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In-Depth Reports

HUD releases another round of final rule guidance, further clarifies existing FAQs

The Department of Housing and Urban Development (HUD) updated its [RESPA final rule frequently asked \(FAQ\) questions](#) guide on April 2, expanding what began as a 16-page document in August 2009 to what is now a 62-page report that provides additional instructions and answers questions that have surfaced over the new Good Faith Estimate (GFE) and HUD-1 Settlement Statement forms. This is just one of numerous updates HUD has released to the industry, and since the new forms went into effect on Jan. 1, HUD has twice added to the massive document.

In this new release, several already existing FAQs were revised to provide further clarification. Among these was a FAQ found on Page 11 addressing whether a loan officer can provide a GFE without knowing the borrower's property address. HUD says yes.

"A loan originator can determine that a property address is not one of the required pieces of information that the loan originator needs in order to issue a GFE. It is important to note that a loan originator must consistently apply its policy on the information it deems necessary to issue a GFE, and the RESPA rule requires a loan originator to issue a GFE whenever it receives information sufficient to complete an application for a GFE," the FAQ states.

Consistent with guidance given in a recent RESPA Webcast conducted by HUD, the FAQ also states that if a loan originator receives an application for a preapproval and that application included all of the pieces of information that the loan originator requires to issue a GFE, the loan originator must issue a GFE. In addition, HUD says that if a GFE is issued without a property address, the future receipt of the property address is not a changed circumstance that would allow the loan originator to issue a revised GFE.

In this round of FAQs, HUD also provided an answer to the following question: "Does RESPA prevent a loan originator from verifying information on an application for a preapproval?"

According to HUD, the RESPA regulations do not address preapprovals. It answered the question this way:

"If the loan originator is missing one of the elements it requires for a loan application (*e.g.*, the property address) and is not required to provide a GFE, the originator is not prevented from verifying information for which the customer voluntarily provides documentation. The loan originator can also always use its own sources to independently verify the information on a borrower's application for a preapproval, regardless of whether it could also be treated as an application for a GFE."

HUD warns, however, that if a loan originator should issue a GFE along with the preapproval — specifically, the customer's application has sufficient information to be treated as an application for a GFE — then all the requirements of the GFE apply.

These requirements include the prohibition of a loan originator to require that a prospective borrower provide supplemental documentation to verify the information provided on the application as a condition of providing the GFE; and the limitation on fees that a loan originator can charge the prospective borrower as a condition of providing the GFE.

According to HUD, for purposes of addressing the above questions, a preapproval is defined as "a document issued by a lender stating that a consumer qualifies for a specific loan amount." HUD indicated that a preapproval is never to be used as a substitute for a GFE.

"If an applicant has chosen a property to purchase and the loan originator is willing to qualify the applicant for a specific loan amount, then a loan originator should issue the applicant a GFE that facilitates shopping for a loan, not just a preapproval used to shop for a property. For example, a lender may never issue only a preapproval to an applicant seeking to refinance his or her loan; the lender must also issue a GFE," HUD said.

HUD also provided guidance on the use of worksheets before and during the loan transaction process. It was again consistent with guidance provided in its recent RESPA educational Webcast. HUD said a worksheet can be provided to a customer for a rate quote in a situation in which the customer does not want to provide the information necessary to generate a GFE.

However, HUD warned that loan originators need to ensure the following:

"To eliminate consumer confusion, a worksheet should not look like a GFE and should not lead the customer to believe that it is a GFE; a loan originator should never use a worksheet in lieu of a GFE; and as stated in previous guidance, under RESPA regulations, when a loan originator receives an application or information sufficient to complete an application, the loan originator must issue a GFE," HUD stated.

HUD also added a FAQ that says loan originators may use a worksheet to provide to the consumer additional information about the loan transaction, such as the amount of cash needed to close, seller credits and other non-loan transaction fees.

On Page 23, the answer to the following question under the heading "GFE Important Dates," was updated: "If a lender does not offer a rate lock, how should Line 1 in the 'Important dates' section on the GFE be completed?"

According to HUD, line 1 is completed the same way whether or not the lender offers a rate lock. "In line 1, the loan originator must state the date, and if applicable, time until which the interest rate for the GFE will be available," HUD said.

HUD also revised FAQ Nos. 7 and 8 (found on Page 28) regarding block 1 on Page 2 of the GFE.

In FAQ No. 7, HUD addresses the question of where a loan originator's commitment fee would be disclosed. This fee is defined as an administrative fee to provide a loan commitment. HUD said the fee would be included in block 1 as part of the overall origination charge.

