

HUD' s Proposed Rule on RESPA Reform Q & A

Why is the purpose of HUD's proposed rule?

To simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers.

First: To simplify the process, it addresses the issue of loan originator compensation, specifically the problems of lender payments to mortgage brokers, by changing the way these payments are recorded to consumers

Second: significantly improve the Good Faith Estimate (GFE) to make it firmer and more usable, to facilitate shopping, make the mortgage transaction more transparent and to prevent unexpected charges at settlement

Third: promotes competition by removing regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to borrowers, to simplify shopping and reduce settlement costs.

What does HUD see as the problem in the mortgage transaction today?

Under current law, borrowers are provided estimated settlement cost information on a GFE only after paying a significant fee to the originator, which prevents the borrower from shopping among additional originators. Often these estimates are not reliable and final charges at settlement include additional surprise fees. The current GFE requires a long list of estimated services, which leads to a proliferation of charges without any actual increase in the work performed or services rendered. The types of fees charged by loan originators, title agents and other service providers have multiplied in recent years making it steadily more difficult for borrowers to compare settlement costs.

HUD's also thinks that their rules requiring originators to pass through third party costs without "mark-ups" or "upcharges" and generally prohibits volume discount arrangements. These regulatory restrictions prevent activities and innovations, which would lower costs to consumers. Therefore they have concluded that guaranteed packaging arrangements should be permitted in a carefully circumscribed environment.

Under this proposal, can an originator continue to operate as they do today using the Good Faith Estimate?

No. If this proposal is finalized, all originators must use one of two disclosure methods, 1) the Firmer Good Faith Estimate with tolerances, or 2) Guaranteed Mortgage Package (GMP)

Improved Good Faith Estimate (GFE)

When will the originator have to provide the new GFE and how long is it valid?

The GFE must be delivered 3 days after application and would be valid for a minimum of 30 days from when the document is delivered or mailed to the borrower.

How does this proposal change the way mortgage broker fees are disclosed?

Under current rules, direct mortgage broker compensation is disclosed on the GFE while all indirect payments, including yield spread premiums (YSP's) are disclosed separately as "paid outside of closing"(POC). Because the way the broker's indirect compensation is disclosed, many borrowers think that such payments have no effect on their loan costs. This proposal will require that in all loans, any payments based on an "above par" interest rate be reported as a lender payment to the borrower. Mortgage brokers would be unable to increase their compensation without the borrowers knowledge, by placing the borrower in an above par loan and receiving a payment from the lender (YSP) or by retaining any part of any borrower payment intended to reduce the loan rate (discount points).

In addition, the GFE will include a section that will describe the originator's function and will advise the borrower that the originator will not shop for loans from all lenders, nor will it guarantee the lowest price or best terms and encourages the borrower to shop.

How are costs disclosed on the new GFE?

The new GFE groups and consolidates all costs into major cost categories with a single estimated total for each category. According to HUD, this would reduce any incentives for originators and others to establish "junk fees" and provide them in a long list, in order to increase their profits. The cost categories would include A) Origination charges, B) Interest rate dependent payments, C) Lender Required and Selected Third Party Services-must be disclosed on attachment, D) Title Services and Title Insurance (lender's only), E) Shoppable Lender Required Third party services, F) Government Charges, G) Reserves/Escrow, H) Per Diem Interest, I) Hazard Insurance, J) Optional Owners Title Insurance.

*The costs for lender required third party services must include an estimate of the maximum mortgage insurance premium to be charged upfront to the borrower based upon the borrowers assertion of the value of the property and the loan amount needed. It will also be noted that the mi premium may decrease or be removed after full underwriting.

Which services will be guaranteed and which will be subjected to a 10% tolerance?

The rule would prohibit the originator from exceeding the charges stated on the GFE for their own services, lender required and lender selected third party services, and government charges. A 10% tolerance or upper limit would be established for shoppable lender required third party services, borrower selected title and insurance, and reserves and escrow.

The establishment of tolerances will require loan originators to actively follow market prices for settlement services in their communities.

Can an originator charge an application fee?

No. An originator shall not collect a fee in connection with the application beyond that which is necessary to provide the good faith estimate. The estimates shall be open for 30 days and within that period. The borrower may agree to go forward with the loan and may be required to pay additional money to complete the underwriting process.

Can a lender require the use of an affiliated settlement provider under the GFE approach?

No.

Are there any penalties for exceeding the GFE?

If the cost at settlement exceeds the amount reported on the GFE, the borrowers may withdraw the application and receive full refund of all loan related fees. Loan originators failing to meet these new requirements will be scrutinized for section 8 violations.

Guaranteed Mortgage Package (GMP)

What is a Guaranteed Mortgage Package (GMP) and what are the requirements for a safe harbor?

A GMP is a loan (interest rate) and a lump sum package price for loan origination and virtually all other lender required settlement services needed to close the mortgage (application, origination, underwriting, appraisal, pest inspection, flood and tax review, title services and insurance, and any other lender required services, including mortgage insurance (will be calculated as the maximum upfront MIP based on the estimate of the property value and the amount that needs to be borrowed). The packager will qualify for the safe harbor if the package and interest rate disclosure is made within 3 days of application, at no cost until the borrower selects the package, and a Guaranteed Mortgage Package Agreement (GMPA) is provided as a prospective contract with the borrower that is binding through settlement.

How long does the guarantee hold?

The GMP offer would remain open for as an offer for a minimum of 30 days from when the document is delivered or mailed to the borrower. If the borrower does not choose to commit right away, the quoted interest rate will not change except from a change in an observable and verifiable index or based on other appropriate data.

Who may Package?

Entities other than the lender may qualify for the safe harbor (Section 8 exemption). Their packages must include a mortgage and satisfy the other requirements of the safe harbor. A non-lender packager must have the GMPA signed by a lender after borrower acceptance.

Are the services in the package itemized?

No. There is no requirement to itemize the services. However, HUD recognizes that certain services are of interest to the borrower, such as pest inspection, appraisal, and lenders title insurance. Therefore, if these services are not included in the GMP, this fact must be disclosed. On the HUD-1, borrowers will receive a listing of all of the services provided but not the prices of each service. The total cost will be disclosed.

Excluded from the guarantee are those items that fluctuate based on the borrowers choice, hazard insurance, per diem interest, and optional owners title insurance?

What are the remedies for failure to comply?

Borrowers, individually or where appropriate, as a class may sue pursuant to applicable state contract law. In addition HUD will regard noncompliance as an enforcement priority and those in violation will be subject to Section 8 scrutiny.

Will the GMP result in lower costs for borrowers?

According to HUD's economic analysis, packaging will result in lower prices paid for settlement services as packagers aggressively seek discounts in third-party service prices. The packager will be substituted for the borrower as the new shopper of services. The Economic Analysis also estimates that savings will be realized in time saved by borrowers in shopping.

Can HUD make these changes by regulation?

HUD believes they can. Section 19 of RESPA grants the HUD Secretary the authority make these changes. Section 19 authorizes the Secretary to prescribe such rules and regulations, to make such interpretations and to grant such reasonable exemptions from classes of transactions, as may be necessary to achieve the purposes of the act. However, there is some controversy as to whether exempting such a huge class from potential criminal prosecution would be an alteration of such magnitude that congressional action would be needed.

Sections 8(a) and (b) of RESPA prohibit the payment or receipt of kickbacks, referral fees, or unearned fees

