

HUD'S RESPA REFORM PROPOSAL—MARCH 2008 VERSION

Statutory Proposals

HUD advises that it intends to seek statutory modifications that would:

1. Provide HUD with the authority to impose civil money penalties for violations of specific RESPA sections, including:
 - a. Section 4 (HUD-1).
 - b. Section 5 (GFE and Special Information Booklet).
 - c. Section 6 (servicing).
 - d. Section 8 (referral fee and fee splitting prohibitions).
 - e. Section 9 (required use of title provider prohibition for sellers).
 - f. Section 10 portions (escrow accounts).
2. Provide HUD and state regulators with the authority to seek injunctive and equitable relief for RESPA violations.
3. Require delivery of the HUD-1 to the borrower 3 days before closing.
4. Provide a uniform and expanded statute of limitations for government and private actions.

Preamble, p. 14033.

Transition

HUD proposes a transition provision under which the industry would have 12 months from effective date to comply. Preamble, p. 14034.

FHA

HUD proposes to remove the 1% limit on origination fees.

Required Use

1. The current definition of “required use” is as follows:

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

2. HUD proposes to modify the definition of “required use” to read as follows:

Required use means a situation in which a borrower’s access to some distinct service, property, discount, rebate or other economic incentive, or the borrower’s ability to avoid an economic disincentive or penalty, is contingent upon the borrower using or failing to use a referred provider of settlement services. However, the offering by a settlement service provider of an optional combination of bona fide settlement services to a borrower at a total price lower than the sum of the prices of the individual settlement services does not constitute a required use. 3500.2(b).

Comments: Incentives apparently would be limited to offering two or more settlement services at a price lower than the sum of the individual prices for the applicable services.

In the preamble to the proposed rule, HUD states that it is attempting to address complaints regarding builder incentives. Significantly, HUD provides no actual evidence that the complaints had any basis in fact, or of actual market practices and the effects on consumers.

The exception refers only to settlement service providers. HUD does not expressly state in the preamble that it intends to limit the incentive exception to settlement service providers. Rather, HUD states that “The effect of the change made by the proposed rule in the definition of ‘required use’ is not limited to builders and their affiliated settlement service providers.” Preamble, p.14053. However, HUD informally has confirmed that its intent is to exclude builders from being able to offer the incentive that would be permitted under the revised definition.

The revised definition would apply to both the affiliated business arrangement exception under Section 8, and the prohibition against a seller of property requiring a particular title provider under Section 9.

GFE

1. *GFE Application.*

HUD would add the concept of a GFE Application to RESPA. A GFE Application would not be an application for a federally-related mortgage loan that triggered all RESPA disclosure requirements. Rather, it would trigger an obligation for a loan originator to provide a GFE. 3500.2(b); 3500.7.

- a. A lender must provide a GFE within 3 business days of receipt of a GFE Application or information sufficient to complete a GFE Application, and a lender or broker must provide a GFE within 3 business days of the broker's receipt of a GFE Application or information sufficient to complete a GFE Application.
 - i. A lender does not have to provide a GFE if the broker already provided a GFE that is acceptable to the lender (but then would be subject to terms of the broker-provided GFE). 3500.7(b).
 - ii. The term "loan originator" is used to refer to a lender or a mortgage broker. 3500.2(b).
 - iii. A "mortgage broker" would be defined as a person (not an employee of the lender) or entity that renders origination services in a table funded or intermediary transaction. An FHA loan correspondent approved under 24 CFR 202.8 would be a mortgage broker. 3500.2(b).
 - iv. The term "origination services" would be defined as any service involved in the creation of a mortgage loan, including but not limited to the taking of loan applications, loan processing, and the underwriting and funding of loans, and the processing and administrative services required to perform these functions. 3500.2(b).

Comment: The rule does not address the result if a broker provides a GFE that is not acceptable to any lender.

- b. If no specific property is identified, the submission is not a GFE application. (This is consistent with the current rules governing GFEs.) 3500.2(b), 3500.7(a), (b).
- c. A GFE applicant can be required to provide only the following to trigger the need for a loan originator to provide a GFE:
 - i. Name.
 - ii. Social Security Number.
 - iii. Property address.
 - iv. Monthly income.
 - v. Applicant's best estimate of value of property.
 - vi. Loan amount sought.

3500.2(b).

Comment: HUD should add that the consumer can be required to provide express consent to the obtaining of credit report.

- d. A GFE applicant can be required to pay only a fee limited to the cost of providing the GFE, including the cost of an initial credit report. (The loan originator cannot, for instance, collect a fee for an appraisal or inspection.) 3500.7(a), (b).

