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RESPA Reform

RESPA reform, discussed for decades, is a fact. All of us involved in settlement services will adjust, will learn what HUD expects. This seminar is our interpretation of the new rules as published in the Federal Register, and discussed by Ivy Jackson and others from HUD in a series of webinars. Ask questions. Ask lots of questions.

I. Purpose:

1. Help consumers shop for the best loan
2. Shopping prices leads to competition and lower prices for the consumer
3. Lower the cost of purchasing or refinancing real estate since the cost of third party services vary widely

II. Implementation dates

1. required use – deferred until July 16, 2009; HUD seeking additional comments. See Appendix A, HUD news release March 6, 2009 and Appendix A-1 for the proposed rule.
2. average charges (formerly called “average cost pricing”) – January 16, 2009
3. Good Faith Estimate and revised HUD-1 – January 1, 2010, unless lenders start using it earlier. If a lender begins using the new GFE, the settlement agent must comply with all the new rules.

III. How RESPA reform affects settlement agent

A. Average Charge

1. Average charge is NOT “average cost pricing” as was suggested in prior attempts at revising RESPA. Average charge “focuses on the amount disclosed on the settlement statement, rather than the underlying costs of providing a particular settlement service.”¹
2. Average charges may apply when the settlement agent “obtain(s) a service from a third party on behalf of a borrower or seller.”²
Examples: delivery charges (may change in January, 2010 to become part of the settlement fee); independent title examination charges;
3. Applies to charges that are “easily calculated, verified and enforced.”³

¹ Federal Register Vol 73 No. 222/ Monday, Nov. 17, 2009, Rules & Regulations, page 68234

² id

³ Id

4. Average charges “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 for that service for that class of transactions.”⁴

Bottom line = **you can’t make money on the services**

5. The settlement agent can “define a class of transactions based on a period of time, type of loan and geographic area.”⁵
6. Use an objective means to determine the average charge, use a time period between 30 days and 6 months to determine your average charge, and recalculate at least every 6 months.
7. Cannot use the average charge selectively. Use the same amount for all in the same class.
8. Cannot use the average charge if the fee is based on the loan amount OR the value of the property.

Examples where it cannot be used = transfer taxes, recording fees, per diem interest, title (or any other kind) of insurance

9. Documents used to determine the average price must be retained for 3 years.
10. In an on-line HUD seminar, representatives of HUD stated that recording fees could be averaged. Since recording fees are a percentage based on the value of the property, we are not sure that is an accurate interpretation and caution agents against using average charges for recording fees.
11. Settlement agents can always just charge the exact amount charged you by the service provider. There is no requirement that average charges be used.

B. Final HUD-1

The HUD-1 hasn’t changed since its inception in 1974. Settlement agents are *very* familiar with the current format. Therefore, changes in this form cause most concern for settlement agents. (see Appendix D)

1. The HUD-1 has been re-organized to allow consumers to compare charges listed on their Good Faith Estimate (GFE) with the final HUD-1. Borrowers should be able to easily cross-reference their GFE with the HUD-1 and understand the terms of their loan due to the new third page comparison chart that outlines the estimated and actual fees. The third page is completed by the settlement agent. The third page disclosure makes it clear whether there is a difference in what was agreed to by the borrower (GFE) and the actual charges (HUD-1).
2. All settlement fees are shown in lump sums either in Line 1101 or Line 1103.
3. Line 1101 “Title services and lender’s title insurance” (box 4 on GFE)
 - a. One goal of HUD with the changes in the HUD-1 is to “limit unnecessary itemization of component parts of the charge for

⁴ id

⁵ id

title services, administrative and processing services...”⁶, to get rid of the sense consumers have had of being “nickel and dimed” with miscellaneous fees adding hundreds of dollars to the total settlement cost.

