

1  **RESPA Reform: Continuing Questions and Limited Answers**

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3  **All Hands, Battle Stations!**

You:

"Beam me up Scotty"  
will be assimilated"


HUD:

"Complaining is Futile

– You

4  **What Works and What Does Not?**

- A. The good, the bad, and the ugly of RESPA Reform: What works and what does not.
  - The GFE now mean something – good.
  - The HUD-1 bears no resemblance to the GFE – bad.
  - Page 3 of the HUD-1 is incomprehensible and nobody at the closing is going to explain it – things could get ugly
- B. The RESPA FAQ is like a cancer – it keeps growing.
  - Recent additions include splitting the closer from the insurance agency.
  - We still have questions about how to disclose independent notary services and transfer taxes.
- C. Why is RESPA Reform like a can of sardines? We are all looking for the key.
  - Prequals, worksheets, YSP disclosures, tolerances, and disbursements.
  - Itemization – how, when, where?

5  **The Issues We Will Discuss Today**

- Grandfathered loans
- Applications, Preapprovals, Prequalification, and Worksheets
- Origination Fees, YSPs, Credits and Charges
- Lender Required Services and Provider Lists
- Additional Problems for Appraisers and Title Agencies
- Government Fees and Taxes
- Changing the GFE
- Page 3 of the HUD-1 and Curing Tolerance Violations
- Recent HUD Staff Advice
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6  **Grandfathered Loans**

7  **Problems With Grandfathered Loans**

- Grandfathered Loans:
  - The RESPA FAQ provides that any application taken in 2009 is under the old rule if an old GFE was provided in 2009. The old HUD-1 must be used for these loans when they close in 2010.
  - The RESPA FAQ provides that any time a new GFE is used, the new rules apply and a new HUD-1 form must be used.

- FHA Mortgagee Letter says that the new forms must be used for loans “originated” in 2010 (whatever that means).
- The old rule never required the broker or lender to provide a revised GFE – why change it now? Multiple GFEs create disclosure problems.
- HUD personnel provided conflicting advice on whether to use an old or new GFE form when an old GFE form issued in 2009 is revised in 2010.
- You may see very old applications coming back in 2010 as grandfathered loans. How do you determine whether the application was withdrawn or denied, or the application is still live?

## 8 **Applications and Preapprovals and Worksheets. Oh My!**

### 9 **Initial Problems With Applications**

- The loan originator must have an “application” before preparing the GFE.
  - You cannot have an application without the borrower’s name, SSN#, income, property address, estimate of property value and loan amount.
  - A GFE provided without sufficient information (e.g., TBD property) does not satisfy HUD’s requirement that it be provided “in good faith.”

### 10 **Initial Problems With Applications**

- Issuing a GFE based upon too little information leads to tolerance violations.
  - Providing a GFE before a property, property value and loan amount are identified locks the loan originator into a guess that cannot be changed if wrong. Hence, never provide a GFE before the consumer gives the loan originator property and loan amount information.

### 11 **Initial Problems With Applications**

- You also have potential liability if you collect too much information.
  - None of the information collected by the originator prior to issuing the GFE may later become the basis for a “changed circumstance” upon which a loan originator may offer a revised GFE, unless the loan originator can demonstrate that there was a change in the particular information, the consumer provided wrong information, or the loan originator did not rely on that particular information in issuing the GFE.

### 12 **The GFE is Only a Shopping Tool**

- GFE’s do not provide information that the consumer wants or understands.
  - Pre-GFE information is needed to help the consumer understand what the consumer can afford and what they will qualify to finance, before shopping for a home. This is called a Preapproval.
  - You also need a worksheet with the GFE to educate the consumer on what the GFE may be used for and what it does not do.

### 13 **Preapprovals Defined**

- “A *preapproval* is a document issued by a lender stating that a consumer qualifies for a specific loan amount.”
  - A preapproval is viewed as a pre-purchase agreement document that credit qualifies a consumer
  - HUD distinguishes a preapproval from an application by the absence of an identified property
  - The preapproval (in HUD’s view) helps the parties eliminate a financing contingency. Warn consumers – preapproval are not commitments
- A lender may issue a preapproval with a GFE for a refinance loan
  - Preapprovals for a refinance loan should not be issued without a GFE since the lender (in HUD’s view) has or should have enough information to issue a GFE when the borrower qualifies for credit

### 14 **Preapprovals in the Marketplace**

- Preapproval usage has been on hold because of negative guidance from HUD.
- HUD did an about face on the use of a secondary document with the GFE.
  - Previously, HUD said that addendums to the GFE were forbidden.
  - A preapproval and/or a worksheet may accompany the GFE.
  - The accompanying document should not look like the GFE and should be a stand alone form independent of the GFE (e.g. “welcome letter”).
- HUD now permits the loan originator to verify credit information in order to provide a preapproval when the property has not been identified.
  - Do not avoid receiving a property address to evade providing a GFE.
  - Do not condition issuance of a GFE on issuance of a preapproval if the borrower provided sufficient information for a GFE to be issued.

#### 15 **Worksheets Defined**

- “A *worksheet* is a document issued by a loan originator that may include generic information regarding interest rates and loan fees, or a document that may provide additional information to the consumer regarding the cost of the overall transaction outside of loan fees that are disclosed on the GFE.”
  - Worksheets can be used to quote rates and fees when the consumer does not want to apply for a loan.
  - Worksheets may not look like a GFE, and cannot be used in place of a GFE.
  - Worksheets may be provided with a GFE.
  - Whenever the loan originator has sufficient information to provide a GFE, the GFE must be provided.

#### 16 **Guidance on Worksheets**

- HUD backed off its prior guidance that a worksheet can only show “generic” costs.
  - The loan originator may base a worksheet on generic loan terms, or provide a worksheet based on the terms of the transaction.
  - Worksheets based on the terms of the transaction should not contradict the GFE, and should provide additional information not contained in the GFE.
  - Worksheets should not look like a GFE.
- HUD reversed course and allows loan originators to provide a worksheet with the GFE.
  - The worksheet should be stand alone document that does not depend on the GFE, even if it is provided with the GFE

#### 17 **Worksheets in the Marketplace**

- A worksheet is needed for multiple reasons:
  - Estimate how much money the consumer should bring to closing.
  - Show who pays what fees, and identify with certainty the fees that are finance charges.
  - Educate the consumer that the money brought to closing and the monthly loan payment are not the only costs of home ownership. Other costs include utilities, maintenance, repairs, replacements, subordinate financing, home owner association assessments, taxes, hazard insurance premiums, etc.
- Every loan originator has their own form of worksheet, leading to mass confusion in the industry.
- The ABA is working on a draft prequalification form for industry use. It may take the form of a “welcome letter.”

#### 18 **Where Does That Fee Go?**

#### 19 **Initial Problems With the New GFE**

- Fees (other than a credit report fee) cannot be collected, imposed, or requested from the loan applicant until the applicant has received TILA and RESPA disclosures, and the applicant has accepted the GFE by indicating an intent to proceed with processing of the application.
  - Do not ask for credit card numbers, post dated checks, etc., from the applicants.
  - You may ask the mortgage broker or seller to pay fees prior to acceptance of the GFE.

- HUD provided no guidance on how to accept the GFE – whether oral or written. Lender policies should not dictate the method that the consumer must use to accept the GFE (but verification of intent may be requested).

#### 20 **Our Origination Charges**

- Page 2, Line 1:
  - The origination fee is a lump sum consisting of all lender compensation and broker compensation, application fees, YSP, underwriting, funding, discount, origination fees, doc prep, AUS, funding fee, wire fee, lender’s attorney fees, MERS registration fee, lender inspection fees, loan handling fees, loan commitment fees, etc.
  - Fees for appraisal, credit report, tax service, flood certification, lien subordination, government required counseling, up-front MIP (FHA and VA), and HOA subordination fees are separately disclosed, unless the services are performed by the lender.
  - Seller paid fees and broker credits are not disclosed, even if required by contract.

#### 21 **Our Origination Charges**

- Page 2, Line 1:
  - “Our origination charge” is locked unless there are “changed circumstances” directly affecting the fee (e.g. loan amount increases and the fee is a percentage of the loan amount) or the borrower asks for a different loan program.
  - Escrow waiver fees are included in Block 1 if known at the time that the GFE is issued. If the borrower asks for waiver of the escrow requirement after the GFE is issued, an escrow waiver fee has to go in Block 2, box 3 since adding a waiver fee is not a reason to change Block 1. This may be impossible if there is a credit in Block 2, box 2.
  - Title agents believe that they disburse the entire origination fee to the lender and the lender pays the broker.