2. ***GFE Contents***

- a. GFE would become a 4 page document that sets forth:
 - i. As “important dates,” the time period that the interest rate and settlement charges are available (see below).
 - ii. Loan details (see below).
 - iii. Estimated settlement charges.
 - iv. A statement that “Only you can shop for the best loan for you.”
 - v. Details regarding charges that cannot change, charges that can change up to 10% as a whole, and charges that can change without limitations.
 - vi. A trade off table that compares the loan with a loan with a lower rate and a loan with a higher rate, to the extent available.
 - vii. Information regarding the applicant’s responsibilities as a homeowner.
 - viii. Information regarding how to apply for a loan and the required fee.
 - ix. A discussion of how the applicant can obtain more information.
 - x. A shopping chart that the applicant can fill in to compare loans.
 - xi. A statement that the lender can receive additional fees by selling the loan (and that this does not change the applicant’s settlement charges).
- b. The GFE Instructions provide that a separate GFE is required for each loan in a transaction.
- c. The Important Dates section provides as follows:
 - 1. The interest rate for this GFE is available until _____. After that date, the interest rate, some of your Loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
 - 2. The estimate for all other settlement charges is available until _____.
 - 3. If you proceed with this loan, you must go to settlement in ___ days. You must lock the interest rate at least ___ days before settlement.

Comment: As discussed below regarding the availability of terms, there is no distinction made in this section between the pre loan application and post loan application timeframes.

- c. Loan Details. The loan details would include:
- i. The initial loan balance.
 - ii. The loan term.
 - iii. The initial interest rate, but not the APR.
 - iv. The initial monthly payment for principal, interest and mortgage insurance.
 - v. The rate lock period.
 - A. This item would also include a statement that “After you lock in your interest rate, you must go to settlement within this number of days to guarantee this interest rate.”

Comment: This statement would conflict with rescindable loans when the lender requires that the loan be disbursed, and not simply closed, during the lock period.

- vi. Whether the interest rate can increase.
- vii. Whether the loan balance can increase.
- viii. Whether the loan has a prepayment penalty.
- ix. Whether the loan has a balloon payment.
- x. Whether the loan includes a monthly escrow payment for property taxes and possibly other obligations.

Comment: What is the effect of having a GFE application on whether there is an application for TILA purposes or ECOA/HMDA purposes?

TILA: Currently, up front estimate TILA disclosures are required for purchase money transactions secured by a consumer’s principal dwelling. The Regulation Z Commentary provides that creditors may rely on RESPA and Regulation X in deciding whether a “written” application has been received for purposes of the up front TILA disclosure requirement.

(The Federal Reserve Board has proposed to extend the current up front TILA disclosure requirement to refinance loans secured by a principal dwelling.)

In the preamble, HUD states that “Based on consultations with the Federal Reserve, when a GFE application is submitted, an initial TILA disclosure should also be provided so long as the application is in writing, or, in the case of an oral application, committed to written or electronic form.” Preamble, p. 14035.

ECOA/HMDA: For ECOA/HMDA purposes, in general an application is an oral or written request for an extension of credit that is made in accordance with procedures used by the creditor for the type of credit requested.

HUD notes in the preamble that parties commenting on the 2002 proposed rule were concerned that HUD’s proposal to require disclosures earlier in the

consumer's process of shopping for a loan would trigger ECOA and HMDA requirements. HUD then states:

“By refining the definition of ‘application’ under RESPA, and dividing the application process as described, HUD believes that today’s proposal will facilitate the availability of shopping information and avoid unnecessary regulatory burden on the industry and an unwarranted increase in notices of loan denials to borrowers. Whether a GFE application under a particular set of facts triggers HMDA or ECOA requirements must be determined under Regulation B and Regulation C, as interpreted in the Federal Reserve Board’s official staff commentary.” Preamble, p. 14036

3. *GFE Terms Availability*

a. *General.*

i. It appears that to allow a consumer to shop for a loan before submitting a loan application:

A. The settlement charges in the GFE must remain available for at least 10 business days, except for the following charges:

1. The charge or credit for the interest rate chosen.
2. The adjusted origination charges.
3. The per diem interest.

B. The following items in the GFE must remain available until the date set by the loan originator:

1. Interest rate.
2. The charge or credit for the interest rate chosen.
3. The per diem interest.
4. The monthly payment.

ii. It appears that once a loan application is submitted, subject to tolerances and exceptions:

A. Except for settlement charges tied to interest rate lock (which are noted below), all other settlement charges must be available until the settlement deadline specified in the GFE.

B. The following items are tied to the interest rate lock (i.e., they are fixed once the rate is locked and remain fixed for the time period of the lock):

1. Interest rate.
2. The charge or credit for the interest rate chosen.
3. The per diem interest.

4. The monthly payment.

iii. As noted above, the Important Dates section of the GFE addresses the availability of terms as follows:

A. The interest rate for this GFE is available until _____. After that date, the interest rate, some of your Loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.

B. The estimate for all other settlement charges is available until _____.

C. If you proceed with this loan, you must go to settlement in ____ days. You must lock the interest rate at least ____ days before settlement.

Comment: No distinction is made between the pre and post loan application timeframes. This section needs to be revised to be clear regarding the two timeframes.

4. **Tolerances.** Tolerances would apply to certain charges absent “unforeseeable circumstances.”

a. **Zero Tolerance.** Absent “unforeseeable circumstances” no change is permitted in the following charges:

i. The loan originator’s service charge.

ii. While the interest rate is locked, the credit or charge for the interest rate chosen.

iii. While the interest rate is locked, the adjusted origination charge.

iv. Government recording and transfer charges.

