

Mortgage Banking Update

PATTON BOGGS LLP | February 1, 2010

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HUD Issues Another Round of FAQs

Nationwide Mortgage Licensing System Implements Online Criminal Background Checks

Did You Know?

If you have any questions or if you require additional information, please contact:

Richard J. Andreano, Jr.
202-457-7517 (Direct)
202-457-6315 (Fax)
randreano@pattonboggs.com

John D. Socknat
202-457-7513 (Direct)
202-457-6315 (Fax)
jsocknat@pattonboggs.com

Michael S. Waldron
214-758-3436 (Direct)
214-758-1550 (Fax)
mwaldron@pattonboggs.com

HUD ISSUES ANOTHER ROUND OF FAQs

The Department of Housing and Urban Development (HUD) on January 29, 2010 issued another [version](#) of its frequently asked questions (FAQs) regarding the new Real Estate Settlement Procedures Act (RESPA) rule. The version is dated January 28, 2010.

Broker Issued GFE. For the first time, HUD directly addresses in the FAQs the question of whether a lender who accepts a loan application from a mortgage broker who already issued a good faith estimate (GFE) can issue the lender's own version of an initial GFE. HUD advises that the lender may not issue its own initial GFE—the lender is bound by the charges and terms disclosed on the GFE provided by the broker.

GFE Format. Reflecting its position that the GFE is a standardized form that may be changed only as expressly authorized by HUD, HUD advises that the pagination of the GFE may not be changed. However, HUD confirms prior informal advice that the GFE may be on legal size paper.

HUD-1 Format. Consistent with prior advice regarding the GFE, HUD advises that the shading and margins in the HUD- 1 may be changed.

Revised GFE and Intent to Proceed. Previously in the FAQs, HUD indicated that when a revised GFE is issued after the shopping period has ended and the borrower has indicated an intention to proceed with the loan, the originator must enter a new shopping period of at least ten business days in Line 2 of the Important Dates section. It was assumed that this advice applied to situations in which there were changes to the non-rate dependent charges, as such charges are subject to the minimum ten business day shopping period. HUD informally advised that the borrower then must express an intent to accept the revised GFE during the new shopping period. In the latest FAQs, HUD reverses its position and now advises that in the revised GFE the loan originator completes Line 2 by inserting the date from the original GFE because the borrower previously expressed an intent to move forward with the transaction.

Block 1 and Other Non-Rate Dependent Charges. HUD more clearly reflects its position that Block 1 of the GFE (our origination charge) includes non-interest rate dependent charges and is not related to the interest rate. HUD notes that Block 1, and also Blocks 3, 4, 5, 6, 7, 8, 9 and 11, include non-interest rate dependent charges and may not change unless there is a changed circumstance or borrower-requested change.

LOOKING AHEAD:

RESPA Ready 2010 - What You Need to Know to Comply

January 28, 2010 New Orleans, LA 8:30 - 4:30 p.m., CST
February 4, 2010 Washington, DC 8:30 - 4:30 p.m., EST
Topic: New RESPA Requirements
Patton Boggs Participant:
Richard Andreano

Webinar: 2010 NMLS User Conference & Training

February 11, 2010
Topic: Emerging Issues Pertaining to the NMLS
Time: 9:00 – 10:00 a.m. PST
Patton Boggs participant:
Haydn Richards

New RESPA Regulations for Mortgage Finance: Are You Ready?

February 23, 2010
Topic: New RESPA Requirements
Time: 1:00 – 2:30 p.m. EST
Patton Boggs participant:
Richard Andreano
50% off discount by using this link: www.sp-03.com/r.php?products/tlu3ba?trk=ZDFCT

HUD also advises that Block 1 may not change based on the locking of the interest rate and that “Block 1 can increase due to a changed circumstance if the change affects the loan amount and all or a portion of the Origination.

Charges were calculated as a percentage of the loan amount. Block 1 may also increase if the borrower either requests a different loan product or the borrower is no longer eligible for the loan product contained in the initial GFE, but is eligible for a different loan product.” If HUD is stating that these are the only cases in which Block 1 may change based on a changed circumstance, that would represent too narrow a view of changes that legitimately affect the origination charges of a loan originator.

Consents for Verifications with GFE. HUD advises that a loan originator may not require a borrower to sign consents to verify employment, income or deposits as a condition of issuing a GFE. HUD explains that such a requirement “may inhibit borrowers from shopping for the best loan by leading borrowers to believe that they are committed to obtaining a loan from that loan originator.” However, HUD adds that a borrower may voluntarily sign consents prior to the issuance of a GFE to facilitate the loan process.

Fees or Verification Documents with Preapprovals. HUD advises that a loan originator may not request verification documents or charge fees before issuing a pre-qualification or pre-approval. In addressing the issue further, HUD notes the prohibition under the revised RESPA rule of imposing a fee other than a credit report fee on a borrower before issuing a GFE. It is unclear if HUD’s position that fees may not be charged in connection with a pre-qualification or pre-approval applies to all fees or only fees other than a fee for a credit report.

