



Introductory Information In November 2008, HUD published its final rule amending Regulation X of the Real Estate Settlement Procedures Act ("RESPA"). The final rule includes significant changes to the Good Faith Estimate ("GFE") form and the HUD-1 Settlement Statement ("HUD-1"). This announcement includes various Interbank Wholesale Funding ("IBMC") requirements in response to the new rule and is not intended to serve as a comprehensive review of all the rule's provisions.

Resources - Links to Forms, FAQs, RESPA rule The final RESPA rule along with the new GFE and HUD-1/1A forms and training guide can be accessed on HUD's website at <http://www.hud.gov/offices/hsg/ramh/res/respahm.cfm>. Since the rule was published, HUD has also provided additional guidance on the RESPA rule in the form of Frequently Asked Questions ("FAQs") that are also posted on the website accessible through the above link.

Implementation Dates Although several aspects of the new RESPA rule already took effect, the new GFE and HUD-1 forms must be used for applications taken on or after January 1, 2010. The new GFE and HUD-1 forms may be used before that date. However, if a loan originator issues a GFE on the new form, then the settlement agent must use the new HUD-1 form and the tolerances and other requirements in the revised RESPA regulations would apply.

Interbank requires that the new forms be used on and after January 1, 2010.

Application Under the new RESPA rule, the term "application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which must include all of the following: 1) the borrower's name, 2) the borrower's monthly income, 3) the borrower's social security number to obtain a credit report, 4) the property address, 5) an estimate of the value of the property, 6) the mortgage loan amount sought, and any other information deemed necessary by the loan originator.

GFE The loan originator is required to issue the new GFE form no later than 3 business days after the loan originator receives an application or information sufficient to complete an application. The term "loan originator" means a lender or mortgage broker.

- There is no requirement that the borrower sign the GFE.
- No GFE disclosure is required if the application is withdrawn or denied within 3 business days of application.
- Except for interest rate dependent charges, the loan originator is bound by the GFE for at least ten business days after the GFE is provided (or longer if so specified by the loan originator).
- The loan originator may not charge any fee, except for a credit report fee, until after the applicant has received the GFE and **indicates an intention to proceed with the loan request.**
- Fees paid outside of closing will no longer be designated as "POC" on the GFE. All fees typically paid by the borrower must be shown on the GFE as if paid by the borrower at closing.

All charges for settlement services must be placed in the appropriate categories on the GFE.

Changed Circumstances - Reissuance of GFE Except for any permitted tolerances, loan originators must be accurate when disclosing initial settlement charges to the borrower on the GFE. A revised GFE may only be issued to a borrower prior to closing where there exists "changed circumstances" as defined in the final rule and as clarified by HUD in their FAQs.

Absent valid changed circumstances, the originator is bound by the amounts shown on the last disclosed GFE subject to any permitted tolerances.

Note:

- Only charges or terms directly related to the changed circumstance may be changed.
- The revised GFE must be issued within 3 business days of receiving information sufficient to establish the changed circumstance. The 3 business day requirement is triggered from the time of receipt by whichever loan originator, either the mortgage broker or the lender, receives the information first.
- Documentation evidencing the changed circumstance must be kept in the loan file and retained for a period of not less than 3 years after settlement.*

The term "**changed circumstances**" means:

- i. Acts of God, war, disaster, or other emergency;
- ii. Information particular to the borrower or transaction that was relied on in providing the GFE those changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;
- iii. New information particular to the borrower or transaction that was not relied on in providing the GFE; or
- iv. Other circumstances that is particular to the borrower or transaction, including boundary disputes, the need for flood insurance or environmental problems.



"**Changed circumstances**" do not include:

- i. The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, **unless the information changes or is found to be inaccurate after the GFE has been provided**; or
- ii. Market price fluctuations by themselves.

NOTE: To the extent that a "changed circumstance" exists and a revised GFE is to be issued to the consumer, **IBMC will send a letter to the consumer with the revised GFE. In addition, supporting documentation about the changed circumstances that may or may not have been initially disclosed to IBMC may be requested.**

Tolerance Limitations

HUD has created limitations which restrict the amount that settlement charges to borrowers can change between the Good Faith Estimate and the actual fees charged at settlement. These tolerance limitations are designed to help borrowers receive a more accurate GFE and to enable the borrower to easily compare the fees noted on the GFE with those on the HUD-1.