A. The tolerance applies to the sum of the government charges and not each individual charge.

3500.7(e)(1).

Comment: The proposal of strict tolerances again raises the issue of whether the adoption of such tolerances that apply on a loan-by-loan basis is consistent with RESPA.

b. **10% Tolerance.** Absent “unforeseeable circumstances” no more than a 10% increase is permitted for the sum of the following charges (the tolerance is applied to the sum of all the charges, not to each individual charge):

i. “Lender-required settlement services,” where the lender selects the third party settlement service provider.

- ii. “Lender-required services,” and optional owner’s title insurance selected by the borrower, when the borrower uses a settlement service provider identified by the loan originator. 3500.7(e)(2).
 - A. Although the language of the proposed rule refers to “lender-required services” presumably HUD is referring to required settlement services.
 - B. If the loan originator permits the borrower to shop for settlement services, the originator must provide the borrower with a written list of the applicable settlement service providers on a separate sheet of paper. Appendix C, Block 4 Instructions.

Comments: With regard to selected providers, the tolerance provisions refer to “lender-selected” providers, however, the GFE instructions refer to third parties selected by the “loan originator,” which includes the lender and the broker. HUD needs to clarify whether it intends the 10% tolerance to apply to only lender-selected providers or lender- and broker-selected providers. Assuming HUD intends to cover lender- and broker-selected providers, lenders would need to know what providers were selected by the broker.

With regard to identified (but not selected) providers, the tolerance provision refers to “lender-required” services when the “loan originator” identifies the provider. It appears that HUD intends to refer to providers identified by either the lender or broker to perform lender-required services. This would require that lenders know what providers were identified to the borrower by the broker.

Under state law a borrower may have the right to select a provider, such as the settlement agent. In such cases, the charges of the provider should not be subject to the 10% tolerance, because state law, and not the lender, allows the borrower to shop. Otherwise, lenders would be required to identify and provide the borrower with lists of available providers, which could be interpreted as an attempt to restrict the borrower’s ability granted by state law to choose the provider.

- c. **No Tolerance:** Any remaining settlement service charges may change without limitation. 3500.7(e)(3).
- d. **Unforeseeable Circumstances.** “Unforeseeable circumstances” is defined as:
 - i. Acts of God, war, disaster, or other emergency making it impossible or impracticable for the loan originator to complete the transaction; and
 - ii. Circumstances that could not be reasonably foreseen by a loan originator at the time of GFE Application that are particular to the transaction and that result in increased costs, such as a change in the property purchase price, boundary disputes, the need for a second appraisal or flood insurance, or environmental problems. Market fluctuations by themselves shall not be considered unforeseeable circumstances. 3500.2(b).

5. **Exceptions.** If an exception applies, charges can change without regard to tolerances.

a. **Borrower Changes.** If the borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or terms of the loan, the loan originator is no longer bound by the GFE, and the loan originator must:

- i. Notify the borrower within 1 business day of the decision to reject the loan.
- ii. If another loan is made available, provide a revised GFE to the borrower.
- iii. Document the reasons for the revised GFE and retain the documentation for no less than 3 years after settlement. 3500.7(f)(1).

Comment: If the borrower requests the noted changes, for RESPA purposes the result should be that the GFE is no longer valid, not that the loan originator has rejected the loan. The rejection of a loan is an ECOA concept, and HUD should not regulate in this area under RESPA.

b. **Final Underwriting/Unforeseeable Circumstances Denial.** If final underwriting or unforeseeable circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator must:

- i. Notify the borrower within 1 business day of the decision to reject the loan.
- ii. If another loan "is made available", provide a revised GFE to the borrower.
- iii. Document the reasons for the revised GFE and retain the documentation for no less than 3 years after settlement. 3500.7(f)(1).

Comments: For RESPA purposes, the result should be that the GFE is no longer valid, not that the loan is rejected. The rejection of a loan is an ECOA concept, and HUD should not regulate in this area under RESPA.

The preamble provides that the borrower may not be rejected unless the originator determines that there is a change in the borrower's eligibility based on final underwriting, as compared to information provided in the GFE Application and credit information developed for such application prior to the time the borrower chooses the particular originator. Preamble, p. 14035. The rule does not appear to expressly provide for this restriction. Again, this issue is governed by ECOA. HUD should not attempt to regulate in this area under RESPA.

The preamble provides that if another loan "is available" to the borrower, the loan originator must provide the borrower with a revised GFE. Preamble, p. 14035. The language of the proposed rule is if another loan "is made available" the loan originator must provide a revised GFE. These are very different requirements.

A. **Final Underwriting Timeframe.** The loan originator must complete final underwriting within a reasonable time after a borrower's mortgage application is complete. 3500.7(f)(1).

Comment: The requirement to timely review a complete application is governed by ECOA. HUD should not attempt to regulate in this area under RESPA.