#### 22 **Alas Poor YSP. I Knew Him Well.**

#### 23 **Where Oh Where Does My YSP Go?**

- Block 1 is the aggregate cost of originating the loan, including lender and broker compensation, and all of the administrative and processing charges associated with the lender and broker origination functions.
- Block 1 is an “out the door” price for origination services.
- HUD does not care how the lender and broker split the amount in Block 1.
  - The split of Block 1 between the lender and broker can change 6 times while the loan is in process, so long as the total amount in Block 1 does not increase.
  - What starts out as the broker receiving all of its compensation from the lender can change to the lender paying part and the borrower paying part.

#### 24 **Do Not Use the Term YSP**

- HUD prefers the term “lender paid broker compensation” over “YSP. ” Statement of Policy 1999-1 said:
  - “The Department has always indicated that any fees charged in settlement transactions should be clearly disclosed so that the consumer can understand the nature and recipient of the payment. Code-like abbreviations like “YSP to DBG, POC”, for instance, have been noted.....The Department considers unclear and confusing disclosures to be contrary to the statute’s and the regulation’s purposes of making RESPA-covered transactions understandable to the consumer. At a minimum, all fees to the mortgage broker are to be clearly labeled ... and the fee received from a lender is to be clearly labeled and listed in the interest of clarity. For example, a fee would be appropriately disclosed as “Mortgage broker fee from lender to XYZ Corporation (P.O.C.).”

#### 25 **HUD Wants to Empower the Borrower**

- However, using the term “YSP” did not violate RESPA. Footnote 9 in Statement of Policy 1999-1 says:
  - “...HUD recognizes that current practices may leave borrowers confused. However, the use of any particular terms, including abbreviations, may not, by itself, violate RESPA.

Nevertheless, going forward, HUD recommends that the disclosures on the GFE and the settlement statement be as described in the text.”

- HUD wanted the industry to change its software a decade ago. The current GFE is an effort to make the industry change its terminology.

#### 26 **Where Oh Where Does My YSP Go?**

- HUD has no problem with brokers receiving compensation from the lender.
- The credit in Block 2 is a fungible credit that may be used to pay the broker, the appraiser, or anyone else providing settlement services. If the lender is paying some or all of the broker’s compensation, that is a credit to the borrower that must be included in Block 2 Box 2 with any other credits for items paid by the lender.
  - HUD believes that the consumer views the mortgage broker and lender as a married couple.
  - HUD wants to simplify shopping by requiring a single up front cost for originating the loan, a single number adjusting the cost, and a single net amount that the borrower will pay.

#### 27 **Credits and Charges**

- HUD’s concept: the lender pays the borrower a fee for an increased interest rate, which the borrower then pays to the mortgage broker.
  - The broker and lender disclose the YSP differently – the lender uses box 1, 2 or 3; however, discount points cannot be shown in box 1.
  - The broker uses box 2 and shows a negative amount to show lender paid broker and other fees. The “credit” to the borrower is listed as a negative number on Line 802 of the HUD-1 at the closing.
  - Disclose the initial interest rate, not the APR.
  - You cannot have a discount fee and a YSP in the same transaction.

#### 28 **Lender Charges**

- HUD guidance suggests that loan level price adjustments, and fees to lock in the interest rate or to extend the lock period increase the charge or decrease the credit in Block 2, and may not be separately itemized.
- New guidance from HUD states that an addendum may be added to the HUD-1 or additional lines may be added to the 800 section to show what fees are paid by the lender if a credit is shown on line 803. You cannot do this with a GFE.

#### 29 **Adjusted Origination Charge**

- Block A: The net of Block 1 and Block 2.
- Example for initial GFE: \$100,000 loan with no points, 1.5% lender fees and broker yield spread premium of 2%.
  - Block 1: \$3,500 our origination charge (\$1,500 lender fees plus \$2,000 yield spread premium).
  - Block 2: -\$2,000 credit (the yield spread premium).
  - Block A: \$1,500 your adjusted origination charges (Block 1 less Block 2).

#### 30 **Adjusted Origination Charge**

- Example for initial GFE: \$100,000 loan with 2 points, 1.5% lender fees and broker fee of 1%.
  - Block 1: \$2,500 our origination charge (\$1,500 lender fees plus \$1,000 broker fee).
  - Block 2: \$2,000 charge.
  - Block A: \$4,500 your adjusted origination charges (Block 1 plus Block 2).

#### 31 **Credits and Charges**

- Special situations:
  - When a no cost loan covers both the origination charge and some or all of the third party

charges, the credit in Block 2 must equal the origination charge plus the applicable third party fees. Block A will be a negative number.

- A temporary buy-down fee is a charge for the interest rate chosen.
- If the rate is locked after the GFE is issued, provide a revised GFE
  - Block 2 and Block A in the revised GFE are based on the locked rate. Block 2 may be changed to cure a multitude of sins.

### 32 **Lender Credits**

- Only credits tied to the interest rate are disclosed in GFE Block 2 and on HUD-1 Line 802.
  - Other lender credits not tied to the interest rate (e.g. in a no cost FHA streamline loan) are not disclosed in the GFE, and appear in the 200 Section of the HUD-1, per HUD Staff advice
- Example:
  - Par loan rate with no lender credit is 5%.
  - Par loan rate with lender paying all closing costs is 5.25%.
  - Expected closing costs are between \$1000 and \$2000.
  - Lender discloses a \$1000 credit for a 5.25% rate in Block 2 box 2.
  - Actual closing costs are \$1500:
    - (A) If there is no tolerance violation, the extra \$500 is disclosed as a lender credit in HUD-1 Section 200
    - (B) If there is a tolerance violation, the extra \$500 is disclosed as a lender tolerance refund in HUD-1 Section 200

### 33 **Rate Lock Expiration**

- What happens when the rate lock with the borrower expires before closing?
  - HUD informally indicated that it expects the lender to provide a new GFE before closing based on the terms that the lender will offer to the borrower. This makes sense since the last GFE must be used for tolerance calculations. The lender wants to revise the GFE if permitted to avoid tolerance violations
  - A fee to extend the rate lock must be disclosed in Block 2, but Block 2 of the GFE cannot be changed without a new rate lock agreement.
  - Expiration of the rate lock due to a borrower delay may or may not be a changed circumstance; however, the borrower's request to extend a rate lock is a borrower requested change that would permit a change in Block 2 to add the rate lock extension fee.
  - If the borrower does not wish to extend the rate lock, no extension fee may be changed, but the lender is no longer bound by its interest rate commitment.

### 34 **Origination Charge Tolerance**

- 0% tolerance for "Our origination charge."
- 0% tolerance for "Your credit or charge for the rate chosen" and "Your adjusted origination charges" when the rate is locked.
  - The origination charge may not increase.
  - The credit for the rate chosen may not decrease and the charge for the rate chosen may not increase when the rate is locked.
  - Your adjusted origination charges may not increase when the rate is locked. Rate locks do not permit revisions in these fees.

### 35 **Problems With Locked Charges**

- Too many real life situations conflict with HUD's no-tolerance rule:
  - The lender that later decides to broker a loan has a hard time adjusting the GFE to match the investor's expectations.
  - Investors charge a fee to extend the rate lock.
  - The GFE (unlike the HUD-1) cannot be revised to fix silly clerical errors.
- Lenders need a strategy to avoid losses in these situations.

### 36 **Adjusting Credits and Charges**

- How to Adjust the Origination Charge:
  - The initial GFE should show a credit or charge to the borrower.
  - Require the borrower to lock before closing (see line 4 of the Important Dates section).
  - Revise the credit or charge to compensate for market changes in SRP.
  - For TPO loans, the split of Our Origination Charge between the broker and lender can change, so long as the total in Block 1 does not change.
  - Income from the sale of a loan (SRP) is never disclosed on the GFE or the HUD-1 Settlement Statement.

