necessary to provide” the Good Faith Estimate.

3. ***Guaranteed Mortgage Package.***

- a. An optional Guaranteed Mortgage Package Agreement would be added.
 - i. The Agreement would provide for most settlement services to be provided at a guaranteed price, and disclose the few services that are excluded from the package, along with the related costs.
 - ii. Unless the interest rate was locked-in by the borrower, the interest rate identified in the Agreement could vary, but variations must be in relation to changes in a specified index.
- b. A RESPA Section 8 exemption would be added to permit parties to enter into arrangements with settlement service providers to create Guaranteed Mortgage Packages.
- c. The Guaranteed Mortgage Package would be used in lieu of a Good Faith Estimate.
- d. The Guaranteed Mortgage Package would need to be open for acceptance by the borrower for at least 30 days.
- e. No fee could be imposed to issue a Guaranteed Mortgage Package. A fee could be imposed upon a borrower’s acceptance of the Package, and HUD refers to the fee as being “minimal”.

C. HUD Comments Regarding Withdrawal of 2002 Proposed Rule

Then acting HUD Secretary Alphonso Jackson made the following points in his March 22, 2004 news conference announcing the withdrawal of the 2002 RESPA reform proposal from OMB consideration:

- 1. HUD will re-propose a RESPA reform rule.

2. HUD is committed to reforming the home loan settlement process to give home buyers more information and options.
3. Buying a home is the most important financial investment that consumers make and they need as much information as possible.
4. HUD will consider OMB comments and input from Congress, other federal agencies (including the Federal Trade Commission and Small Business Administration), consumer groups and industry groups before the rule is re-proposed.
5. No timetable is given for the issuance of a re-proposed rule.

II. RESPA Reform Part Deux

A. June 2005 Announcement

1. In June 2005, HUD publicly kicked off the second round of the RESPA reform effort by announcing it will hold a series of roundtables during July and August to obtain input from “consumers, potentially affected members of the industry, and other interested parties.” HUD selects who is invited to participate in the roundtables.
2. HUD advises that it also has begun the process of outreach to Congress and other federal agencies.

B. HUD Identified the Following Four Goals for RESPA Reform:

1. Simplicity.
2. Clarity.
3. Transparency.
4. Greater certainty of costs.

C. HUD Identified the Following as Key Issues on Which the Views of Participants Will be Solicited:

1. What changes, if any, should be made to HUD’s Good Faith Estimate form to make it more helpful to consumers and the industry?
2. How should loan originator compensation be disclosed on the Good Faith Estimate?

3. What may be the impact on consumers of a mortgage package that includes an interest rate guarantee and a fixed price for settlement costs?
4. How can subpackaging be designed to maximize competition without creating undue complexity for consumers?
5. Should Home Ownership and Equity Protection Act (HOEPA) loans be eligible for packaging?
6. Should there be an opportunity to cure and/or remedies for errors or violations of mortgage packaging or Good Faith Estimate requirements?
7. Revised versions of Guaranteed Mortgage Package and Good Faith Estimate.
 1. HUD published on its website the internal versions of the Guaranteed Mortgage Package and Good Faith Estimate that were under consideration at the time that HUD withdrew the 2002 proposed rule in 2004. HUD advised that the versions did not necessarily reflect HUD's current thinking, and that the forms were intended to serve as a starting point for discussions.

D. Roundtables

1. Seven roundtables were held in the Summer of 2005
2. MBA or its members, as well as other trade associations and consumer groups, attended.
3. HUD addressed the versions of the rule under consideration at the time of withdrawal in 2004.
4. General theme from the roundtables:
 - a. The packaging concept, in terms of RESPA reform, does not have the support it did back in 2002.
 - b. There is a general consensus that HUD should focus on improving the Good Faith Estimate.

E. MBA RESPA at Ready Task Force

1. MBA established a RESPA at Ready Task Force in 2005 to address RESPA reform.
2. The Task Force:

- a. Considered alternatives to reform.
 - b. Recognized the divisions over HUD's 2002 proposal.
 - c. Identified the need for regulatory relief to accompany any new tolerances.
 - d. Developed options to simplify the process and lower costs.
3. The Task Force:
- a. Developed the revised versions of the Good Faith Estimate and HUD-1 Settlement Statement that have been distributed.
 - b. Developed related Options.

III. RESPA at Ready Task Force Proposals

A. Threshold Determination

1. Should HUD elect to forgo reform at this time?
 - a. The market is evolving and reforming itself.
 - b. HUD may wish to consider allowing the market to continue to operate, innovate and simplify the mortgage process under the current rules.
 - c. Under the current rules, competition and innovation in the mortgage market are resulting in greater transparency and lower costs to consumers.
 - d. Regulatory changes will require significant and costly changes by the industry, and require consumer education.
 - i. The related costs ultimately will be borne by consumers.