The tolerance limitations are divided into three categories:

1. **Settlement charges that cannot increase:** origination charges (including broker fees), borrower's credit or charge for specific interest rate chosen (after locking in the rate), and transfer taxes (0% Tolerance);
2. **Settlement charges that can increase up to 10%:** required services selected by the originator, title services and lender's title insurance (if selected by loan originator or borrower uses companies identified by loan originator), owner's title insurance (if borrower uses companies identified by loan originator), required services that the borrower shops for (if borrower uses companies identified by the loan originator), and government recording charges. (Up to 10% Tolerance)
3. **Settlement charges that can increase without restriction:** required services that borrower shops for, title services and lender's title insurance, and owner's title insurance (where the borrower does not use companies identified by the loan originator); initial deposit for escrow deposit, daily interest charges, and homeowner's insurance. (No Tolerance)

These tolerances are clearly described to the borrower on the third page of the GFE and carry over to page 3 of the HUD-1.

Additional Disclosures

Below is a description of three new disclosures. The new RESPA rules require loan originators to provide the borrower with a written list of Settlement Service Providers. The Itemization of Fees and the Lender / Seller Paid Fees & Credits are not required by the new RESPA rule but are necessary additions based on the changes to the GFE and HUD-1.

Itemization of Fees

Certain fees must be consolidated into a single block on the new GFE form and a single line on the new HUD-1. For example, the total of all charges assessed by loan originators on the transaction (including lenders and brokers), except any charge for the specific interest rate chosen, must be shown in Block 1, "our origination charge", on the GFE and in line 801 on the HUD-1. **Since the individual fee detail will no longer be shown on the GFE and HUD-1, IBMC will require clients to provide that detail on a separate form.** This form is necessary in order to correctly re-calculate the APR and test compliance with Federal and state high cost restrictions. Attached is a sample form that clients may use for this purpose. Although use of this specific form is optional, loans will be suspended if an itemization of the individual fees comprising the totals shown on the GFE and HUD-1 is not provided. Note that an Itemization of Amount Financed will not satisfy this requirement entirely as that form only provides the detail on finance charges.

IBMC fees are \$ 699.00 – "Administration Fee"

Settlement Service Provider List

For blocks 4, 5 & 6 of the new GFE, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider. The estimated charge to be paid to the provider of each service must also be disclosed.

Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time the GFE is issued. This list must be provided on a separate sheet of paper. The list must include those services addressed in Blocks 4, 5 and 6 of the GFE and contain settlement service providers that are likely available to provide the settlement service in the borrower's locale.

HUD has not issued a model form for the written list of settlement service providers. Attached is a sample form that clients may use for



this purpose. The content of the form will vary depending upon which services the borrower is permitted to shop for. If the borrower selects a provider identified on the list, the amount paid for that service would fall within the 10% tolerance for that category. If the borrower chooses a different provider, the amount paid for that service is not subject to any tolerance restriction.

The loan file submitted to IBMC must contain a separate settlement provider list form given to the consumer at the time of the GFE.

Lender/Seller Paid Fees/Credits

All charges typically paid by the borrower must be disclosed on the GFE regardless of whether the charges will be paid for by the borrower, the seller, or other party. However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a loan originator pays for a charge that is included on the GFE, the charge should be listed in the borrower's column on Page 2 of the HUD-1. That charge must also be offset by listing a credit in that amount to the borrower on lines 204-209 on Page 1 of the HUD-1.

WARNING: Similar to the lender/broker paid fees, fees and charges typically paid by the borrower that are to be paid by the seller must also be disclosed on the GFE. If a seller pays for a charge that was included on the GFE, the charge must be listed in the borrower's column on Page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on Page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on Page 1 of the HUD-1.

On a transaction in which the borrower requests a Lender Credit to be applied to closing costs in exchange for a higher interest rate, the premium pricing credit must be reflected as a negative number in Block 2 on the GFE and on line 802 on the HUD-1. **IBMC will include the allocation of the premium pricing credit on an addendum to the HUD-1.**

This detail is necessary in order to correctly re-calculate the APR and test compliance with Federal and state high cost restrictions. Late disclosure of these credits may require the need to for re-disclosure when this information creates a change outside of regulatory tolerances.

Attachments

- [Changed Circumstance Cover Letter](#)
- [Itemization of Fees](#)
- [Settlement Service Provider List](#)
- [Lender/Seller Paid Fees/Credits](#)
- [GFE](#)

Disclaimer

From time to time, Interbank Wholesale alerts Clients to important legal issues. However, Clients should not rely upon Interbank Wholesale to inform them of the legal requirements applicable to the origination of mortgage loans. Clients represent and warrant to Interbank Wholesale that all loans sold to Interbank Wholesale are originated in accordance with state and federal law. This Compliance Alert is not intended and should not be construed as legal or business advice. Interbank Wholesale is not responsible for updating this Compliance Announcement to reflect any changes in applicable laws.

Questions

Users are required to be authenticated (by logging into our site) in order to view secured documents (links) on our website. If you have any questions regarding any information in this announcement, please feel free to contact your Senior Relationship Manager or Loan Coordinators.

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