- B. ***Unforeseeable Circumstances.*** The definition of “unforeseeable circumstances” that applies to the tolerances also applies to this exception. The definition is set forth above.
- c. ***New Homes.*** For new home purchases when the settlement is anticipated to occur more than 60 days from the time of a GFE Application:
 - i. The loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 days prior to closing the loan originator may issue a revised GFE.
 - ii. The loan originator must provide the revised GFE no later than 60 days before closing.
 - A. Failure to provide the separate disclosure precludes the loan originator from issuing a new GFE under the new home provision. 3500.7(f)(3).

Comment: It is not clear why HUD believes that a 60-day timeframe is necessary in this situation when the proposal does not specify a settlement date deadline that applies to a GFE in other situations.

6. ***Required Provider Disclosure.***

- a. HUD proposes to eliminate the requirement to disclose the identity of a provider that will be required and selected by the lender. Preamble, p. 14038.

Origination Charge Concepts—GFE and HUD-1

- 1. ***Three Related Disclosures.*** Both the GFE and HUD-1 would contain three related disclosures regarding the origination charges:
 - a. Our service charge.
 - b. Your credit or charge for the specific interest rate chosen (points).
 - c. Your adjusted origination charges.
- 2. ***Our Service Charge—GFE Block 1, HUD-1 Line 801.***
 - a. This includes all charges that loan originators involved in the transaction will receive, except for any charge for the rate chosen. Appendix A, Line 801 Instructions; Appendix C, Block 1 instructions.
 - i. The preamble provides that for loans originated by mortgage brokers, this includes the charges received by the broker and any other originator for, or

as a result of, loan origination, including any payments from the lender to the broker for the origination. Preamble, p. 14047.

- ii. The preamble provides that for loans originated by lenders, this includes the charges to be paid by the borrower that are to be received by the lender for, or as a result of, the loan origination to the borrower, except any amounts denominated by the lender as discount points or amounts that the lender chooses to call a credit and which are disclosed in Block 2 (for a charge or credit to the borrower based on the interest rate). Preamble, p. 14047.

Comment: Thus, a lender would disclose its and the broker's compensation as "our" service charge, which will suggest that the entire charge is the lender's charge.

- b. This is subject to the zero tolerance. Appendix C, Block 1 Instructions & 3500.7(e)(1)(i).

3. ***Your Credit or Charge for the Specific Interest Rate Chosen (Points)—GFE Block , HUD-1 Line 802.***

- a. This includes a credit to the borrower for the interest rate chosen on the loan or an additional up-front charge to the borrower for the interest rate chosen on the loan. Appendix A, Line 802 Instructions; Appendix C, Block 2 Instructions.
- b. A credit and charge cannot occur together in the same transaction. Appendix C, Block 2 Instructions.

Comment: This may mean that a YSP and discount points cannot be present in the same transaction.

- c. A lender can choose not to separately disclose any credit or charge for the interest rate chosen. If no positive or negative amount is disclosed for this item (in Block 2), the lender must reflect in the GFE that the credit or charge for the interest rate chosen is included in Our Service Charge. Appendix C, Block 2 Instructions.
- d. "For a mortgage broker, the credit or charge for the specific interest rate chosen is the difference between the initial loan amount and the payment to the mortgage broker (i.e., the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender). When the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE." Appendix C, Block 2 Instructions.

Comment: The approach appears to be based on the assumption that a lender is buying a loan from a broker. HUD needs to clarify this approach.

- e. This is subject to the zero tolerance while the interest rate is locked. Appendix C, Block 2 Instructions & 3500.7(e)(1)(ii).
4. ***Your Adjusted Origination Charges—GFE Line A, HUD-1 Line 803.***
- a. This is the sum of Our Service Charge and Your Credit or Charge for the Specific Interest Rate Chosen (Points), and is entered in Line A on the first page of the GFE. (Line B shows the charges for all other settlement services, and Line A + B shows the combined amount.) Appendix C, Line A Instructions.
 - b. For a “no cost” loan when “no cost” refers only to the loan originator’s fees, Line A must show a zero charge as the adjusted origination charge. Appendix C, Line A Instructions.
 - c. For a “no cost” loan when “no cost” refers to the loan originator’s fees and third party fees, the third party fees listed in Block 3 through Block 10 being paid by the loan originator must be itemized and listed on the GFE, and the total for Line A is a negative number equal to the third party fees covered in the loan originator’s definition of no cost. Appendix C, Line A Instructions.
 - d. This is subject to the zero tolerance while the interest rate is locked. Appendix C, Line A Instructions & 3500.7(e)(1)(iii).

Other Charges—GFE

1. ***Required services that we select—GFE Block 3.***
- a. Estimated charges for each third party settlement service required and selected by the loan originator, excluding title services. Appendix C, Block 3 Instructions.
 - i. Both individual charges for each service and the total charge are provided.
 - b. If the borrower may shop for required services, the loan originator must provide the borrower with a written list of the applicable settlement service providers at the time of the GFE on a separate sheet of paper. Appendix C, Block 3 Instructions.
 - c. This is subject to the overall 10% tolerance. Appendix C, Block 3 Instructions & 3500.7(e)(2)(i).
2. ***Title services and lender’s title insurance—GFE Block 4.***
- a. Estimated total price paid to third party settlement service providers for all title related services and lender’s title insurance premiums, whether selected by the loan originator or borrower. Appendix C, Block 4 Instructions.