### 37 **The Few, The Proud, The Required Settlement Service Providers**

#### 38 **Lender Selected Providers**

#### 39 **Lender Selected Providers**

#### 40 **Lender Selected Providers**

#### 41 **What is Excluded for the GFE?**

#### 42 **Promulgating Provider Lists**

- HUD gave us no guidance on formulating lists of available providers for Blocks 4, 5 and 6.
  - Vendors who do not end up on the list will complain or sue because they are unfairly excluded
  - Consumers will sue for recommending a bad vendor if a vendor makes a mistake. Provider lists should include disclaimers
  - HUD gave us no guidance on how many vendors should be on the list, or what information is provided for each provider
  - The aggregate (10% bucket) tolerance is higher if all services are provided by companies identified or selected by the lender
  - We do not have any definition of what an “available” provider is
  - We have no guidance on what provider information should be on the list in addition to the providers’ names
  - We do not know if the list of LOS selected providers satisfies the requirement to list “available” providers

#### 43 **Lender Selected Providers**

#### 44 **Lender Selected Providers**

#### 45 **Promulgating Provider Lists**

- Potential solution: limit choices to one service provider.
  - The dollar amount of the tolerance will be larger
  - Better service from vendors
- Down side to this solution:
  - A lender cannot require the use of an affiliated settlement service provider
  - HUD advice to lenders to only put their affiliated provider on the list of providers is poor – the opposite advice was given in other HUD presentations
  - Must the lender allow the borrower to choose a provider that is not on the list if an affiliated company is on the list?
  - Putting an affiliate on the list is a referral – the lender must provide an Affiliated Business Arrangement Disclosure with the list containing the name of an affiliate
  - Can the lender choose an affiliated provider that is NOT on its list?

#### 46 **LOS Business to Business Portals**

- Settlement service providers need to communicate their fees to loan originators to avoid MDIA redisclosure and to avoid RESPA violations.
  - Loan Origination Software Companies found a solution: establish business to business portals within the software that automatically populate GFE fields with fee information from the settlement service provider.
  - LOS companies do not seek out the available settlement service providers – only

settlement service providers that contract with the LOS company are permitted to be on the LOS list.

- HUD has not provided guidance to establish that the list of providers generated by the LOS software is sufficient.

#### 47 **LOS Business to Business Portals**

- The LOS provider charges a per transaction fee for the business to business order transmission “service.”
- Is this transaction fee a kickback?
  - The fee is paid only when the appraiser collects a fee. HUD indicated previously that success fees are illegal.
  - The portal to portal fee is arguably an undisclosed split of the appraisal fee that violates RESPA, FHA and USPAP standards.
- LOS providers could have charged loan originators an annual update fee rather than charge a transaction fee (similar to computer virus software fees) that would generated the same income.

#### 48 **Average Charge Pricing**

- HUD’s solution to the problem of disclosing fees that are not known at application is to average the charge for the service over time and distance.
  - “...[A]n average charge may 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.”
  - “...[T]he provider must ensure that the average charge used does not result in borrowers, in the aggregate, paying more for a particular settlement service than the aggregate price paid for obtaining that service from third parties.”
  - Appraisers may determine the average charge for a class of services over a 6 month period for a specific geographic region, and impose that charge for all transactions in the class.
  - At least every six months, the average charge is recalculated, and overages or undercharges are folded into the new charge.

#### 49 **Problems With Average Charge Pricing**

- Average charges are subject to manipulation
  - The provider can change the geographic region or recalculate the average charge at will
  - Lenders will force providers to recalculate average charge pricing to readjust fees when the “bucket” fees are above the 10% tolerance.
  - The RESPA reform rule “...prohibits the use of average charges for settlement services where the charge is based on the loan amount or the value of the property.” This was intended to prevent appraisers from adding incremental fees to the average appraisal cost to subsidize the cost of appraisals for higher priced unique properties.
  - HUD has no qualms about appraisers eating the cost of higher priced appraisals; however, this may lead to charges of discrimination (the rich white owners are given a break on the real cost of the appraisal). HUD did not see this issue when it drafted the rule.
- There is no safe harbor for average fees under TILA – the average fee may be a finance charge.

#### 50 **Additional Problems for Appraisers and Title Agencies**

##### 51 **Disclosing Appraisal Fees**

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##### 53 **Disclosing Appraisal Fees**

- Appraisers may impose certain add-on fees for extra services:
  - Mileage for travel beyond a local area

- Additional fee for being refused entrance or the owner not being home, necessitating an additional visit
- Do these circumstances justify a change in the GFE?
  - If the loan originator knew or should have known of the circumstance from the information provided by the borrower prior to the time that the GFE is provided, then a change in the GFE is not justified.
  - If the circumstance arises after the GFE is provided, and this is all new information to the loan originator, the circumstance justifies a change in the GFE.

#### 54 **Appraisal Management Fees**

#### 55 **Take a Closer Look at AMC Fees**

- HUD's RESPA FAQ says:
  - Q: What charges are part of the charge in Block 1 of the GFE, "Our origination charge"?*
  - A: Block 1, "Our origination charge" on the GFE contains all charges for origination services performed by or on behalf of a lender and/or a mortgage broker. Origination services includes, but is not limited to, the following: taking of the loan application, loan processing, underwriting of the loan, funding of the loan, acting as an intermediary between a borrower and lender, obtaining verifications and appraisals, and any processing and administrative services required to perform these functions.*
- It would seem, therefore, that the fee retained by the AMC for obtaining the appraisal is a part of Our Origination Charge in Block 1, *or is it...?*

#### 56 **Take a Closer Look at AMC Fees**

- HUD's rationale for including this FAQ was to warn mortgage brokers not to charge a separate fee for ordering the appraisal.
- There is little need for the warning:
  - Ordering the appraisal is one of the fourteen defined services that may be provided to earn a mortgage broker fee.
  - The mortgage broker is fully compensated for ordering the appraisal by receiving a mortgage broker fee.
  - Charging a separate for ordering the appraisal is a double fee that violates Section 8(b) of RESPA.
- HUD view: The AMC provides the appraisal, and HUD presumes that the AMC performs substantive services.

#### 57 **Title Agency Charges**

- Originators must provide a list of "available" title agencies.
  - The lender may select the title agency, and list only the selected title agency on its list of settlement service providers.
  - HUD advises that the one selected title agency may be an affiliated entity. This is poor advice since:
    - Placing a settlement service provider on the list is a referral; and
    - Placing one affiliated provider on the lender's list is risky since this might one day be interpreted by a court as requiring the use of an affiliated entity (a violation of Section 15 of Regulation X).

#### 58 **Title Premiums and Closing Fees**

- If different entities provides title insurance and close the loan, lenders should disclose the insurance and closing services (and fees) separately on the provider list.
  - If the closing documents are mailed to the borrower, and the lender expects the borrower to hire notary, the notary fee should be included in Block 4.
  - Should lenders should identify a notary service on the list of providers given with the GFE? Is the notary fee paid by the borrower is disclosed on the HUD-1 as a separate borrower charge? No HUD guidance.
  - Is a credit is given in the 200 section of the HUD-1 for the fee paid out of pocket by the

borrower in a mail closing?

59  **Title Premiums and Closing Fees**

- Additional title agency issues
  - The lender may allow shopping for insurance and not for closing services, or vice versa. Watch out for state laws that permit shopping.
  - HUD has not given us guidance to treat the survey as a separate service. As of this date, the survey fee is included in Block 4 if the title agency requires a survey. If the lender requires the survey, this service is separately itemized in Block 3 or Block 6.
  - Lenders cannot ask title agents to cut their fees. This would be a kickback for the referral of future business.

60  **Closing Fees**

- If the lender conducts the closing and charges a closing fee, the closing fee is included in Line 801 of the HUD-1.
- If the lender mails closing documents to the borrower for signature, the notary fee paid by the borrower directly to the notary is included in Line 801 of the HUD-1.
- If the title agent conducts the closing, no closing fee is broken out on Line 1102 (Line 1102 is reserved for third party charges).
- Fees paid to third parties for administrative and processing services (wire, doc prep, fax, overnight delivery, etc.) provided as part of issuing title insurance or closing the loan are not disclosed in the 1100 Section.

61  **Government Fees and Taxes**

62  **GFE: Recording Fees and Mtg. Tax**

- Recording fees and lender required services have an aggregate 10% tolerance.
  - How do you know how many pages the deed will be or whether the borrower will use a power of attorney? Estimates are always wrong.
  - Someone is going to eat extra recording fees if they exceed the bucket tolerance.
  - The lender cannot ask the title agency to pay excess recording fees, since this would be a kickback for the referral of future business.

63  **GFE: Government Fees and Taxes**

- Government transfer, mortgage, and intangible taxes:
  - Transfer and mortgage taxes in Block 8 must be accurate to the penny.
- HUD issued new guidance:
  - “The amount the borrower is likely to pay for transfer taxes is disclosed in Block 8 of the GFE. In some areas this amount, as a matter of practice, is governed by state or local laws. If state or local law is unclear or does not specifically attribute transfer tax to a seller or borrower, the amount to be disclosed on the GFE is governed by common practice or experience in the locality of the property.”
  - “If the seller is paying a portion of the transfer tax that was not disclosed on the GFE, then that portion should be listed in the seller’s column in the 1200 series on the HUD-1.”