Independent Verification Activity. HUD states that the revised RESPA rule prohibits a loan originator from requiring, before issuing a GFE, that an applicant provide supplemental documentation to verify information provided by the applicant on the application. However, HUD clarifies that the rule does not bar a loan originator from using its own sources before issuing a GFE to independently verify the information provided by the applicant.

Escrow Account Waivers. HUD advises that (1) an escrow waiver fee is a type of loan level price adjustment and may be part of the calculation of Block 2 of the GFE, which is for the credit or charge for the rate chosen, and (2) alternatively, if the escrow waiver is known at the time of application, the charge for the waiver can be included in Block 1 for our origination charge. HUD also states that when a borrower asks to waive the escrow account after the interest rate has been locked, the charge should be disclosed by adjusting Block 2 of the GFE. However, HUD explains that an escrow waiver cannot be considered a borrower-requested change and the GFE cannot be revised to reflect an escrow account waiver charge if the initial GFE indicated that there was no escrow account.

Condominium Certificates and Questionnaires. HUD advises that if a lender requires a condominium certificate and questionnaire, the charge should be disclosed in Block 3 of the GFE on the basis that the service is performed by a third party and the borrower is not permitted to shop for the provider of the service.

Non-Endorsement Statement in Written List. When a loan originator permits a borrower to shop for the provider of one or more settlement services, under the revised RESPA rule the originator must issue a separate written list that identifies at least one provider for each applicable service. HUD confirms prior informal advice that in the written list of providers the originator may include a statement that the listing of a service provider does not constitute an endorsement of the provider. Industry members had raised concerns that borrowers may misinterpret the identification of a provider as the endorsement of a provider.

Issuance of Revised GFE with Rate Lock. Previously HUD advised in the FAQs that if a borrower locks the interest rate after a GFE was issued a revised GFE must be issued if there are any changes to the interest rate dependent charges or loan terms. However, HUD informally began advising that a revised GFE must be issued anytime a rate is locked because, if nothing else, the Important Dates portion of the GFE will change. HUD revised the FAQs to reflect the updated position. *Third Party Fees Not Paid by Borrower.* HUD advises that, except for administrative and processing services, the loan originator must list all required third party services on the GFE and HUD-1 regardless of whether the charge is paid by the borrower, seller, loan originator or any other party. HUD explains that if a party other than the borrower pays for a fee that was included in the GFE, the fee should be disclosed in the borrower's column on the HUD-1, with an offsetting credit to the borrower in the HUD-1. A credit can be shown in Lines 204 to 209 of the HUD-1, or as a negative number in Line 803 of the HUD-1. (A lender would show a negative number in line 803 of the HUD-1 when the lender will pay all loan originator compensation and some or all third party fees based on the rate chosen.)

Changed Circumstances. HUD updates various FAQs that address situations that may constitute a changed circumstance to note that a loan originator may issue a revised GFE reflecting only increased charges that result from the changed circumstance.

Appraisal Management Company. HUD advises that if an appraisal is ordered through an appraisal management company and the management company engages an appraisal firm to perform the appraisal, the management company is identified in the HUD-1 as the recipient of the appraisal charge.

NATIONWIDE MORTGAGE LICENSING SYSTEM IMPLEMENTS ONLINE CRIMINAL BACKGROUND CHECKS

The Nationwide Mortgage Licensing System (NMLS) recently implemented its online criminal background check functionality. In order to submit an

online criminal background check, a mortgage loan originator must submit a criminal background check request through the NMLS and pay a fee of \$39 for an electronic fingerprint scan or \$49 for a paper fingerprint card scan. After submitting the request, the mortgage loan originator will receive a PIN and will then be able to schedule an appointment at an NMLS-approved fingerprinting vendor. All new and existing mortgage loan originators must submit the online criminal background check pursuant to the deadlines imposed by the various state regulators.

Further information regarding the state deadlines and instructions for completing the process can be found [here](#) on the NMLS website.

DID YOU KNOW?

- The update to the Nationwide Mortgage Licensing System (NMLS) that became effective January 25, 2010 modified the language of several of the disclosure questions that must be answered by any individual that maintains their own individual NMLS record (e.g., control persons, branch managers and mortgage loan originators). These changes require all individuals to review and respond to all of the new questions before their next filing may be submitted. We note that many of the updated questions were revised to bring the language of the disclosure questions in line with the requirements of the SAFE Act.

This information is not intended to constitute, and is not a substitute for, legal or other advice. You should consult appropriate counsel or other advisers, taking into account your relevant circumstances and issues. While not intended, this update may in part be construed as an advertisement under developing laws and rules. You may receive this industry update from other people, which often occurs. To SUBSCRIBE or change your address, e-mail mortgagebanking@pattonboggs.com.