- b. If the borrower may shop for required services, the loan originator must provide the borrower with a written list of the applicable settlement service providers at the time of the GFE on a separate sheet of paper. Appendix C, Block 4 Instructions.
 - c. This is subject to the 10% tolerance if the borrower selects a title services provider identified by the loan originator. Appendix C, Block 4 Instructions & 3500.7(e)(2)(i).
3. ***Required services that you can shop for—GFE Block 5.***
- a. Estimated charges for each third party settlement service required by the loan originator for which the borrower is permitted to shop for and select the provider, excluding title services. Appendix C, Block 5 Instructions.
 - i. Both individual charges for each service and the total charge are provided.
 - b. The loan originator must provide the borrower with a written list of the applicable settlement service providers at the time of the GFE on a separate sheet of paper. Appendix C, Block 5 instructions.
 - c. This is subject to the overall 10% tolerance if the borrower selects a settlement service provider identified by the loan originator. (If the borrower selects a provider that is not identified by the loan originator, the charge is not subject to any tolerance on the amount that the charge may vary, and the charge should not be included in the sum of the prices on which the 10% tolerance is based.) Appendix C, Block 5 instructions & 3500.7(e)(2)(ii), (iii).
4. ***Government recording and transfer charges—GFE Block 6.***
- a. Based upon the proposed loan amount and/or sales price, and the property address, the loan originator must estimate the sum of all state and local government fees, charges, and taxes usually resulting from the mortgage loan or property transfer which can be expected to be charged at settlement. Appendix C, Block 6 Instructions.
 - b. The zero tolerance applies to the sum of the estimated fees. Appendix C, Block 6 instructions & 3500.7(e)(1)(iv).
5. ***Reserves or escrow—GFE Block 7.***
- a. Estimated amount that the borrower must place in escrow at settlement for property tax, homeowner's insurance, mortgage insurance or other periodic charges. Appendix C, Block 7 Instructions.
 - b. The amount that the charges may vary from the estimated amount is not subject to a tolerance. 3500.7(e)(3).

6. ***Daily interest charges—GFE Block 8.***
 - a. The daily interest amount applicable to the proposed loan and estimated amount due at closing, based on an identified closing date and identified specific number of days. Appendix C, Block 8 Instructions.
 - b. The amount that the charges may vary from the estimated amount is not subject to a tolerance. 3500.7(e)(3).

7. ***Homeowner’s insurance—GFE Block 9.***
 - a. Estimated premium for hazard policy meeting the loan originator’s requirements. Appendix C, Block 9 Instructions.
 - b. The amount that the charges may vary from the estimated amount is not subject to a tolerance. 3500.7(e)(3).

8. ***Optional owner’s title insurance—GFE Block 10.***
 - a. Estimated price of an owner’s title policy. Appendix C, Block 10 instructions.
 - b. The loan originator must provide the borrower with a written list of providers of owner’s title insurance at the time of the GFE on a separate sheet of paper. Appendix C, Block 10 Instructions.
 - c. The amount is subject to the 10% tolerance if the borrower selects a title services provider identified by the loan originator. (If the borrower selects a provider that is not identified by the loan originator, the charge is not subject to any tolerance on the amount that the charge may vary, and the charge should not be included in the sum of the prices on which the 10% tolerance is based.) Appendix C, Block 10 Instructions & 3500.7(e)(2)(ii), (iii).

HUD-1—General

1. ***Amended***
 - a. ***Basic Form Kept Intact.*** While HUD proposes to modify the HUD-1 to provide for an easier comparison with the GFE, the basic form of the HUD-1 is proposed to be kept intact.
 - b. ***Closing Script Addendum.*** A closing script would be added as an addendum to the HUD-1. See the discussion below.

2. ***Changes Include.*** The proposed changes include the following:
 - a. Lines 801 to 803 would be changed to provide for the disclosure of Our Service Charge, Your Charge or Credit for the Specific Interest Rate Chosen, and Your Adjusted Origination Charges, respectively, with a reference to the appropriate

place in the GFE where the estimated amount was disclosed (i.e., GFE Block 1, Block 2 and Line A, respectively).

- i. The amounts for Our Service Charge and Your Charge or Credit for the Specific Interest Rate Chosen would be entered on Lines 801 and 802, respectively, to the left of, and not in either of, the Borrower's or Seller's column.
- ii. The amount for Your Adjusted Origination Charges must be entered in the Borrower's or Seller's column, or shown as POC.

Appendix C, Lines 801 to 803 Instructions.

