

RD AN No. 4736 (1940-I)  
September 26, 2013

TO: State Directors  
Rural Development

ATTENTION: Rural Housing Program Directors

FROM: Richard A. Davis /s/ Richard A. Davis  
Acting Administrator  
Housing and Community Facilities Programs

SUBJECT: Estimate of Settlement Costs and Real Estate Settlement Procedures  
for Direct Single Family Housing Programs

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to provide guidance on the implementation of the Real Estate Settlement Procedures Act (RESPA) disclosure and accuracy requirements and to elaborate upon the standardized Good Faith Estimate (GFE) and HUD-1, "*Settlement Statement*," (also referred to as HUD-1) forms for loans originated under the Single Family Housing Direct Loan Program (SFHDLP).

The intended outcome of this AN is to ensure that field staff provide effective and timely delivery of disclosures associated with a federally related mortgage loan to comply with RESPA's requirements.

**COMPARISON WITH PREVIOUS AN:**

This AN replaces RD AN No. 4676 (1940-I), dated August 27, 2012, which expires on September 30, 2013. There are no changes since the last issued AN on this subject.

**EXPIRATION DATE:**  
September 30, 2014

**FILING INSTRUCTIONS:**  
Preceding RD Instruction 1940-I

## **BACKGROUND:**

RESPA is a consumer protection statute applicable to all federally related mortgage loans. This includes most purchase loans, assumptions, refinances, and property improvement loans under the Direct Single Family Housing programs. RESPA requires lenders to provide borrowers with pertinent and timely disclosures of the nature and costs of the real estate settlement process. Disclosures include an estimate of the costs associated with the settlement, an outline of the lender's servicing and escrow account practices and a description of business relationships between settlement service providers, if any.

In 2008, the U.S. Department of Housing and Urban Development (HUD) issued a final rule to amend 24 CFR Part 3500 (Regulation X), which implements RESPA. One of the goals of this rule is to simplify and improve the process of obtaining a mortgage, thus assisting consumers in shopping for the loan with the lowest cost and best terms. RESPA requires that lenders provide consumers with a standard Good Faith Estimate (GFE) that clearly discloses key loan terms and closing costs. Under the law, the actual charges at settlement may not exceed the amounts listed on the GFE. The HUD-1 conforms to the standardized GFE to assist settlement agents in comparing the settlement charges on the GFE and the final charges on the HUD-1. Therefore, it is imperative that closing costs are accurately estimated before issuing the GFE. Rural Development (the Agency) may provide a revised GFE only if changed circumstances occur. There is also a Settlement Cost Booklet that must be provided along with the GFE disclosures. The GFE form does not replace the Truth in Lending disclosures. *Form RD 1940-41, "Truth in Lending Statement,"* will continue to be used as required in *RD Instruction 1940-I, § 1940.401 (c)(1)*.

As a reminder, field office staff should access the following SharePoint site to find performance tools and helpful information regarding the requirements outlined in the RESPA regulation: *Single Family Housing > Single Family Housing Information > Direct Program Information>Presentations>Revised GFE-RESPA*.

## **IMPLEMENTATION RESPONSIBILITIES:**

The Loan Originator is responsible for issuing accurate and timely RESPA disclosures associated with direct SFH loans. The State Office is responsible for ensuring compliance with RESPA regulation requirements and for the cost incurred to cure tolerance violations.

## Good Faith Estimate

HUD has adopted a standardized three page GFE. This form includes an estimate of the settlement charges as well as a summary of key loan terms similar to the loan information provided in the Truth in Lending Statement. HUD requires that lenders provide consumers with the standardized GFE form within 3 business days of receiving an application, or information sufficient to complete an application, that includes the following items:

- (1) Applicant's name;
- (2) Applicant's social security number to obtain a credit report and *Form RD 3550-1, "Authorization to Release Information"*;
- (3) Applicant's monthly income;
- (4) Property address;
- (5) Estimate of value of the property; and,
- (6) Mortgage loan amount sought.

If the applicant provides all of these items, the GFE must be provided to the applicant even if the application form has not been received.

If the GFE documents are not hand delivered to the applicant at the time of application, the Loan Originator must mail them within 3 business days of receiving the required information.

The Agency is required to keep the stated settlement costs available for at least 10 business days from when the GFE is provided. The intent of this requirement is to allow consumers to comparison shop. While our programs are not intended to be comparison shopped (to be eligible, the applicant must be unable to obtain credit from other sources on terms and conditions they can reasonably be expected to fulfill), it is critical to note that the GFE is binding, subject to tolerances and changed circumstances, unless a revised GFE is issued before settlement or the GFE expires.

The Agency may collect the credit report fee before issuing a GFE to the applicant, but it may not charge any other fee such as for an appraisal or other settlement service as a condition for providing the GFE. As a rule, the Agency does not collect fees before closing other than the credit report fee.

HUD's GFE form shall be used to disclose the nature and costs related to direct Section 502 and 504 loans. The closing costs information in *Form RD 440-58, "Estimate of Settlement Costs,"* printed from UniFi may be used as a reference to complete the new GFE form; however, this form must not be used to disclose the closing costs estimate to the applicant. A fillable version of HUD's GFE form, as well as information on how to complete this form, has been posted to the SharePoint site.