64  **GFE: Hazard Insurance Disclosures**

- Hazard insurance premiums need not be disclosed in the GFE for a refinance loan.
  - The lender does not know at the time the GFE is prepared whether the borrower must renew the hazard insurance policy at closing
  - FAQ: the premium may be disclosed as 0 in the HUD-1; HUD orally advises that no disclosure is required in the GFE (disclose \$0)
  - This is a no-tolerance item, so there is no monetary liability for getting it wrong – hence no duty to revise the GFE if a premium is paid at closing
  - However, the lender is damned if the premium is disclosed and damned if it is not disclosed. If the fee is not disclosed and the insurance must be disclosed at closing, the lender is accused of hiding fees. If the lender discloses a premium, and the insurance

- need not be renewed, the borrower may go elsewhere for a lower cost loan
- The GFE cannot be annotated to describe this dilemma

#### 65 **Hazard Insurance Disclosure Suggestion**

- In a refinance transaction, the loan originator should not disclose the premium for the existing hazard and flood insurance policies. Enter zero (0) in Block 11 for the hazard insurance premiums.
- If the borrower is required to renew a policy at closing, the premium should be reflected in Block 11.
- If the loan originator discovers after the GFE is issued that the hazard insurance will expire and must be renewed at closing, I recommend a revised GFE.
  - You never want your GFE to look deceiving, even if no violations exist.
  - Avoid anything that might lead to predatory lending charges if possible – the legal costs of defending a lawsuit will eat all your profits.

#### 66 **Disclosure of Escrow Fees**

- Parallel issues arise for escrow of taxes as were raised for hazard insurance premiums.
  - Most lenders do not have a handle on what taxes are due and when they are due to allow an accurate disclosure of the escrow balance in the GFE – hence no real property taxes are disclosed in the GFE other than amounts placed in an escrow account
  - Real property taxes paid at closing (other than into an escrow account) are disclosed on HUD-1 lines 104-105.
  - Many vendors are working to provide a solution to the lender (for a fee) to disclose escrow items
  - Most of the solutions are not seamless – vendor data must be entered in the lender's LOS by hand. This leads to data entry errors

#### 67 **Revising the GFE**

#### 68 **Revising the GFE**

- There are six categories of conditions that permit changes in the GFE:
  - Changed circumstances affecting settlement costs.
  - Changed circumstances affecting the loan.
  - Borrower requested changes.
  - Expiration of the GFE.
  - Interest rate dependent charges and terms.
  - New construction purchases.
- Not all categories allow wholesale changes in the GFE:
  - Expiration of the GFE and new construction purchases permit changes in any fee and any amount disclosed in the GFE.
  - The other four categories permit changes only to services and fees impacted by certain changes.

#### 69 **Circumstances Affecting Costs**

- Examples of changed circumstances impacting settlement costs are:
  - Higher level appraisal is required than anticipated.
  - Encroachments are discovered that require additional cost to clear.
  - Title is in a trust or a minor, requiring court approval or additional documentation.
  - The appraiser notes a pest infestation, requiring a pest inspection.
- Only circumstances not known to the loan originator at the time the GFE is issued constitute a change in circumstance that permits a change in the GFE.
  - An AVM obtained prior to issuing the GFE that turns out to be wrong is not a changed circumstance.
  - A TBD property that is later identified as different than anticipated is not a changed circumstance.

#### 70 **Circumstances Affecting the Loan**

- Examples of changed circumstances impacting the loan are:

- The appraisal comes in low, and the loan now requires PMI because the loan amount requested is higher than 80% of value.
- The property changes from a primary residence to a secondary residence, changing underwriting considerations, interest rates and fees.
- Regulatory changes impact the loan terms.
- The borrower's credit score changes.
- Only circumstances not known to the loan originator at the time the GFE is issued constitute a change in circumstance that permits a change in the GFE.

#### 71 **Borrower Requested Changes**

- Examples of borrower requested changes are:
  - Borrower decides to buy a different home than originally identified by the borrower.
  - Borrower changes loan programs (ARM vs. fixed rate).
  - Borrower adds a co-borrower.
  - Borrower changes the down payment amount.
- Only circumstances not known to the loan originator at the time the GFE is issued constitute a change in circumstance that permits a change in the GFE.

#### 72 **Expiration of the GFE**

- If the GFE is not accepted by the borrower by the date in box 2 of the Important Dates section, then the GFE is no longer binding.
  - The borrower must indicate an intention to proceed with the loan application to accept the GFE.
  - HUD provided no guidance on how the borrower indicates this intention; ergo, some lenders want a written acceptance while others accept oral consent.
  - Acknowledgments and signature lines cannot be added to the GFE.
  - The consumer cannot be required to sign the GFE.
  - An acknowledgement of receipt is not an acceptance of the GFE or an intention to proceed with the application.

#### 73 **Expiration of the GFE**

- If the GFE expires, the lender has the option of proceeding with the terms of the expired GFE or issuing a whole new GFE before closing
  - Hint – issue a new GFE before closing so there are no tolerance violations.
- RESPA does not impose a waiting period between issuing a new GFE and closing.
  - Some investors are requiring a 24 hour waiting period between the last GFE change and the closing.

#### 74 **Interest Rate Dependent Charges**

- The lender must issue a new GFE after locking in the interest rate with the borrower, unless none of the terms in the GFE change with the lock-in.
- The following may change in the GFE when the interest rate is locked:
  - The second and fourth boxes in the Important Dates section.
  - Payment amount (two places on page 1, and one place on page 3).
  - The credit in box 2 or the charge in box 3 of Block 2 of the GFE.
  - The Adjusted Origination Charge in Block A on pages 1 and 2, if Block 2 changes.
  - Per diem interest rate, total prepaid interest, and the estimated closing date in Block 10.
  - Your Charges for All Other Settlement Services (Block B) on pages 1 and 2, if Block 10 changes.

#### 75 **Page 2: Adjustments to Origination Fee**

- Why is it important to be able to adjust Block 2?
  - Discovery of the need for a higher cost service may or may not be a "changed

- circumstance" that permits adjustment of the fee disclosed on the GFE.
- When in doubt, use the opportunity to lock in interest rates as a means of adjusting fees rather than guessing whether the appraisal fee can be adjusted.

76  **Page 1: Important Dates**

77  **Page 1: Important Dates**


78  **Page 1: Important Dates**

79  **Page 1: Important Dates**


80  **New Construction Purchases**

- A new GFE may be issued for a loan to finance construction (or reconstruction) of a home IF all of the following are met:
  - The construction phase is longer than 60 days
  - A Certificate of Completion (Certificate of Occupancy) has not been issued yet
  - An initial GFE is given with a separate piece of paper stating that the loan originator may issue a new GFE at least 60 days before the closing
- A new GFE under these circumstances may be issued at least 60 days before closing. The original GFE is not binding when the new GFE is issued
  - We do not know if the borrower must accept the new GFE or whether the lender may continue to impose fees before the borrower accepts the new GFE

81  **Refunding Tolerance Violations**

82  **Page 3 of the HUD-1**

- The lender is responsible for providing all information needed to complete page 3 of the HUD-1, and the lender is responsible for any refunds due to tolerance violations.
  - Provide the four page Uniform Supplemental Closing Instructions to the closing agent to allow the closing agent to prepare page 3.

83  **Page 3 of the HUD-1**

- Listen to your closing agent when the closing agent says you are doing things wrong – the closing agent may be correct if the closing agent has unpublished advice.
  - For example, unpublished HUD advice states that the closing fee is not disclosed on line 1102 when the title agent performs the closing.

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**Refunding Tolerance Violations**

- A refund of a "10% bucket" violation is the amount exceeding 110% of the aggregate fees in the bucket.
- In the example above, the tolerance level is \$2286.90 and the refund is 8% of the bucket fees or \$166.10.
  - Note that it is to the lender's advantage to include as many fees as possible in the bucket to increase the tolerance.

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**Refunding Tolerance Violations**

- Technical and inadvertent errors, and tolerance violations, may be corrected. A revised HUD settlement statement should be provided by the closing agent within 30 days of closing.
  - A refund of a tolerance violation for a single item that cannot increase (e.g. the origination fee or transfer tax) is shown either on page 2 of the HUD-1 in the same section as the fee is found, or in the 200 section.
  - The designation for a refund of a tolerance violation for a single item is "\$\_\_\_\_\_ P.O.C. (lender) to meet tolerance" and the amount in the borrower's column reflects the amount in the GFE. If this credit is shown in the 200 section, list the service for which the refund is given.
  - If the refund is for a tolerance violation for the "10% bucket" charges, a credit for the amount of the refund is shown in the 200 section on page 1 of the HUD-1 as a "Cure for

10% Tolerance Category" (the "10% bucket" fees on page 2 of the HUD-1 are not revised lower).