- b. Lines for disclosure of the appraisal fee (Line 804) and credit report fee (Line 805) would be retained, and a reference to the appropriate place in the GFE where the estimated third party charges were disclosed would be added (i.e., GFE Block 3).
- c. The Lines for the disclosure of a lender's inspection fee, mortgage insurance application fee and assumption fee would be removed, and lines for disclosure of a tax service fee (Line 806) and flood certification fee (Line 807) would be added, along with a reference to the appropriate place in the GFE where the estimated third party charges were disclosed (i.e., GFE Block 3).
- d. The Lines for per diem interest (Line 901) and homeowner's insurance payments (Line 903) made in advance would be revised to add references to the appropriate place in the GFE where the estimated amounts for the payments were disclosed (i.e., GFE Block 8 and Block 9, respectively). The Line for mortgage insurance payments made in advance (Line 902) would be revised to add a reference to the two possible places in the GFE where the estimated fees were disclosed (i.e., GFE Block 3 and Block 5).
- e. Line 1001 would be revised to provide for the disclosure of the total reserves and a reference to the appropriate place in the GFE where the estimated amount was disclosed (i.e., GFE Block 7). A line for the disclosure of the aggregate adjustment would be added (Line 1009).
- f. Line 1101 would be revised to provide for the disclosure of the total charge for title services and lender's title insurance, along with a reference to the appropriate place in the GFE where the estimated total of the charge was disclosed (i.e., GFE Block 4).
- g. The reference to "Owner's coverage" in Line 1110 would be changed to "Optional owner's title insurance" along with a reference to the appropriate place in the GFE where the estimated charge was disclosed (i.e., GFE Block 10).
- h. See the change below regarding the title premium split.

- i. Line 1201 would be revised to provide for the disclosure of the total government recording and transfer charges, along with a reference to the appropriate place in the GFE where the estimated total of the charges was disclosed (i.e., GFE Block 6).
 - j. Lines 1301 and 1302 for the survey and pest inspection charges, respectively, each would be revised to include a reference to the appropriate place in the GFE where the estimated charges for services the borrower could shop for were disclosed (i.e., GFE Block 5).
3. ***Title Premium Split.***
- a. HUD proposes to revise the HUD-1 to require the disclosure of title agent's and title underwriter's portions of total title insurance premium on Lines 1113 and 1114, respectively.
4. ***POC Party.***
- a. The instructions to HUD-1 would be revised to provide that settlement agent must reflect who pays a POC item. Appendix A, General Instructions.

HUD-1—Closing Script and GFE Comparison

1. ***Addendum to HUD-1.*** A Closing Script would be added as an addendum to the HUD-1, and would include a comparison of the loan terms and settlement charges estimated on the GFE with those set forth in the HUD-1, and include details regarding the loan terms for the specific mortgage loan and related settlement information. 3500.2(b); 3500.8(d)(1).
- a. A form of closing script would be added in Appendix A, with various alternative clauses for different loan products and terms.
- Comment:*** HUD needs to make clear that it is not limiting loan products and terms to those addressed in the form.
- b. Examples of six completed closing scripts would be added in Appendix A for the following type of loan products:
 - i. Fixed rate loan.
 - ii. Adjustable rate loan.
 - iii. Adjustable rate loan with an initial discounted interest rate.
 - iv. Hybrid fixed rate/adjustable rate loan.
- A. HUD does not define what constitutes a hybrid loan.

Comment: What constitutes a so-called “hybrid loan” is an issue with legislators/regulators in general. Common loan products such as the 2/28 and 3/27 that have always been viewed by the industry as adjustable rate

loans often are now referred to by various legislators/regulators as hybrid loan products. A definition is needed so lenders know when to use this example.

- v. Fixed rate, interest-only loan with a balloon payment.
- vi. Fixed rate, partially amortizing loan with a balloon payment.

2. ***Prepared by Settlement Agent.*** The settlement agent would prepare the closing script. The loan originator would be required to provide the settlement agent with the information necessary to complete the closing script, and the closing script would need to accurately reflect the required information provided by the loan originator regarding the loan terms and settlement information. 3500.8(d)(1).

Comments: While HUD would require that the closing script accurately reflect the required information provided by the loan originator, the proposal does not expressly address a failure by a settlement agent to do so. Lenders currently face liability when settlement agents add fees to or change fees in the HUD-1 without notifying the lender, even if doing so is contrary to the closing instructions provided by the lender. HUD needs to clearly address the liability of the lender and settlement agent based on their respective duties regarding the closing script.

HUD also should make clear that if there is a conflict between the closing script and the loan documents, the loan documents control.

Settlement agents may not have the expertise to explain the loan, and the preparation and discussion of the closing script could present unauthorized practice of law issues.

What about the time added to closings?

In its Regulatory Flexibility Analysis, HUD estimates that the closing script could add an additional 45 minutes to each closing, although it also notes that this could be an overestimate.

Based on the 45 minute estimate, HUD estimates an additional cost to the settlement firm related to the longer closing timeframe of \$54.

It appears HUD failed to consider whether, by adding an additional 45 minutes to each closing, settlement firms will need to hire more staff and lease additional office space.

