Chicago Title Insurance Company

HUD has published its proposed RESPA Regulation. The new rule contains several noticeable changes from the current rule which will impact the conduct of business and the closing of transactions.

The new rule gives new definition to the term "thing of value" as currently defined in Section 8, to exclude discounts and also contains a new prohibition against requiring the use of affiliates.

There is a new standardized form of Good Faith Estimate ("GFE") which consolidates fees and expenses into categories with a single amount for each category and the HUD 1 /1A has been changed to conform to the GFE and includes a "Closing Script" which must be read aloud by the closer to the consumer.

The new rules contain very little "wiggle room" for increased fees that must fall within prescribed tolerances.

The following article that has been reprinted with the permission of RESPA News.com to whom all rights have been reserved, contains many of the highlights of the new rule.

On Feb. 22, a six-page summary of what is purported to be the new RESPA reform rule was sent to congressional aides on Capitol Hill, explaining what is in the current RESPA rule and comparing it to what is being proposed in the new RESPA reform rule.

The complete version of the new rule, which has been estimated by some sources to be 250 pages long, will be released in "early March" according to a Feb. 13 statement by HUD Secretary Alphonso Jackson, in testimony before the House Appropriations Committee Subcommittee on Transportation, Housing and Urban Development.

HUD Spokesman Brian Sullivan declined to confirm whether the summary circulating in Washington, D.C. was in fact from HUD, stating only that HUD could not discuss the substance of the rule yet to be published.

According to a copy of the summary obtained by RESPAnews.com, the new rule includes an intriguing change to the permissibility of negotiated discounts.

Section 8 revisions

Currently, 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. "Thing of value" is currently defined to include "discounts."

The new rule revises the definition of "thing of value" 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.

There will also be a new prohibition against requiring the use of affiliates. The summary notes that 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.

New meaning for 'required use'

Currently, "required use" is defined 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.

The new RESPA reform rule, however, will clarify 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 bona fide 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.

Average cost pricing

Further, while the current RESPA rule does not address the permissibility of average cost pricing, the new rule will permit loan originators to use average cost pricing for settlement services. The rule 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.

A standardized GFE

As expected, according to the summary, the Good Faith Estimate (GFE) will go from having a suggested format to being a standardized form. The new rule will establish new definitions for "GFE application" and "mortgage application." Within three days of receiving a "GFE application" (which may be oral), consisting of such information necessary to arrive at a preliminary credit decision, the borrower must be provided with a GFE.

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.

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.

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.

Currently, there is no provision that addresses fees that may be charged for providing the GFE, but the new rule will limit the fee a loan originator is allowed to collect to the cost of providing a GFE.

New information to be included

Currently, no loan term information is required to be provided, but the new 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.

While there is currently no requirement that the interest rate be disclosed on the GFE or be available for any particular time period, the new rule will require the interest rate of the loan to be shown on the GFE and be available until a date set by the loan originator.

The rule will likewise require that the estimate of settlement service charges be available until at least 10 business days from when the GFE is provided.

Settlement costs

The proposed standardized GFE will group and consolidate all fees and charges into settlement cost categories, with a single total amount estimated for each category. The total estimated settlement charges will be shown prominently on the first page so that the consumer can compare loan offers.

The new GFE will also inform the borrower of how the interest rate of the loan affects upfront settlement costs, and requires the loan originators to present actual options of higher and lower interest rates and upfront settlement costs.

The rule also sets a new standard for "good faith" by establishing tolerances for settlement costs. Loan originators will not be allowed to increase their own charges from those stated on the GFE absent "unforeseeable circumstances." When the interest rate is locked, the charge or credit to the borrower for the final interest rate chosen cannot be exceeded at settlement absent "unforeseeable circumstances."

The sum of other services would be subject to a 10 percent 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 percent, so long as the total does not increase by more than 10 percent.

The tolerance rule

The new definition of "unforeseeable circumstances" provides that 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 resulted 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 result in increased costs.

YSP as 'credit to borrower'

Regarding the controversial disclosure of yield spread premiums, the new rule provides that 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.

The new informational section of the standardized GFE will inform the 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, homeowners/condominium fees, and other fees.

The informational section also 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.

Further, current FHA regulations limit the amounts mortgagees may charge borrowers for originating and closing a FHA loan. These limits are removed in the new rule in favor of the rule's approach to making total loan charges more transparent and certain.

HUD-1 modifications

The HUD-1/1A is also modified to be comparable to the new standardized GFE, and an addendum to the new HUD-1/1A, the "Closing Script," will be required to be provided to the borrower at closing. The settlement agent must read the addendum aloud to the borrower at closing, explaining: 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 the specific mortgage loan as stated in the mortgage note, and related settlement information.

The current mortgage servicing regulations will also be updated to ensure consistency with current statutory requirements, and the expired provisions of escrow regulations will be removed from the statute.

Incorporating ESIGN

Finally, the summary notes that the new rule will amend RESPA to explicitly recognize the applicability of the Electronic Signatures in Global and National Commerce Act (ESIGN) to RESPA. ESIGN is a federal law that applies to all disclosures, providing 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.

The new amendment will clarify 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. The amendment also clarifies that all documents that are required to be retained under RESPA may be retained in electronic format, so long as the ESIGN requirements for document retention are met.

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