"Our origination charge' includes processing, application, administration fees, underwriting, document preparation, wire, lender inspection, mortgage broker, loan handling and other miscellaneous origination services provided by or on behalf of the loan originator," the FAQ states.

In FAQ No. 8, HUD answers whether the loan originator is allowed to issue a revised GFE with an updated charge in block 1, if all or a portion of the charge in block 1 is calculated as a percentage of the loan amount and the loan amount changes. HUD says yes, "but, only if issuance of a revised GFE is permissible under 24 CFR § 3500.7(f)." HUD adds, "In particular, if the loan amount changes and all or a portion of block 1 is calculated as a percentage of the loan amount, then that portion in block 1 may be recalculated."

HUD provided further guidance for the following two FAQs on Pages 42 and 43, which address tolerance violations and curing.

The first asks, "How is a potential tolerance violation that is corrected by the lender shown on the HUD-1?"

HUD states: "The settlement agent must prepare a revised HUD-1 that states the actual charges paid by the borrower and seller. If the lender pays for a portion of a charge to cure a potential tolerance violation, the amounts for the charge shown on Page 2 of the HUD-1 must be corrected to show the actual amount charged to the borrower. The settlement agent should include on a blank line in the applicable series a notation that the lender has made a P.O.C. payment of a specified amount to correct a potential tolerance violation. After the revised HUD-1 has been prepared by the settlement agent, the settlement agent must provide the revised HUD-1 to the borrower, the lender and the seller as appropriate."

The other FAQ updated in this section states: "May a credit for a tolerance cure be listed on Page 1 of the HUD-1?" HUD says yes, the cure can be listed as a credit on Page 1 with a description of the service or services that the credit is applied to. In addition, HUD says that if the tolerance cure is applied to the overall tolerance category "Charges That in Total Cannot Increase More Than 10 percent," the tolerance cure credit may be listed as a lump sum amount on a blank line in lines 204 thru 209 with a description of the tolerance category cure.

In this release, HUD also included the following new FAQs:

Page 5 under the heading “General”

Q: If we furnish separate copies of the HUD-1 to the borrower and seller in a transaction, can we leave Sections B through I (“Type of Loan” through “Settlement Date”) blank on either copy of the HUD-1?

A: No. Sections B through I must be completed on both the borrower’s and the seller’s copies of the HUD-1. However, section K may be left blank on the borrower’s copy of the HUD-1, and section J may be left blank on the seller’s copy.

Page 29, under the heading “GFE – Block 1”

Q: If the credit for the interest rate chosen (sometimes known as “yield spread premium” or YSP) is \$4,000, how much of that \$4,000 do I put in Block 1?

A: It depends. Block 1, in effect, contains the mortgage broker’s compensation for the loan plus any lender fees for origination (except for any charge for the specific interest rate chosen). The amount shown in Block 1 may contain all or some of the credit for the interest rate chosen.

Page 32, under the heading “GFE – Block 3”

Q: What block on the GFE should contain a charge from the borrower’s employer or banking institution for the verification of employment (VOE) and the verification of deposit (VOD)?

A: If the loan originator knows at the time it provides the GFE that there will likely be a charge by the borrower’s employer or banking institution for the VOE or VOD, the amount of that charge should be estimated in block 3 of the GFE.

Page 34, under the heading “GFE – Block 8”

Q: What is the definition of transfer taxes?

A: Transfer taxes are taxes charged by state and local governments on mortgages and home sales based upon the loan amount or sales price and on the property address.

Q: How is the transfer tax disclosed in block 8 of the GFE?

A: 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.

Page 35, under the heading “GFE – Block 11”

Q: How should Block 11 be completed in a refinance where the new lender is requiring the borrower to maintain his or her existing hazard and flood insurance?

A: If a borrower is refinancing the mortgage on his or her home and the new lender is requiring the borrower to maintain the existing hazard and flood insurance policies on the home, Block 11 may be completed with \$0.

Q: If a loan contains mortgage insurance that is paid by the lender (LPMI) and will not be charged separately to the borrower, should the loan originator disclose it in the “Summary of your loan” section of the GFE or as a charge in any block on the GFE?

A: No, because the LPMI has already been captured in the interest rate and is not charged separately to the borrower, it is not disclosed on the GFE.

Page 50, under the heading “HUD-1 800 Series”

Q: May the lender itemize the charges paid through the credit listed in line 803 on the HUD-1?

A: Yes. A lender may itemize the charges for third-party settlement services on an additional page to the HUD-1. See 24 CFR § 3500.9(a)(9). The lender may also itemize those charges outside the columns on a blank line in the 800 series.