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#### **Refunding Tolerance Violations**

- It does not matter whether the borrower or seller paid a required settlement service fee, or whether the lender paid the fee or gave the borrower a credit to pay for a fee. If the fee or group of fees violates tolerances, HUD expects the lender to refund the amount over the tolerance to the consumer, even if it means a windfall.

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#### **Are You Pondering What I'm Pondering?**

88 

#### **What You See is What You Got**

- HUD's RESPA FAQ's are incomplete.
  - There are many pages of hard questions left unanswered by HUD
  - Changes and reduction in HUD staff will slow down or eliminate further work on FAQ's
  - New situations arise for which there is no guidance
  - FAQ's are not binding on state regulators or courts
  - FAQ's cannot be extrapolated or interpolated to provide guidance where there is none
  - Some FAQ's appear to be inconsistent; some FAQ's appear to conflict with the RESPA rule
  - Guidance in PowerPoint presentations and private email answers conflict with the FAQ's or exceed the advice in the FAQ (what can you trust?)
- The following slides detail some of the unanswered issues and suggest work-arounds for a few issues.

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#### **Credit Reports**

- FNMA requires a second credit report prior to closing as part of its loan quality initiative. Is the second credit report fee disclosed in Block 3 of the GFE or as part of Block 1?
  - If the latest GFE was provided before FNMA announced its loan quality initiative, the need for an additional credit report is a "changed circumstance" permitting a change in the GFE within 3 business days of the announcement
  - If the latest GFE was provided after FNMA announced its loan quality initiative, then the fee disclosed in Block 3 for the credit report should include the cost of both credit reports
  - If you missed this issue, the lender has a 10% bucket tolerance to account for these mistakes
  - 
  -

90 

#### **Adding a Co-Borrower**

- May the GFE be based on and given to one co-borrower?
  - Each co-borrower does not have to receive his or her own copy of the GFE (compare this to TILA)
  - If the borrower does not credit qualify, the lender has a choice of denying the application or asking for a co-borrower. RESPA does not alter the lender's choices available under Regulation B, and RESPA does not dictate that each co-borrower must receive their own copy of the GFE
  - Adding a co-borrower is a "borrower requested change" that will impact the credit report fee (a fee is now required for the co-borrower) and some other charges
  - 
  - 
  -

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#### **Increased Fees for Added Services**

- Higher fees for re-draws of closing documents cannot be the basis for a revised GFE since document preparation fees are included in Block 1.
  - Block 1 only changes when the loan amount or loan program change

- Higher appraiser fees due to multiple visits to the property may be due to a changed circumstance that permits the lender to change the GFE.
  - Determining whether a changed circumstance occurred is subjective
  - One solution is to simply charge a high enough fee for origination to cover unanticipated fees in some closings. Nothing in fair credit laws prohibits higher fees for more difficult loans
  - Lenders have a 10% tolerance to cover unanticipated increases in appraiser fees

#### 92 **Tolerance Violations as a Competitive Tool**

- Some lenders will always quote fees in the GFE below actual costs to undercut the competition.
  - The HUD-1 does not have to match the GFE exactly. Some lenders will quote fees 10% low to attract borrowers
  - This marketing method was used extensively in other retail settings (“I will give you five pounds of coffee if I cannot beat your best deal”)
  - Quoting fees too low (to beat the competition) or too high (to avoid tolerance violations) both evade the requirement to quote fees in good faith
  - HUD provided no guidance on what action it will take if it finds lenders avoiding providing GFE disclosures in good faith
  - Enforcement of RESPA requirements will be left to each financial institution’s primary regulator

#### 93 **Errors in the GFE**


- There is no method to correct an obvious GFE error.
  - Nothing in the RESPA rule permits correction of errors in the GFE
  - HUD’s cryptic response that failure to follow its rule is a violation of Section 5 of RESPA begs the question – so what? Is there liability under state law? What does HUD or your primary regulator plan to do if there is an error? The lender can be fined, but will regulators take a hard line?
  - Potential solution: Hope that the borrower does not accept the GFE within the ten business day period that fees are guaranteed. If the GFE is not accepted, then a new GFE may be provided prior to closing
  - There is no guidance on what to do if the fees were not locked for at least ten days
  - Failing to place a fee in a Block may result in a tolerance violation
  - A GFE is “delivered” to a consumer when placed in the mail or handed to the consumer – there is no “recall” button and no return

#### 94 **Errors in the GFE**

- May a borrower reject a GFE after acceptance?
  - Some borrowers feel sorry for a lender that make a blatant error in a GFE, and do not want to hold the lender to the GFE. HUD gave us guidance on accepting a GFE, but none on rejecting a GFE
  - In theory, the consumer may reject the GFE after acceptance while the borrower is shopping for services (I found a better deal), but is rejection permitted after the ten business days are up?
  - Potential solution: Have the borrower withdraw the application and start over
  - But, HUD gave us no guidance on whether a GFE dies when an application is withdrawn
  - Some investors will not allow a revised GFE, fearing a claim of evasion of RESPA by the loan originator
  - Failure to be able to correct an erroneous GFE hurts the borrower, who cannot get a loan through that loan originator

#### 95 **Rejecting a GFE**

- If a lender rejects a broker prepared GFE after receiving the application from the broker, must an adverse action letter must be sent to the borrowers?
  - Receipt of an application under a lender's normal procedures triggers Regulation B requirements for notice of a credit decision
  - Rejection of an application for any reason (e.g. the GFE is bad) is adverse action (some lenders disagree)
  - The reason for rejection is that the lender does not provide loans on the terms requested
  - Potential solution: Require the broker to provide the GFE for inspection before sending the application. Rejection of the GFE before the application is received does not trigger Regulation B notice requirements

96  **If You Do Not Succeed at First...**

- If a loan application is not approved, and the lender wants to broker it out (or the mortgage broker wants to send the application to a different lender), can the GFE be changed?
  - HUD expressly stated in the RESPA FAQ that changing investors is not a changed circumstance that permits changes to the GFE
  - Potential solution: Disclose a high enough origination fee to cover any investor's fees. The lender can always lower Our Origination Charge at closing. The risk of this strategy is an allegation that Our Origination Charge is not disclosed in good faith
  - Potential solution: Disclose a high enough interest rate to cover any fees that the investor might want from a secondary market premium. The rate can always be lowered at closing
  - Potential Solution: Do not encourage the borrower to accept the GFE during the ten business days following delivery of the GFE

97  **Questions?**



Issue Date: RESPA News Monthly  
 May 2010, Posted On: 5/28/2010  
 In-Depth Reports

# Please do not kill the RESPA messenger

Column by Howard Lax

I was surprised by comments from attendees at a RESPA reform seminar earlier this year. Most reviews gave the presenters excellent marks, but a few attendees were sorely disappointed that the presenters could not sufficiently answer their questions.

Their disappointment was unexpected, but logical. More attendees are looking to the experts at seminars for "free" legal advice in lieu of hiring attorneys. This, in turn, results in tougher questions. As good as we "experts" are, there is simply too little guidance to confidently answer every question. When we say "I do not know," we really mean that the answer requires us to stretch existing guidance well beyond the bounds of reasonable interpretation.

Statutes and rules may be interpolated and extrapolated, bent, torqued and stretched. Under ideal conditions, statutes are accompanied by an extensive legislative history, which flows naturally into the rule-making process. Rules are preceded by plenty of opportunity to comment. The preambles to rules announce the agency's reasons for accepting or rejecting these comments. These sources help the "experts" extend the rule to new circumstances.

Unfortunately, the U.S. Department of Housing and Urban Development (HUD) threw out 35 years of informal advice and court decisions when it published the RESPA reform rule. Hence, the "experts" have little guidance upon which to base advice for real life situations.

Furthermore, HUD's 10-year path of rule-making has more twists than coastal Highway 1. Consequently, we have plenty of guidance on what nobody liked about HUD's proposals, but very little comment or guidance on the final rule.

HUD attempted to fill this void with informal guidance in the form of Frequently Asked Questions (FAQs), PowerPoint presentations, and e-mail responses to selected questions. Unfortunately, FAQs and public presentations are not rules, and informal guidance is not binding on HUD. Stretching a FAQ beyond its four corners often produces advice that HUD later contradicts. Having been burned more than once, the "experts" are understandably hesitant to respond to questions that are not expressly addressed by HUD FAQs and PowerPoint presentations.