3. ***Read to Borrower Cost Comparison and Loan Details.*** The settlement agent must read the closing script aloud to the borrower and explain:
- a. The comparison between the final settlement charges on the HUD-1 and the estimate of charges on the GFE.
 - b. Whether or not the tolerances have been met.
 - c. Other required loan information as shown on the closing script addendum forms. 3500.8(d)(2).

4. ***Explain Inconsistencies.*** Any inconsistencies between the loan documents, including the mortgage note, and the summary of loan terms on the GFE, and between the HUD-1 settlement charges and the charges stated on the GFE, must be disclosed and explained to the borrower. 3500.8(d)(3).
5. ***24 Hour Prior Review.*** HUD proposes that the closing script be made available for review by the borrower 24 hours prior to closing in accordance with the rule for the prior review of the HUD-1 itself. 3500.8(d)(4).
6. ***Loan Details.*** The loan details in the closing script would include the following:
 - a. A **Loan Description**, that includes the loan amount, loan term and loan type.
 - b. An **Interest Rate** section, that includes:
 - i. For a fixed rate loan, the interest rate and statement that the rate will not rise.
 - ii. For an adjustable rate loan:
 - A. The initial rate. If the initial rate is discounted, a statement that the rate is discounted along with a disclosure of when the rate will first adjust.
 - B. A statement that the loan is an adjustable rate loan and that the interest rate can rise.
 - C. The rules regarding adjustments to the rate, including when adjustments begin, the frequency of adjustments, the per adjustment caps and life of loan caps.
 - iii. For a hybrid adjustable rate loan (which is not defined):
 - A. A statement that the loan is a hybrid adjustable rate loan.
 - B. The initial fixed interest rate and a statement that the interest rate will not rise as long as it remains fixed.
 - C. When the fixed rate will change to an adjustable rate, and the rules regarding adjustments to the rate, including when adjustments begin, the frequency of adjustments, the per adjustment caps and life of loan caps.
 - D. A statement that when the rate changes from fixed to adjustable, the interest rate can rise.
 - c. A **Payment** section that includes:
 - i. For a fixed rate loan with an escrow account:
 - A. The total payment for principal, interest and mortgage insurance, a statement of whether the payment can or cannot rise, the principal

and interest payment and the mortgage insurance payment. (For interest-only loans there is an alternate provision that does not refer to principal.)

- B. A statement that there is an escrow account, the amount of the total initial escrow payment for indicated items and a statement that the amount may increase.
- C. The total payment for principal, interest, mortgage insurance and indicated escrow items. (The reference to principal is to be removed for interest-only loans.)

ii. For a fixed rate loan without an escrow account:

- A. The total payment for principal, interest and mortgage insurance, a statement of whether the payment can or cannot rise, the principal and interest payment and the mortgage insurance payment. (For interest-only loans there is an alternate provision that does not refer to principal.)
- B. A statement that there is no escrow account and that items such as property taxes and homeowners insurance must be paid directly by the borrower.
- C. The total payment for principal, interest, and mortgage insurance.

Comment: There is no need for a second disclosure of the total payment in this situation

iii. For an adjustable rate loan (with or without an initial discounted rate) or a hybrid adjustable rate loan with an escrow account:

- A. The total initial payment for principal, interest and mortgage insurance, a statement that the payment can rise, the principal and interest payment and the mortgage insurance payment. (For interest-only loans there is an alternate provision that does not refer to principal.)
- B. The highest principal and interest payment based on an indicated maximum interest rate, and the earliest that the maximum payment could be reached.

Comment: No alternate statement is provided for an interest-only loan.

- C. A statement that there is an escrow account, the amount of the total initial escrow payment for indicated items and a statement that the amount may increase.
- D. The total initial payment for principal, interest, mortgage insurance and indicated escrow items.

iv. For an adjustable rate loan (with or without an initial discounted rate) or hybrid adjustable rate loan without an escrow account:

- A. The total initial payment for principal, interest and mortgage insurance, a statement that the payment can rise, the principal and interest payment and the mortgage insurance payment. (For interest-only loans there is an alternate provision that does not refer to principal.)
- B. The highest principal and interest payment based on an indicated maximum interest rate, and the earliest that the maximum payment could be reached.

Comment: No alternate statement is provided for an interest-only loan.

- C. A statement that there is no escrow account and that items such as property taxes and homeowners insurance must be paid directly by the borrower.
- D. The total initial payment for principal, interest and mortgage insurance.

Comment: There is no need for a second disclosure of the total payment in this situation.

v. For an interest-only loan:

- A. The first sentence in the Payment section is to be replaced with a statement of the total payment for interest and mortgage insurance, a statement that the payment can or cannot rise, the subtotals for interest and mortgage insurance, and a statement that the payment will not reduce the principal balance.

vi. For a Payment Option loan:

- A. The Payment section also must include a statement of the three payment options: a traditional principal and interest payment, an interest-only payment and a minimum interest payment.
- B. For each payment option, the rate applicable to the payment, the total payment, and the principal and interest portions of the payment.
- C. A statement next to the interest-only payment that the payment will not reduce the loan balance.
- D. A statement next to the minimum interest payment that the payment will increase the loan balance, along with the amount that would be added to the loan balance.
- E. A separate statement that paying the minimum interest payment will result in an increase to the loan balance and such increase is called negative amortization, and a statement that the monthly mortgage payment will increase if the loan balance increases.

