

RD AN No. 4506 (1940-I)  
April 12, 2010

TO: State Directors  
Rural Development

ATTENTION: Rural Housing Program Directors

FROM: Tammye Treviño (*Signed by Kathy McEntee*) for  
Administrator  
Housing and Community Facilities Program

SUBJECT: Changes to Estimate of Settlement Cost 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) new disclosure and accuracy requirements and to elaborate upon the new standardized Good Faith Estimate (GFE) and HUD-1, “*Settlement Statement*,” 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 new requirements.

**COMPARISON WITH PREVIOUS AN:**

There is no previous AN issued on this subject.

**EXPIRATION DATE:**  
April 30, 2011

**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.

On November 17, 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 the new 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. The new rule requires, for the first time ever, that lenders provide consumers with a standard Good Faith Estimate (GFE) that clearly discloses key loan terms and closing costs. The *HUD-1*, "*Settlement Statement*" (also referred to as HUD-1), has also been revised to conform to the new standardized GFE. Under the new law, the actual charges at settlement may not exceed the amounts listed on the GFE. However, the Agency may provide a revised GFE due to changed circumstances. Therefore, it is imperative that closing costs are accurately estimated before issuing the GFE. There is also a revised Settlement Cost Booklet that must be provided along with the GFE disclosures. The new 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.

## **IMPLEMENTATION RESPONSIBILITIES:**

The Loan Originator is responsible for issuing accurate and timely RESPA disclosures associated with direct SFH loans. Such disclosures apply to both 502 and 504 loans. The State Office is responsible for ensuring compliance with the new RESPA regulation requirements and for the cost incurred to cure tolerance violations.

### **New Good Faith Estimate**

HUD has adopted a new standardized three page GFE. The new form includes an estimate of the settlement charges as well as a summary of the key loan terms similar to the loan information provided in the Truth in Lending Statement. HUD requires that lenders provide consumers with the new standardized GFE form within three 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 three business days of receiving the loan application and required information.

The Agency is required, under the new rule, to keep the stated settlement costs available for at least ten (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 after ten (10) days the GFE becomes binding, subject to tolerances and changed circumstances as well.

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.

Effective immediately, HUD's GFE form shall be used to disclose the nature and costs related to direct 502 and 504 loans for:

- (1) Existing applications where a GFE has not been issued; and,
- (2) New applications.

The new GFE form is being implemented and will be in UniFi. Until it is available, the closing cost 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 should 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 in the SharePoint site for training purposes.

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

Under the final rule, HUD established new accuracy requirements for the GFE by establishing tolerance limitations between the charges disclosed in the GFE and final charges listed in the HUD-1. To accomplish this goal, the HUD-1 has been modified to be consistent with the language and order of the charges in the new 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 new 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.

Settlement costs are now divided into three categories and, absent unforeseen 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 new tolerance requirements increase the Agency's accountability for accurate settlement cost estimates. 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. Funding guidance provided in this AN supersedes the guidance provided in the Unnumbered Letter titled *Program Loan Cost Expense Funds FY 2010 Allocation and Requirements Under the Credit Report Act of 1990*, dated October 30, 2009. States may use "A" funds to cure RESPA violations without obtaining National Office approval.

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 will no longer be required to use *Form RD 1940-59*, "*Settlement Statement*" (as prescribed in HB-1-3550 Chapter 7 Section 7.5), but they will use the new version of the HUD-1 for any GFE issued after January 1, 2010. 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 has been posted in the SharePoint site.

## **Settlement Service Providers List**

RESPA's instruction for completing the GFE requires that "where the 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 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. 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. 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.

## **Settlement Cost Booklet**

HUD's revised Settlement Cost Booklet is available through the RD Supply Catalog. An advance supply has been sent to each office.

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 three business days after the Loan Originator receives an application or information sufficient to complete an application.

## **Effective Date and Applicability**

Applications that are already in the pipeline, where an estimate of settlement costs has been issued (Form RD-440-58), will not be subject to HUD's new RESPA requirements. The Loan Originator is not required to re-issue an estimate of settlement costs using the new standardized GFE form. Issuing a new GFE will trigger the tolerance test requirements prescribed in the new RESPA regulation. The new standardized GFE form is required for new applications that meet RESPA's definition of "application" (i.e. the six items noted above- applicant's name, social security number, monthly income, property address, estimate of value of the property, and mortgage amount sought).

Work is under way to incorporate the new GFE form in UniFi. In the meantime, Loan Originators should manually complete the new GFE. Training materials on how to use the fillable version of the GFE have been posted in the aforementioned SharePoint site.

**SUMMARY:**

The new RESPA rule implements significant changes to the process of disclosing settlement costs for applicable mortgage loan transactions. The new 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. Compliance with the new requirements is required as of January 1, 2010.

Field Office staff should access the RESPA SharePoint site to find training materials and helpful information regarding the implementation of the new 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 Michael Feinberg at (202) 720-3214. Their respective email addresses are Migdaliz.Bernier@wdc.usda.gov and Michael.Feinberg@wdc.usda.gov. For questions concerning PLCE funds or to request additional "A" funds please contact Carl Muhlbauer, Program Support Staff, at (202) 690-2141.