The industry should not hold its breath waiting for further guidance from HUD. Significant changes in personnel were made at the HUD Office of Regulatory Affairs. **Ivy Jackson** moved out of that office, and her former supervisor, **William Matchneer**, is now a senior attorney advisor in the Office of General Counsel working on SAFE Act issues. **Barton Shapiro**, who worked for Jackson, is now doing his and Ivy's

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jobs. Bart reports to **Teresa Payne**, who has a background in Section 8 of RESPA. Rumors of other staff cuts at the Office of Regulatory Affairs were circulating. Consequently, HUD may have issued its final set of RESPA FAQs for the foreseeable future.

This leaves the "experts" with more new questions every day, but few answers. Here is a sampling of issues puzzling title agencies:

Is the second credit report that many lenders will obtain to satisfy Fannie Mae and Freddie Mac new loan quality initiatives disclosed as part of Line 801, Line 805 or a blank line in the 800 section of the HUD-1?

If a property insurance premium is shown on the GFE for a refinance loan (even though this is not required), but no premium is paid at closing, is Line 903 of the HUD-1 left blank or is a "0" shown in the borrower's column, and is hazard insurance included in the comparison table on Page 3 of the HUD-1?

If the lender conducts the closing and charges a closing fee, is the closing fee shown on Line 1102 or is it included in Line 801 of the HUD-1?

If the lender mails closing documents to the borrower for signature, is the notary fee paid by the borrower directly to the notary included in Line 1101 or in Line 801 of the HUD-1?

The borrower applied for a loan to buy a home in a short sale in May 2009. The borrower's purchase offers were rejected for two short sale properties before a purchase offer was accepted. Along the way, the loan officer provided six GFEs to the borrower, alternating between the old and new GFE forms. The most recent GFE form given to the borrower is not complete. Is the old HUD-1 form used at closing or the new HUD-1 form? If the new HUD-1 form is used, which GFE is used to complete the comparison charts on Page 3 of the HUD-1?

In a relocation loan, are costs reimbursed by the employer shown as credits in the 200 section of the HUD-1? Should the title agent revise the HUD-1 after the reimbursement is made to show a credit?

Michigan law (MCL 438.31b) states that most lenders "shall furnish a loan settlement statement to a borrower upon closing of the loan, indicating in detail the charges the borrower has paid or obligated himself to pay the lender or to any other person in connection with the loan." Does this permit the title agent to itemize costs included in Line 801, or should the lender prepare a separate closing statement to satisfy state law (similar to real estate brokers)?

May a HUD-1A Settlement Statement be used when the lender is paying some of the borrower's costs in a refinance loan? Some experts say that only credits tied to the interest rate are included on Line 802 of the HUD-1, and that lender credits not tied to the interest rate are shown in the 200 section, which only exists in the HUD-1 form.

This brings us to the next question: May a lender include some credits in the 200 section if they are not tied to the interest rate, and will this lead to lenders using Line 802 (which has a tolerance) only for discount points, and disclosing any credits in the 200 section (because there is no GFE disclosure and no tolerances for 200 section items).

The FAQ says that a notation may be added to the HUD-1 to show the points included in Line 801. May a similar notation be added to show the discount points included in Line 802?

May a mortgage broker be fined for preparing an erroneous GFE, or is only the lender fined when the GFE is in error? May a title agent be fined for making an error when preparing the HUD-1?

Split closings (the real estate broker's title agency issues the owner's policy and the lender's title agency issues the lender's policy) are common in Michigan. What does the lender's title agency do if the real estate broker's title agency refuses to reveal the split of the owner's policy premium between the agency and the underwriter?

Do not think for one moment that title agencies have a lock on the list of unanswered issues in RESPA reform. The loan originator list of questions is just as long:

Does acceptance of the GFE by one borrower permit the loan originator to impose fees on the other co-borrower?

What constitutes an "intention to proceed?"

If the lender requires information from the purchase agreement as items necessary to have an application (HUD frowns on requiring a copy of the purchase agreement), but a mortgage broker does not require the purchase agreement, may the lender prepare a separate GFE from the broker, and which GFE is controlling?

How "voluntary" does the request to a borrower for a signed IRS form 4506-T have to be before the GFE is provided?

If the lender requires verifications in a preapproval process and the borrower identifies a property before the preapproval is issued, does the lender have to use any verifications received before the GFE is mailed to prepare the GFE, or may the lender rely upon the statements of the borrower to prepare the GFE, regardless of when verification is received?

If a settlement service provider charges fees well above market rates, may a lender ask the provider to reduce fees. According to Regulation X, high fees are an indication of a possible kickback, but asking a provider that is referred by the lender to reduce fees is also an indication of a kickback.

Is a service provider list included with each revised GFE?

May a loan originator revise its list of providers after providing a GFE?

How does a loan originator determine that a provider is "available?" Is the list of providers based on providers generally available in the area, or must the loan originator know that every provider on the list can perform the services in the specific transaction?

What should a lender do when a borrower revises the application from an investor property to a second home just before closing (and no GFE was previously provided)?

Little advice has been provided for construction loans. The GFE may be revised at least 60 days prior to closing if the loan originator notified the borrower of this option. Does this mean a whole new disclosure is provided, or are there limitations on what may change? What standards should be set to determine the changes? The rule also leaves open the questions of (1) how many revised GFE's can be issued for a construction loan; (2) whether the lender is bound to issue new GFE's when there are changes in circumstance, or whether these changes can be rolled into one new GFE delivered 60 days prior to closing; (3) whether the GFE can be changed for other reasons (*e.g.*, locking in the interest rate) within 60 days of closing; and (4) whether you can extend the closing date for 60 days if you want to change the GFE just prior to closing. Also, there are some off the wall issues, such as whether the borrower may sign a commitment and lock in the loan right after issuing a revised GFE (and provide Truth in Lending disclosures at that time), put an affidavit on record to cloud title and then have the mortgage signed 60 days later.

I am sure that you can add questions to this list. Unfortunately, the "experts" cannot provide concrete answers to these issues with a significant degree of certainty. We only ask that you allow us to do the best we can at these programs, and that you do not shoot the messenger standing at the podium.

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**Name That GFE Block and HUD-1 Line Number**

**Instructions:** List the GFE Block number and HUD-1 Line number or HUD-1 Series (900s etc) that each charge would belong in. Some of the charges may have multiple answers such as Block 3 or Block 6 and other charges may be not applicable or "N/A". Also state whether the charge on the HUD-1 would be listed as charge in the borrower's column or outside the borrower's column.

**Key:** LO = loan originator      OTIP = Owner's title policy      LTIP = Lender's title policy

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
1. application fee	_____	_____	_____
2. application fee paid P.O.C.	_____	_____	_____
3. LO commitment	_____	_____	_____
4. title commitment/binder	_____	_____	_____
5. title - notary	_____	_____	_____
6. settlement/closing fee	_____	_____	_____
7. MERS registration	_____	_____	_____
8. LO processing fee	_____	_____	_____
9. tax service	_____	_____	_____
10. appraisal by 3 <sup>rd</sup> party	_____	_____	_____
11. appraisal by staff appraiser	_____	_____	_____
12. LO doc review	_____	_____	_____
13. LO doc prep	_____	_____	_____
14. LO email fee	_____	_____	_____
15. title - email fee	_____	_____	_____
16. LTIP endorsement	_____	_____	_____
17. deed prep	_____	_____	_____
18. OTIP endorsement	_____	_____	_____
19. home warranty	_____	_____	_____
20. doc recording service	_____	_____	_____
21. underwriting	_____	_____	_____
22. transfer tax	_____	_____	_____

If 50/50 split by state law 0%, 50% or 100% on GFE and HUD-1? \_\_\_\_\_%

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
23. LO wire fee	_____	_____	_____
24. termite on a VA loan	_____	_____	_____
25. annual property taxes due now	_____	_____	_____
26. lien cert charged by city	_____	_____	_____
27. title lien cert charge	_____	_____	_____
28. abstract/title search	_____	_____	_____
29. annual property taxes due in 6 months	_____	_____	_____
30. title examination	_____	_____	_____
31. origination point	_____	_____	_____
32. seller credit for appraisal	_____	_____	_____
33. judgment search	_____	_____	_____
34. discount point	_____	_____	_____
35. home inspection requested by borrower	_____	_____	_____
36. title copy fees title	_____	_____	_____
37. LO interest rate related credit for appraisal, tax service and credit report	_____	_____	_____
38. LO credit for appraisal, tax service and credit report NOT related to the interest rate	_____	_____	_____
39. survey required by lender	_____	_____	_____
40. LO copy fees	_____	_____	_____
41. survey required to issue LTIP	_____	_____	_____
42. doc stamps	_____	_____	_____
43. survey requested by borrower	_____	_____	_____
44. flood cert/determination	_____	_____	_____
45. abstract charged to seller	_____	_____	_____
46. attorney - LO review/doc prep	_____	_____	_____

