

COMPARISON BETWEEN CURRENT RESPA REGULATIONS AND PROPOSED RESPA RULE

ISSUE	CURRENT RESPA REGULATIONS	PROPOSED RESPA RULE
<p>Good Faith Estimate (GFE) Requirements</p>	<p>A GFE is defined as an estimate of charges that a borrower is likely to incur in connection with a settlement. While there is a suggested format for a GFE, there is no standard form.</p>	<p>The GFE is defined as an estimate of settlement charges a borrower is likely to incur, as a dollar amount, in connection with a settlement, along with related loan information. The estimate is to be provided on a required standardized form.</p>
<p>GFE: Application Requirements</p>	<p>Loan originator must provide a GFE of the borrower's settlement costs at or within 3 days of a mortgage loan application.</p>	<p>Establishes new definitions for "GFE application" and "mortgage application." Within 3 days of receiving a "GFE application" (which may be oral), consisting of such information necessary to arrive at a preliminary credit decision (Social Security number, property address, monthly income, borrower's information on the house price, and amount of mortgage loan sought), the borrower must be provided with a GFE.</p> <p>When a borrower chooses to proceed with a particular loan originator, the loan originator may require that the borrower provide a "mortgage application" to begin final underwriting. The mortgage application will ordinarily expand on the information provided in the GFE application.</p> <p>During final underwriting, the loan originator may verify the information in and developed from the GFE and mortgage applications. A borrower may not be rejected for the mortgage loan unless the originator determines that there is a change in the borrower's eligibility as compared to information provided in the GFE application.</p> <p>Where a borrower is rejected for the loan but another loan product is available to the borrower, the loan originator must provide the borrower with a revised GFE, notify the borrower within one business day, and document the reasons for the rejection.</p>

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GFE: Fees to Provide	There is no provision that addresses fees that may be charged for providing the GFE	Limits the fee a loan originator is allowed to collect to the cost of providing a GFE.
GFE: Loan Terms Shown	No loan term information is required to be provided.	Proposed GFE includes a summary of the key terms of the loan; initial loan amount; the loan term; the initial interest rate on the loan; the initial monthly payment owed for principal, interest and mortgage insurance; and the rate lock period. The GFE form also discloses whether the interest rate can rise; the loan balance can rise; the monthly amount owed for principal, interest and any mortgage insurance can rise; the loan has a prepayment penalty or a balloon payment; and the loan includes a monthly escrow payment for property taxes and other obligations.
GFE: Interest Rate	No requirement that interest rate be disclosed on the GFE or be available for any particularly time period.	Interest rate of the loan must be shown on the GFE and must be available until a date set by the loan originator.
GFE: Period During Which Estimate of Settlement Charge Is Available	No requirement that settlement charges be available to borrower for any length of time.	Estimate of settlement services charges (other than the interest rate of the loan and rate-dependent charges) is required to be available until at least 10 business days from when the GFE is provided.
GFE: How Fees Displayed	Estimated fees or charges are itemized. No standardized terminology or grouping of fees is required.	Proposed standardized GFE groups and consolidates all fees and charges into settlement cost categories, with a single total amount estimated for each category. Total estimated settlement charges prominently shown on first page so consumer can compare loan offers.
GFE: Information on Effect of Interest Rate	No requirement that GFE provide information on how the interest rate of the loan affects the borrower's upfront settlement costs	Proposed standardized GFE informs the borrower how the interest rate of the loan affects upfront settlement costs, and requires loan originators to present actual options of higher and lower interest rates and upfront settlement costs.

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<p>GFE: Compliance Standard for Estimating Costs</p>	<p>Lender required to provide a good faith estimate of the “amount of or range of charges” for the specific settlement services the borrower is likely to incur in connection with the settlement. Each such estimate must be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement.</p>	<p>Sets a new standard for “good faith” by establishing tolerances for settlement costs. Loan originators may not increase their own charges from that stated on the GFE absent “unforeseeable circumstances.” When the interest rate is locked, the charge or credit to the borrower for the interest rate chosen cannot be exceeded at settlement absent “unforeseeable circumstances.” The sum of other services would be subject to a 10% tolerance, including: required services the loan originator selects; title and closing services; lender’s title insurance; optional owner’s title insurance (if provider is chosen or identified by the originator); and required services the borrower can shop for when the borrower elects to use the provider identified by the loan originator. A specific charge may increase by more than 10%, so long as the total does not increase by more than 10%. (Charges may increase in the event of unforeseeable circumstances.)</p>
<p>Unforeseeable Circumstances</p>	<p>No comparable concept.</p>	<p>Provides that the loan originators should not be held to tolerances where actions by the borrower or circumstances concerning the borrower’s particular transaction result in higher costs that could not have reasonably been foreseen at the time of the GFE application, or where other legitimate circumstances beyond the originator’s control result in higher costs. “Unforeseeable circumstances” are defined as: 1) acts of God, war, disaster or other type of emergency that makes it impossible or impractical to perform; or 2) circumstances that could not have reasonably been foreseen at the time of the GFE application, that are particular to the transaction and that result in increased costs.</p>
<p>GFE: Disclosure of Yield Spread Premium</p>	<p>An interest rate-based payment from a lender to a mortgage broker, characterized as a yield spread premium, must be reported on the GFE and shown as P.O.C. (Paid Outside of Closing). The yield spread premium is not included in the calculation of the mortgage broker’s total charges, nor is it clearly listed as an expense to the borrower.</p>	<p>An interest rate-based payment from a lender to a mortgage broker would be listed on the GFE as a “credit to the borrower” for the specific interest rate of the loan, and would reduce the borrower’s upfront charges for the loan. This change effectively includes the yield spread premium in the calculation of the mortgage broker’s total compensation.</p>