- b. Title services means any service involved in the provision of title insurance.
 - c. The fees are lumped together in line 1101, but shown in lines 1102 and 1104 as subcomponent parts.
 - d. Line 1102 “Settlement or closing fee” should include all the miscellaneous administrative fees such as delivery fees, computer download fees, storage fees, scanning fees, release update fees, search fees, etc.
 - e. Fees on line 1101 cannot be itemized unless they are paid to a third party. (independent title examiners, overnight delivery services, release follow-up services, etc.)
 - f. Line 1104 “Lender’s Title Insurance” should include the title premium for a lender’s policy.
4. Line 1103 “Owner’s title insurance” (box 5 on GFE)
- a. Only the owner’s portion of the title insurance charge goes on this line.
 - b. To figure this amount, subtract the amount of a loan policy from the simultaneous issue fee plus the owner’s policy premium. Hopefully, your settlement software will automatically figure the Owner’s premium using this format. This is a more accurate picture of the split between the Owner’s and Lender’s title premiums, as the Lender’s policy is required and the Owner’s policy is optional.
5. Lines 1105/1106 and 1107/1108 are for information purposes only.
- a. Lines 1105/1106 state the amount of coverage on the Loan policy and on the owner’s policy.
 - b. Lines 1107/1108 show the total premium split between the agent and the underwriter.
 - (1) Regardless of the argument by ALTA and others in the industry that the split between agent and underwriter is a private contract matter, the GAO report recommended showing the split. HUD agreed with the report, because they believe this disclosure will drive prices down.
 - (2) If an agent provides title only services, they must provide the split between the agency and the underwriter on the invoice to the settlement agent.
6. Miscellaneous matters
- a. Attorney’s fees are to be included in line 1101 if the attorney is the settlement agent, or the seller’s attorney. If the borrower uses a non-attorney settlement service and brings an attorney to the

⁶ Id, page 68229

table as well, the attorney's fee is listed as a miscellaneous fee in the 1300's.

- b. There is no federal statutory requirement for HUD-1's to be signed by the parties.
 - c. Items in the 1300's are totaled on line 1301, then subcategorized as necessary.
7. Page 3 – GFE comparison (see Appendix D)
- a. Settlement agent, using the GFE information provided by the Lender, must complete this form.
 - b. The GFE has fees in 3 categories:
 - (1) zero tolerance fees = cannot change,
 - (i) Lines 801 (origination fee), 802 (points or lender credit), 803 (adjusted origination charge) and 1203 (transfer taxes)
 - (ii) If there's a change in this category lender must do a revised GFE, or refund the difference to the borrower within 30 days.
 - (2) 10% tolerance fees = can adjust up or down by 10%,
 - (i) Lines 804 (appraisal), 805 (credit report), 806 (tax service), 807 (flood insurance), and 902 (up front MIP)
 - (3) Charges that can change
 - (i) Lines 1001 (escrow reserves), 901 (per diem interest, and 903 (homeowner's insurance)
 - c. Where settlement service fees (1100's) go in the categories depends on whether the borrower has used the services recommended by the lender, or has chosen independent service providers.
 - d. "The settlement agent must list items on the GFE that were provided by the lender, run the calculations, and determine if tolerances have been exceeded. It is then the responsibility of the lender to reimburse the borrower."⁷
 - e. "Either the settlement agent or the borrower contact the lender for a reimbursement. The lender will want to respond within 30 days because HUD will be conducting regular audits."⁸
 - f. If there is a variation outside the tolerances the settlement agent must "reissue the HUD-1, which doesn't require signatures. Both the lender and borrower get a copy of the new HUD-1."⁹
 - g. If fees charged by the state or locality change so that they exceed tolerance levels, the lender should issue a new GFE.¹⁰

C. Enforcement

⁷ ALTA questions and answers, see Appendix E.

⁸ id

⁹ id

¹⁰ id

1. A violation of any of the requirements for completing the HUD-1 is a violation of section 4 of RESPA.
2. Technical or inadvertent errors may be corrected within 30 calendar days of settlement with copies sent to all parties, buyer, seller, and lender.