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
47. attorney - deed preparation	_____	_____	_____
48. attorney - represent borrower at closing	_____	_____	_____
49. clearing title defects	_____	_____	_____
50. mortgage stamps	_____	_____	_____
51. excise tax	_____	_____	_____
52. title guaranty charge by state	_____	_____	_____
53. flood insurance	_____	_____	_____
54. credit life upfront	_____	_____	_____
55. credit life escrowed	_____	_____	_____
56. kickback	_____	_____	_____
57. title wire fee	_____	_____	_____
58. LO courier	_____	_____	_____
59. termite requested by borrower	_____	_____	_____
60. title - courier	_____	_____	_____
61. LO doc delivery	_____	_____	_____
62. title - doc delivery	_____	_____	_____
63. rate lock extension	_____	_____	_____
64. escrow waiver fee	_____	_____	_____
65. Upfront MIP	_____	_____	_____
66. Monthly PMI	_____	_____	_____
67. Homeowners Assoc. dues	_____	_____	_____
68. Homeowners Assoc. transfer fee	_____	_____	_____
69. condominium dues	_____	_____	_____
70. condominium certificate or questionnaire by 3 <sup>rd</sup> party	_____	_____	_____
71. lender closing fee	_____	_____	_____
72. VA funding fee	_____	_____	_____
73. MIP refund	_____	_____	_____
74. Yield Spread Premium	_____	_____	_____

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
75. lump sum lender credit	_____	_____	_____
76. record Power of Attorney	_____	_____	_____
77. subordination fee (2 <sup>nd</sup> trust lender)	_____	_____	_____
78. LO subordination processing fee	_____	_____	_____
79. title - US Patriot Act search fee	_____	_____	_____
80. LO – US Patriot Act search fee	_____	_____	_____
81. lien search	_____	_____	_____
82. record deed - Land Records	_____	_____	_____
83. record Deed of Trust - Land Records	_____	_____	_____
84. Owner’s title insurance policy	_____	_____	_____
85. Lender’s title insurance policy	_____	_____	_____
86. Lender paid mortgage insurance	_____	_____	_____
87. LO survey review fee	_____	_____	_____
88. title – survey review fee	_____	_____	_____
89. LO regulatory compliance fee	_____	_____	_____
90. title - regulatory compliance fee	_____	_____	_____

**Name That GFE Block and HUD-1 Line Number**

**Instructions:** List the GFE Block number and HUD-1 Line number or HUD-1 Series (900s etc) that each charge would belong in. Some of the charges may have multiple answers such as Block 3 or Block 6 and other charges may be not applicable or "N/A". Also state whether the charge on the HUD-1 would be listed as charge in the borrower's column or outside the borrower's column.

**Key:** LO = loan originator    OTIP = Owner's title policy    LTIP = Lender's title policy

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
1. application fee	1	801	out
2. application fee paid P.O.C.	1	801	out
3. LO commitment	1	801	out
4. title commitment/binder	4	1101	in
5. title - notary	4	1101	in
6. settlement/closing fee	4	1101	in
7. MERS registration	1	801	out
8. LO processing fee	1	801	out
9. tax service	3 or 6	806 or 1301	in
10. appraisal by 3 <sup>rd</sup> party	3 or 6	804 or 1301	in
11. appraisal by staff appraiser	1	801	out
12. LO doc review	1	801	out
13. LO doc prep	1	801	out
14. LO email fee	1	801	out
15. title - email fee	4	1101	in
16. LTIP endorsement	4	1101 & 1104	in/out
17. deed prep	4	1101	in
18. OTIP endorsement	5	1103	in
19. home warranty	n/a	1300s	in
20. doc recording service	4	1101	in
21. underwriting	1	801	in
22. transfer tax	8	1203	in

If 50/50 split by state law 0%, 50% or 100% on GFE and HUD-1? 50%

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
23. LO wire fee	1	801	in
24. termite on a VA loan	3 or 6	800s or 1300s	in
25. annual property taxes due now	n/a	900s	in
26. lien cert charged by city	7	1201	in
27. title lien cert charge	4	1101	in
28. abstract/title search	4	1101	in
29. annual property taxes due in 6 months	n/a	900s if collecting	in unless POC
30. title examination	4	1101	in
31. origination point	1	801	out
32. seller credit for appraisal	n/a	200/500s	in
33. judgment search	4	1101	in
34. discount point	1 or 2	801 or 802	out
35. home inspection requested by borrower	n/a	1300s	in
36. title copy fees title	4	1101	in
37. LO interest rate related credit for appraisal, tax service and credit report	2	802	out
38. LO credit for appraisal, tax service and credit report NOT related to the interest rate	n/a	200s	in
39. survey required by lender	3 or 6	800s or 1300s	in
40. LO copy fees	1	801	out
41. survey required to issue LTIP	4	1101	in
42. doc stamps	8	1203	in
43. survey requested by borrower	n/a	1300s	in
44. flood cert/determination	3 or 6	807 or 1300s	in
45. abstract charged to seller	4	1101	in
46. attorney - LO review/doc prep	1	801	in

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
47. attorney - deed preparation	4	1101	in
48. attorney - represent borrower at closing	n/a	1100s	in
49. clearing title defects	4	1101	in
50. mortgage stamps	8	1203	in
51. excise tax	8	1203	in
52. title guaranty charge by state	4	1100s	in
53. flood insurance	11	900s	in
54. credit life upfront	n/a	1300s	in
55. credit life escrowed	9	1001	in
56. kickback	n/a	n/a	n/a
57. title wire fee	4	1101	in
58. LO courier	1	801	out
59. termite requested by borrower	n/a	1300s	in
60. title - courier	4	1101	in
61. LO doc delivery	1	801	out
62. title - doc delivery	4	1101	in
63. rate lock extension	2	802	out
64. escrow waiver fee	2	802	out
65. Upfront MIP	3	902	in
66. Monthly PMI	9 if escrowed	1001	in
67. Homeowners Assoc. dues	n/a	1300s	in
68. Homeowners Assoc. transfer fee	n/a	1300s	in
69. condominium dues	n/a	1300s	in
70. condominium certificate or questionnaire by 3 <sup>rd</sup> party	3	800s	in
71. lender closing fee	1	801	out
72. VA funding fee	3	900s	in
73. MIP refund	n/a (show net)	n/a (show net)	n/a
74. Yield Spread Premium	2	802	out

<u>Charge</u>	<u>GFE Block</u>	<u>HUD-1 Line</u>	<u>In or Out of Column</u>
75. lump sum lender credit	2 or n/a	802 or 200s	out/in
76. record Power of Attorney	7	1201 + blank	in/out
77. subordination fee (2 <sup>nd</sup> trust lender)	3	800s	in
78. LO subordination processing fee	1	801	out
79. title - US Patriot Act search fee	4	1101	in
80. LO – US Patriot Act search fee	1	801	out
81. lien search	4	1101	in
82. record deed - Land Records	7	1201	in
83. record Deed of Trust - Land Records	7	1201	in
84. Owner's title insurance policy	5	1103	in
85. Lender's title insurance policy	4	1101/1104	in/out
86. Lender paid mortgage insurance	n/a	n/a	n/a
87. LO survey review fee	1	801	out
88. title – survey review fee	4	1101	in
89. LO regulatory compliance fee	1	801	out
90. title - regulatory compliance fee	4	1101	in



# Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	
Originator Phone Number	
Originator Email	
	Property Address
	Date of GFE

## Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at [www.hud.gov/respa](http://www.hud.gov/respa). If you decide you would like to proceed with this loan, contact us.

## Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

## Important dates

- The interest rate for this GFE is available through [ ] . After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
- This estimate for all other settlement charges is available through [ ]
- After you lock your interest rate, you must go to settlement within [ ] days (your rate lock period) to receive the locked interest rate.
- You must lock the interest rate at least [ ] days before settlement.

## Summary of your loan

Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ per month
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of %.
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$ . The maximum it can ever rise to is \$
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.

## Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ [ ] .