B. If Reform is a Go

1. If HUD determines there is a need to revise the current rules, then three Options developed by the RESPA at Ready Task Force are available for consideration.
2. Option 1 focuses on revising the Good Faith Estimate and HUD-1.
3. Option 2 includes Option 1, and adds tolerances for lender and mortgage broker charges, along with limited Section 8 exemptions.

4. Option 3 includes Options 1 and 2, and adds tolerances for all major settlement charges, except government charges and prepaid charges, and includes an additional Section 8 exemption.

IV. Option 1

A. Good Faith Estimate

1. Up front, the GFE would:
 - a. Include a brief statement describing the document.
 - b. Provide that the estimate is based information provided by the consumer.
 - c. Provide that additional information would be required to determine if the consumer and property qualifies for the loan.
2. The basic loan characteristics, such as amount and term, would be set forth.
3. The proposed interest rate, points, APR and monthly payment would be disclosed.
4. The estimated charges would be disclosed in nine main categories instead of being itemized individually:
 - a. Lender charges.
 - b. Mortgage broker charges.
 - c. Credit report, property valuation and inspection charges.
 - d. Title charges.
 - e. Government, recording and transfer charges.
 - f. Interest and mortgage insurance charges.
 - g. Taxes, flood and hazard insurance charges.
 - h. Escrow charges and reserves.
 - i. Other loan settlement charges, such as life of loan flood and tax services.
5. The charges that are included in the APR calculation would be noted.
6. The POC items would be shown as a lump-sum and deducted from the total charges to show the estimated amount due at closing.

7. Consistent with the current rule, the GFE would disclose estimated compensation to be paid by the lender to the mortgage broker, but with an explanation.
 - a. You may recall that the FTC tested with consumers the method of disclosing lender-paid mortgage broker compensation that HUD included in its original reform proposal.
 - b. The FTC found that under the proposed disclosure method, consumers often could not determine whether a retail or wholesale loan was cheaper, and in various cases incorrectly concluded that the brokered loan was more expensive.
 - c. Under Option 1, the GFE would state that brokers must disclose lender-paid compensation, and that to compare loans the consumer should focus on the interest rate, points and settlement charges, and not lender-paid broker compensation.

B. HUD-1

1. Like the GFE, the HUD-1 would set forth the actual loan charges in nine main categories instead of itemizing each charge.
2. This would provide for an easy comparison of the estimated charges in the GFE and the actual charges in the HUD-1.

C. Other Matters

1. The Special Information Booklet would be revised to reflect the new forms.
2. HUD would need to consult with the Federal Reserve Board for TILA coordination purposes.
3. The Option recommends that HUD preempt state laws that would conflict with the streamlined disclosure method.

V. Option 2

A. Good Faith Estimate and HUD-1

1. The Good Faith Estimate and HUD-1 would be the same as with Option 1.

B. Tolerances

1. Tolerances would be added.

2. Except for discount points, the lender charges and the broker charges each could not vary by more than 2%, as long as:
 - a. The borrower and property qualify for the loan; and
 - b. The borrower does not request a change in the loan described in the GFE.

C. Duration

1. The Good Faith Estimate would be open for acceptance for a minimum period of 5 calendar days.

D. Limited Section 8 Exemptions

1. Lenders and mortgage brokers would be entitled to a limited Section 8 exception for average-cost pricing of their own charges and other categories of costs on the GFE, provided that:
 - a. The tolerances were not exceeded; and
 - b. The charges for each of the cost categories are generally (that is, more than 80%) attributable to the sub-items of costs described in the category.
2. Lenders and mortgage brokers also would be entitled to an exemption from Section 8(b) with regard to mark-ups of third party costs, as long as the charges in each cost category are disclosed and the tolerances are not exceeded.

E. Non-Judicial Corrective Action

1. If the lender's or broker's charges exceeded the 2% tolerance, the lender or broker, as applicable, could take non-judicial corrective action by repaying any overage.
 - a. If the lender or broker did not repay the overage in a certain period of time, the amount required to correct the error would increase.

VI. Option 3

A. Option 1 and Option 2

1. Option 3 would include all the changes in Option 1 and Option 2.

B. Additional Tolerance

1. There would be a 10% tolerance for a third-party costs and title costs, as long as:

- a. The borrower and property qualify for the loan; and
 - b. The borrower does not request a change in the loan described in the GFE.
2. Government charges and prepaid charges would not be included in the tolerance.

C. Additional Section 8 Exemption

1. There would be a limited Section 8 exemption for lenders, mortgage brokers and other settlement service providers to permit volume discount arrangements.
 - a. As long as the charges in each cost category are within the tolerances, volume discounts would be permissible, whether or not the charges in the categories are greater than the volume costs negotiated.

VII. INPUT

Please provide input on MBA's website.