## **Tolerance Limits / Accuracy Requirements**

RESPA sets forth accuracy requirements for the GFE by establishing tolerance limitations between the charges disclosed in the GFE and final charges listed in the HUD-1. Settlement costs are divided into three tolerance categories and, absent changed circumstances, the final charges on the HUD-1 cannot vary from the charges on the GFE more than allowed under each category. The following are the three categories for settlement costs:

- (1) Zero Tolerance (charges that cannot increase)
- (2) The 10% Tolerance (charges that in total cannot increase more than 10%)
- (3) No Restrictions (charges that can change)

These tolerance requirements increase the Agency's accountability for accurate settlement cost estimates. The Agency is required to cure tolerance violations by reimbursing to the borrower the amount by which the tolerance was exceeded, either at settlement or within 30 calendar days after settlement. In instances where the tolerance is exceeded, the State's Program Loan Cost Expense (PLCE) funds, Salaries and Expense Account ("A" funds), will be used to cover the difference. States may use "A" funds to cure RESPA violations without obtaining National Office approval. To protect the Agency from additional risk, we ask that you review the "Curing RESPA Violations" document posted on the SharePoint site before processing payments to cure tolerance violations.

## **Changed Circumstances**

The GFE cannot be revised and reissued unless changed circumstances occur. "Changed Circumstances" is defined by regulation as:

- (1) Situations that we cannot control;
- (2) Information particular to the applicant or transaction that was relied on when the GFE was provided and subsequently changes or is found to be inaccurate;
- (3) New information particular to the applicant or transaction; or,
- (4) Other circumstances that are particular to the applicant or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

In the event changed circumstances occur, the Loan Originator must send the revised GFE within three business days of receiving the information that established the change. Only those fees impacted by the changed circumstance may change and supporting documentation must be retained in the case file for no less than three years after settlement.

## **Settlement Service Providers List and RESPA-Related Disclosures**

RESPA's instruction for completing the GFE requires that "[w]here a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the

GFE, on a separate sheet of paper.” This requirement refers to any settlement services in the following blocks of the GFE:

- Block 4, “Title services and lender’s title insurance”
- Block 5, “Owner’s title insurance”
- Block 6, “Required services that you can shop for”

If the applicant selects a service provider from the list provided by the Agency, the charges associated with that provider are subject to the tolerance limit. Any services for which the applicant selects a provider other than those identified by the Agency will not be subject to the tolerance test.

Field offices should prepare a list of settlement service providers that have recently provided services to our customers and are likely available to provide the settlement service for the applicant. It is not necessary to provide separate cost estimates for each provider on the list. The cost reflected on the GFE should be based on the highest anticipated cost for the service provided to assure that the Agency estimate is within the tolerance limit. Loan Originators should counsel applicants so they understand that the list of settlement service providers does not represent an endorsement by or an affiliation with Rural Development.

In transactions involving new construction homes, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the Loan Originator may provide the GFE to the applicant with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the Loan Originator may issue a revised GFE. If no such separate disclosure is provided, the Loan Originator cannot issue a revised GFE.

To assist field staff with complying with these two provisions of the RESPA rule, *Attachment 3-I, Settlement Service Providers and RESPA-Related Disclosures*, has been incorporated into the HB-1-3550. Attachment 3-I must be provided to the applicant along with the GFE and the List of Settlement Service Providers.

### **Settlement Cost Booklet**

HUD’s Settlement Cost Booklet, “*Shopping for Your Home Loan*,” is posted on the SharePoint site for on-demand printing. Please be reminded that this booklet should be provided only once per loan application. This information should be provided along with the GFE no later than 3 business days after the Loan Originator receives an application or information sufficient to complete an application.

## **HUD-1, Settlement Statement**

The HUD-1 is consistent with the language and order of the charges in the standardized GFE. This consistency makes it much simpler to cross-reference the charges on the two documents and confirm whether the tolerance requirements have been met or exceeded. The HUD-1 also verifies that the borrower receives the loan for which they applied. The information on these two standardized forms will be used as a mechanism for consumers to shop for the lowest cost mortgage and for title/closing agents to perform the tolerance test before loan closing.

As prescribed in the HB-1-3550, the Loan Originator should assemble the forms needed for closing, and forward them to the Closing Agent/Attorney with *Form RD 3550-25, "Loan Closing Instructions and Loan Closing Statement."* Agency staff should not attempt to prepare the HUD-1; the settlement company should complete it. The Closing Agent/Attorney are no longer required to use *Form RD 1940-59, "Settlement Statement"* (as prescribed in Chapter 8, paragraph 8.5 of HB-1-3550), instead, they will use the revised version of the HUD-1 form. Agency staff should carefully review the HUD-1 before settlement to ensure accuracy of the settlement charges categories and amounts. Additional information about the GFE / HUD-1 tolerance categories is posted on the SharePoint site.

## **Effective Date and Applicability**

The standardized GFE form is required for loan applications dated after April 12, 2010. Any loan, including a Section 504 loan, is subject to RESPA if a security interest will be taken on the property.

## **SUMMARY:**

RESPA outlines the process of disclosing settlement costs for applicable mortgage loan transactions. The regulation enhances the definition of mortgage application, establishes tolerance limitations between the charges in the GFE and the final charges in the HUD-1, reduces the lender's flexibility to change the initial GFE, requires lenders to provide a list of lender-identified settlement service providers, revises the HUD-1, and requires timely disclosures.

Field office staff should access the RESPA SharePoint site to find performance resources and helpful information regarding the implementation of the standardized GFE and other stipulations outlined in the RESPA reform.

State Office officials with questions regarding this AN may be directed to Migdaliz Bernier at (202) 690-3833 or at Migdaliz.Bernier@wdc.usda.gov.

Sent by Electronic Mail on September 26, 2013 at 11:15 a.m. by Single Family Housing Direct Loan Division. The State Director should advise other personnel as appropriate.