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

## Summary of your settlement charges

<b>A</b>	Your Adjusted Origination Charges (See page 2.)	
<b>B</b>	Your Charges for All Other Settlement Services (See page 2.)	
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	\$

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges										
1. <b>Our origination charge</b> This charge is for getting this loan for you.										
2. <b>Your credit or charge (points) for the specific interest rate chosen</b> <input type="checkbox"/> The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [ ] for this interest rate of [ ] %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ [ ] for this interest rate of [ ] %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.										
<b>A</b> Your Adjusted Origination Charges		\$								
Your Charges for All Other Settlement Services										
3. <b>Required services that we select</b> These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Service	Charge								
Service	Charge									
4. <b>Title services and lender's title insurance</b> This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.										
5. <b>Owner's title insurance</b> You may purchase an owner's title insurance policy to protect your interest in the property.										
6. <b>Required services that you can shop for</b> These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Service	Charge								
Service	Charge									
7. <b>Government recording charges</b> These charges are for state and local fees to record your loan and title documents.										
8. <b>Transfer taxes</b> These charges are for state and local fees on mortgages and home sales.										
9. <b>Initial deposit for your escrow account</b> This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other [ ] .										
10. <b>Daily interest charges</b> This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ [ ] per day for [ ] days (if your settlement is [ ] ).										
11. <b>Homeowner's insurance</b> This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Policy	Charge								
Policy	Charge									
<b>B</b> Your Charges for All Other Settlement Services		\$								
<b>A + B</b> Total Estimated Settlement Charges		\$								



# Instructions

## Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> <li>Our origination charge</li> <li>Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate)</li> <li>Your adjusted origination charges (after you lock in your interest rate)</li> <li>Transfer taxes</li> </ul>	<ul style="list-style-type: none"> <li>Required services that we select</li> <li>Title services and lender's title insurance (if we select them or you use companies we identify)</li> <li>Owner's title insurance (if you use companies we identify)</li> <li>Required services that you can shop for (if you use companies we identify)</li> <li>Government recording charges</li> </ul>	<ul style="list-style-type: none"> <li>Required services that you can shop for (if you do not use companies we identify)</li> <li>Title services and lender's title insurance (if you do not use companies we identify)</li> <li>Owner's title insurance (if you do not use companies we identify)</li> <li>Initial deposit for your escrow account</li> <li>Daily interest charges</li> <li>Homeowner's insurance</li> </ul>

## Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

*Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.*

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate <sup>1</sup>	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ <b>more</b> every month	You will pay \$ <b>less</b> every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be <b>reduced</b> by \$	Your settlement charges will <b>increase</b> by \$
How much your total estimated settlement charges will be	\$	\$	\$

<sup>1</sup>For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

## Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
<b>Total Estimated Settlement Charges</b>				

## If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.





# A. Settlement Statement (HUD-1)

## B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.);" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

## J. Summary of Borrower's Transaction

<b>100. Gross Amount Due from Borrower</b>	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
<b>Adjustment for items paid by seller in advance</b>	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
<b>120. Gross Amount Due from Borrower</b>	
<b>200. Amount Paid by or in Behalf of Borrower</b>	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
<b>Adjustments for items unpaid by seller</b>	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
<b>220. Total Paid by/for Borrower</b>	
<b>300. Cash at Settlement from/to Borrower</b>	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
<b>303. Cash</b> <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

## K. Summary of Seller's Transaction

<b>400. Gross Amount Due to Seller</b>	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
<b>Adjustment for items paid by seller in advance</b>	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
<b>420. Gross Amount Due to Seller</b>	
<b>500. Reductions in Amount Due to seller</b>	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
<b>Adjustments for items unpaid by seller</b>	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
<b>520. Total Reduction Amount Due Seller</b>	
<b>600. Cash at Settlement to/from Seller</b>	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	( )
<b>603. Cash</b> <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

**L. Settlement Charges**

				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
<b>700. Total Real Estate Broker Fees</b>					
Division of commission (line 700) as follows :					
701. \$	to				
702. \$	to				
703. Commission paid at settlement					
704.					
<b>800. Items Payable in Connection with Loan</b>					
801. Our origination charge		\$	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen		\$	(from GFE #2)		
803. Your adjusted origination charges			(from GFE #A)		
804. Appraisal fee to			(from GFE #3)		
805. Credit report to			(from GFE #3)		
806. Tax service to			(from GFE #3)		
807. Flood certification to			(from GFE #3)		
808.					
809.					
810.					
811.					
<b>900. Items Required by Lender to be Paid in Advance</b>					
901. Daily interest charges from	to	@ \$	/day	(from GFE #10)	
902. Mortgage insurance premium for	months to			(from GFE #3)	
903. Homeowner's insurance for	years to			(from GFE #11)	
904.					
<b>1000. Reserves Deposited with Lender</b>					
1001. Initial deposit for your escrow account			(from GFE #9)		
1002. Homeowner's insurance	months @ \$		per month \$		
1003. Mortgage insurance	months @ \$		per month \$		
1004. Property Taxes	months @ \$		per month \$		
1005.	months @ \$		per month \$		
1006.	months @ \$		per month \$		
1007. Aggregate Adjustment			-\$		
<b>1100. Title Charges</b>					
1101. Title services and lender's title insurance			(from GFE #4)		
1102. Settlement or closing fee		\$			
1103. Owner's title insurance			(from GFE #5)		
1104. Lender's title insurance		\$			
1105. Lender's title policy limit \$					
1106. Owner's title policy limit \$					
1107. Agent's portion of the total title insurance premium to		\$			
1108. Underwriter's portion of the total title insurance premium to		\$			
1109.					
1110.					
1111.					
<b>1200. Government Recording and Transfer Charges</b>					
1201. Government recording charges			(from GFE #7)		
1202. Deed \$	Mortgage \$		Release \$		
1203. Transfer taxes			(from GFE #8)		
1204. City/County tax/stamps	Deed \$		Mortgage \$		
1205. State tax/stamps	Deed \$		Mortgage \$		
1206.					
<b>1300. Additional Settlement Charges</b>					
1301. Required services that you can shop for			(from GFE #6)		
1302.		\$			
1303.		\$			
1304.					
1305.					
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>					



## **Property Tax Appeals**

**David E. Nykanen, Esq.**  
**Steinhardt Pesick & Cohen**  
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### **I. Scope of Discussion**

- A. What types of property?
  - 1. Real Property
    - a. What is defined as real property.
    - b. Determining the true cash value of real property; statutory requirements.
  - 2. Personal Property
    - a. What is defined as personal property.
    - b. Self-reporting nature of personal property assessment.
    - c. Penalties for failure to report.
    - d. STC tables and the true cash value of personal property.

### **II. The Process**

- A. The Formal Process:
  - 1. Notices of Assessment
    - a. Timing.
    - b. Content
  - 2. Boards of Assessor's Review
  - 3. Boards of Review
  - 4. Filing before the Tribunal

- a. Forum: All valuation and classification appeals are filed in one location: The Michigan Tax Tribunal. An appeal can be filed before the Entire Tribunal or the Small Claims Division, depending upon the classification of the property and the amount of SEV in dispute.
- b. Deadlines:
  - i. May 31: Commercial and Industrial classified properties.
  - ii. July 31: Agricultural and Residential classified properties.

## B. Today's Reality

- 1. If a case is not settled in the first year and a half (or so), a Petitioner (i.e. owner) will incur the expense of obtaining an appraisal in the Entire Tribunal. This is not merely a "financing"-type appraisal. This is a litigation appraisal, prepared by an appraiser who has experience in the Tribunal, and who can testify and survive cross-examination regarding the appraisal. In other words, it's expensive.
- 2. For appeals filed this year, if the cases are not settled, I would expect a hearing to be scheduled in late 2012-early 2013. If a hearing is held, I would expect an Opinion anywhere from mid-2013 to mid-2014.
- 3. The volume of appeals is historically high. There are seven (7) Tribunal Judges, when all slots are filled. It has been rare for all 7 slots to be filled, and when they are it is usually for a brief time period.
- 4. It is not uncommon for a Tribunal Judge to leave the bench AFTER the hearing, but BEFORE writing an Opinion, which means that a Judge who was not present at the hearing will be writing an Opinion based upon a Transcript.

## III. Approaches to Value

- A. Income
- B. Cost
- C. Sales Comparison/Market

## IV. Selected Issues in the Income Approach

- A. Market rent vs. actual rent
- B. Actual expense ratios vs. customary expense ratios
- C. Capital reserves as an expense
- D. Treatment of current property taxes
- E. Occupancy/Vacancy percentages
- F. Capitalization rates (base and tax-loaded)

**V. Selected Issues in the Cost Approach**

- A. Functional obsolescence
- B. External obsolescence
- C. Year of construction

**VI. Selected Issues in the Sales Comparison/Market Approach**

- A. Availability of arms-length transactions
- B. Identifying true comparables.
- C. Identifying appropriate adjustments.
- D. The Tribunal prefers quantitative adjustments (i.e. actual percentages), rather than qualitative adjustments (up or down).