- F. A statement that if the loan balance increases above __%, the lender has the right to increase the loan payments greatly for the remainder of the loan.

Comment: The disclosures would not accurately reflect all types of payment option products.

d. A **Late Charge** section that includes:

- i. A statement that “Your loan payment is due on the __ of every month and is considered late after the ___ of every month.”
- ii. A statement that “If your lender receives your mortgage payment after the ___, your lender will charge a late fee of __% of the overdue payment of principal and interest.”
- iii. If the payment terms are other than monthly, appropriate modifications may be made.

Comment: The payment technically is late if paid after the 1st, but a late charge is not imposed until after a grace period. HUD should not require a statement that provides a loan is not considered late until after the grace period for the late charge.

e. A **Loan Balance** section that includes a statement that the balance cannot rise, or that the balance can rise to a stated maximum amount.

f. A **Prepayment Penalty** section that includes:

- i. A statement of whether or not the loan provides for a prepayment penalty.
- ii. If the loan provides for a prepayment penalty:
 - A. A statement that the penalty is an additional amount that must be paid if the loan is paid off early or the borrower makes significant additional principal payments prior to a specified date.
 - B. The maximum possible penalty amount.

g. A **Balloon Loan** section that includes:

- i. A statement of whether or not the loan provides for a balloon payment.
- ii. If the loan provides for a balloon payment:
 - A. A statement that the remaining balance will have to be paid at the end of the loan term, that often very little, if any, of the loan balance is paid down and that, therefore, the balloon payment may

be most of the initial balance, and that most consumers will refinance the loan before the payment becomes due.

- B. A statement of the amount and due date of the balloon payment.

Average Cost Pricing

1. ***HUD-1.*** HUD proposes to allow the optional use of average cost pricing to disclose on the HUD-1 the average price, as opposed to actual price, for a settlement service provided by a third party. The average price would be calculated based on either of the following methods:
 - a. The average price may be based on the actual average price for that service for all loans closed by the loan originator on a national or more limited basis during the averaging period.
 - b. The average price may be based on a tiered pricing contract, provided the projected number of loans used in calculating the average is equal to the number of loans actually closed by the loan originator during the averaging period. 3500.8(b)(2)(i).
2. ***Calculation.*** For purposes of calculating an average price, the averaging period must be a specific recent period of 6 consecutive months preceding the receipt of a GFE application, as designated by the loan originator. The same method of determining the averaging period must be used for each borrower from whom a GFE application is received, until such time as the average is recomputed. 3500.8(b)(2)(ii).
3. ***Class of Transactions.*** If a loan originator uses average cost pricing for any class of transactions in a particular period, the loan originator must use the same average cost price in every transaction within that class, for which the borrower's GFE application was received during that period. 3500.8(b)(2)(iii).
4. ***Record Retention.*** The loan originator must retain all documentation that the average cost pricing is accurate in a given time period, under the pricing formula used, for at least 3 years. 3500.8(b)(2)(iv).

Comment: Unless states agree to allow average cost pricing, or HUD preempts state law, non-federal creditors will not be able to use average cost pricing in many states.

Volume Discounts

1. The definition of "thing of value" would be amended to provide that "A discount negotiated by settlement service providers in the price of a third party settlement service is not a thing of value, provided that no more than the discounted price is charged to the borrower and disclosed on the HUD-1/1A." 3500.14(d)(2).

Comment: As drafted the exception is limited to discounts negotiated by settlement service providers. It is not clear why HUD believes the exception should be limited to discounts negotiated by settlement service providers.

Mortgage Servicing Disclosure

1. ***Statutory Change.*** In 1996 RESPA Section 6 was amended to remove the detailed disclosure requirements for the up front Servicing Disclosure Statement and to require simply a statement as to whether the servicing of the loan may be assigned, sold or transferred to any other person at any time while the loan is outstanding.
2. ***Initial Regulatory Proposal.*** In May 1997 HUD proposed to amend Regulation X to reflect the statutory change.
3. ***New Regulatory Proposal.*** HUD now re-proposes to amend Regulation X to reflect the statutory change.
 - a. A lender, mortgage broker who anticipates using table funding, or a dealer who anticipates a first lien dealer loan must provide the up front Servicing Disclosure Statement.
 - b. A revised form of a Servicing Disclosure Statement is proposed, and use of the specific language in the Statement would not be required.
 - i. For a party that intends to service the loan, the form of Statement provides that “The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.”

Comment: It would not be advisable to use such language. The statute requires as statement as to whether the servicing may be transferred at any time. Thus, for a party with a current intent to service the loan, it is advisable to reflect that the party currently intends to service the loan, but may transfer the servicing at some point in time.

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