

BULLETIN

Old Republic National Title Insurance Company

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2008 RESPA REFORM - AVERAGE CHARGE CONCEPT

The information contained in the following document is meant to be a helpful starting point in researching the law applicable to the subjects covered therein, but the information should not be relied upon as the final authority on the laws recited in the document. The current state and/or federal statutes on any subject should always be obtained and reviewed in reaching any determination as to the law of any particular jurisdiction.

One of the more significant changes made in the new RESPA rule is the concept of "average charge." What follows is a short synopsis of that portion of the rule, the actual text of the relevant section of the rule, as well as HUD's own analysis of the average charge provision.

According to HUD's preamble to the rule, an average charge can be used for any settlement service, "provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to the providers of that service for that class of transactions." While the average charge concept will be very useful for the settlement services industry, the preceding quote is important to remember. Care will have to be taken so that the total average charge billed does not exceed the total paid for a given service. HUD states that one of the benefits of the average charge is that it will save administrative fees for settlement service providers and HUD expects that those savings will be passed onto consumers due to the pressures of competition.

In calculating an average charge, a provider may define a class of transactions based on time, loan type or geographic area. The average charge must be recalculated at least every 6 months. If a settlement service provider uses an average charge for a class of transactions, the provider must use the same average charge for every transaction within that class. An average charge may NOT be used for services where the charge is based on the loan amount or property value, because it would cause smaller borrowers to subsidize larger borrowers. For instance, an average charge may NOT be used for title or mortgage insurance. A provider "must maintain all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used." This last provision concerning record-keeping will be very important to keep in mind, as well. See 24 CFR 3500.8 (b)(2).

It is important to note that the average charge concept is the exception to HUD's rule. HUD states in its proposal that "(t)he amount stated on the HUD-1 for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section." 24 CFR Section 3500.08 (b)(1). In other words, RESPA does not allow mark-ups. Should distinct and necessary additional services be provided, however, it is appropriate to charge a fee equal to the value of the additional services rendered.

The ability to use an average charge begins when that part of the new rule takes effect on January 16, 2009.

Click [here](#) for the **NEW § 3500.8, Use of HUD-1 or HUD-1A settlement statements.**

Click [here](#) for the **HUD Determination (HUD description of Average Charge rule).**

These documents can also be found on the **News Center** section of our website at:

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