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GFE: Important Information for Borrowers	<p>No requirement that GFE include information about financial responsibilities as a homeowner.</p> <p>No requirement that borrowers be informed that lenders can receive additional fees after settlement by selling the loan.</p>	<p>Informational section of standardized GFE informs borrower that in addition to the monthly loan payment for principal, interest and mortgage insurance, the borrower may be required to pay other annual charges to keep the property, including property taxes, homeowner's insurance, flood insurance, homeowner's condominium fees, and other fees.</p> <p>The informational section informs borrowers that lenders can receive additional fees by selling the loan after settlement. The borrower is informed that once the loan is obtained at settlement, the loan terms, the adjusted origination charges and total settlement charges cannot change.</p>
Limits on Origination Fees in FHA Loans (24 CFR part 203)	Under current FHA regulations, origination fees that mortgagees may collect from mortgagors for expenses incurred in originating and closing certain FHA-insured mortgage loans are limited to 1 percent of the loan amount. However, additional mortgagee compensation is not included in this limitation.	Current specific limitations on the amounts mortgagees may charge borrowers for originating and closing an FHA loan are removed in favor of the rule's approach to making total loan charges more transparent and certain.
HUD-1 Settlement Statement	GFE and HUD-1/1A are generally not directly comparable.	The HUD-1/1A Settlement Statement is modified to be comparable to the new standardized GFE.
Addendum to HUD-1/1A Settlement Statement	No required explanation to borrower at closing.	Addendum to HUD-1/1A Settlement Statement, the "Closing Script," must be provided to the borrower at closing and the settlement agent must read the addendum aloud to the borrower at closing. The settlement agent must explain: 1) the comparison between the loan terms and settlement charges estimated on the GFE and those on the HUD-1; 2) whether or not the tolerances have been met; and 3) the loan terms for this specific mortgage loan as stated in the mortgage note, and related settlement information.
Permissibility of Negotiated Discounts	Section 8 of RESPA prohibits any person from giving or accepting a fee, kickback, or thing of value pursuant to an agreement to refer settlement service business involving a federally related mortgage loan to a particular person. "Thing of value" is defined in 24 CFR 3500.14(d) to include "discounts."	Definition of "thing of value" is revised to exclude discounts negotiated by settlement service providers based on negotiated pricing arrangements, provided that no more than the reduced price is charged to the borrower and disclosed on the HUD-1/1A.

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<p>Permissibility of Average Cost Pricing</p>	<p>Regulations do not address permissibility of average cost pricing.</p>	<p>Permits loan originators to use average cost pricing for settlement services. Sets forth two specific methods that loan originators may use to calculate an average price for a particular settlement service. If the loan originator uses one of the methods to calculate the average price for a settlement service, HUD will deem the originator to have complied with the requirements of the rule for stating the actual charge.</p>
<p>Prohibition Against Requiring Use of Affiliates</p>	<p>Under RESPA, businesses are allowed to make referrals to affiliated businesses and to receive a benefit from their ownership interest in the affiliated business as long as three conditions are met: 1) a disclosure is made of the existence of such a relationship to the person being referred; 2) the person being referred is not required to use any particular provider of settlement services; and 3) the only thing of value received from the arrangement, other than the payments permitted for certain services, is a return on ownership interest.</p> <p>“Required use” is defined in 24 C.F.R. 3500.2 to mean a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property. However, the offering of an optional package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use.</p>	<p>Clarifies the definition of “required use” to include an economic incentive or disincentive that is contingent upon the borrower using or failing to use a referred provider of settlement services. However, the offering by a settlement service provider of an optional combination of <i>bona fide</i> settlement services to a borrower at a total price lower than the sum of the prices of the individual settlement services does not constitute a required use.</p>

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Technical Amendments: Mortgage Servicing Disclosure Requirements	Current mortgage servicing disclosure regulations require that the borrower be provided with more detailed information than is required by the RESPA statute as amended.	The regulations are updated to ensure consistency with current statutory requirements.
Technical Amendments: Escrow Regulations	Current escrow accounting regulations at 24 C.F.R. 3500.17 contain expired transitional provisions.	Expired provisions of escrow regulations are removed.
ESIGN Applicability to RESPA Disclosures	The Electronic Signatures in Global and National Commerce Act (ESIGN) is a federal law that applies to all disclosures, including RESPA disclosures. ESIGN provides that any signature, contract, or other record relating to a transaction provided in electronic form has the same validity as if it had been provided in written form. There is no specific provision in the RESPA regulations on ESIGN applicability.	Amends RESPA rules to explicitly recognize the applicability of ESIGN to RESPA. Clarifies that all RESPA disclosures may be provided to consumers in electronic form, so long as the consumer consents to receive such disclosures in electronic form and the other specific provisions of ESIGN are met. Also clarifies that all documents required to be retained under RESPA may be retained in electronic format, so long as the ESIGN requirements for document retention are met.