RESPA News Monthly, May 2009, 5/29/2009

Filling out the new GFE: A comprehensive guide to mastering the form - Part 1

The editors at *RESPA News* understand the real estate industry has much concern over the new Good Faith Estimate (GFE), which goes into effect Jan. 1, 2010. There have been numerous mentions of uncertainties over the intense impact this form and the new HUD-1 settlement statement may have on the settlement services industry. The number one question we are seeing is: Is this new form actually simpler than the old form, as the U.S. Department of Housing and Urban Development (HUD) intended it to be? Most RESPA experts agree it is not.

Therefore, *RESPA News* decided to lay down for you a step-by-step guide on how to fill out the new GFE in a four-part series that includes not only an instructional element to filling out the form, but also implementation considerations. Here is part one, which covers Page 1 of the new 3-page form.

Why a new form?
Before we get into the line-by-line instructional guide, it is worth mentioning how we even got to this point. Why did HUD deem it necessary to create a new Good Faith Estimate, especially at a time when the mortgage industry has expressed an overwhelming concern regarding the plethora of recent regulation?

According to **Phil Schulman**, partner of Washington, D.C.-based K&L Gates, the answer lies in the hands of the consumer.

"The whole idea of RESPA reform, expressed by then President Bush and the principals at HUD who were there at the time, was a desire to get consumers a more transparent, clearer and more accurate settlement transaction," noted Schulman in a GFE instructional Webinar produced by October Seminars and presented by *RESPA News* on April 14, 2009.

Schulman said the number one consumer complaint in a real estate transaction is that when the consumer gets to the closing, the dollar figure the lender originally told them they would need at closing is different from the actual dollar amount the consumer has to come up with at the closing table. "That right there is the crux of and the heart of where HUD was headed on RESPA reform," Schulman said. "The whole idea was to try to create a system that would simplify the process, provide greater transparency and most important, try to get the consumer more accurate figures about what this transaction was going to cost them three days into the process, rather than at the closing table."

HUD issued a final RESPA rule on Nov. 17, 2008, which includes the new GFE and HUD-1 among other RESPA changes. The rule went into effect Jan. 16, 2009, and HUD is giving the industry until Jan. 1, 2010 to implement the new forms and train staff. A great deal of controversy stemmed from the new rule, and many trade associations have urged HUD to withdraw it and align the new mortgage reform with the Federal Reserve Board's new Truth in Lending Act rules.

In early May 2009, HUD Secretary **Shaun Donovan** went public for the first time on RESPA reform, announcing that the Obama administration plans to keep the new RESPA rule, with the exception of withdrawing RESPA's "required use" provision, which did not allow homebuilders to provide incentives to their buyers in return for the use of their affiliated mortgage and title companies.

"The timing of this rule couldn't be worse from the lender's perspective," Schulman said. "Many lenders are hanging on by a thread and they can ill afford the expense of getting geared up for this new GFE."

In saying this however, Schulman strongly urges the industry to be prepared to use the new forms and to not delay in training staff and upgrading computer systems, as it will be a timely and costly process.

The new GFE represents the first significant change in RESPA in nearly 17 years. HUD took the 2-page GFE used for years and made it a 3-page form. The main differences between the new and old GFE form are 1) standardization of the form, 2) grouping of fees and 3) tolerance for variations from the GFE amounts at settlement. Overall, the new form is a standardized document that gives loan terms and an estimate of settlement charges. According to HUD, with the new form, the consumer should easily be able to compare GFEs from various lenders when shopping for loans.

Step-by-step through Page 1

On Page 1, the form contains six sub-headings, with four of the six sections requiring information.

The first sub-heading simply states the **Purpose** of the GFE form, including additional resources for the consumer such as HUD's Web site, www.hud.gov/respa, HUD's *Special Information Booklet* on settlement charges and Truth in Lending disclosures. The second sub-heading, **Shopping for your loan**, is also copy for the consumer: "Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive."

The third section, **Important Dates**, requires four pieces of information the lender must reveal to the consumer.

"Right up front, the consumer is told, these are the operative dates. These are the dates you want to circle on your calendar, in terms of your closing transaction," noted Schulman.

Box number one: The date the interest rate on the GFE is good through.

According to Schulman, there are no restrictions to this date. "The interest rate can be good for a day, it can be good for a week, it can be good for 15 minutes. Whatever period of time the interest rate is good for, unless of course, there's a lock, is put in this first box," he said.

Box number two: The date the estimate for all other settlement charges is available through.

Schulman said HUD requires that these charges be good for a minimum of 10 days, unless there are changed circumstances. For example, if today is May 2, then the date the lender would put on this line would be May 12.

The third and fourth pieces of information in the "Important Dates" section pertain to locking the interest rate. The form states that if you do lock, you have to go to settlement within X number of days to receive the locked interest rate and you must lock the interest rate at least X days before settlement.

"If you do decide to lock, you can't lock 30 seconds before closing or six months before closing," Schulman said. "Your interest rate lock must be at least X, maybe it's 10 days, maybe it's five days before settlement."

The fourth sub-heading on Page 1 is titled, **Summary of your loan**. Schulman applauded HUD for creating this section.

"Basically, you're telling the consumer right up front, look, you're borrowing $275,000 for the term, which is 30 years. Your interest rate is going to be 5.5 or 6 percent. Your monthly mortgage payment for principle and interest is going to be $2,150. Is the interest rate going to rise? No, this is not an adjustable rate mortgage," Schulman offered as a hypothetical.

Within this summary section, there is a "yes-no" question to answer regarding the balance of the loan rising.

"If it's an adjustable rate mortgage, the answer would be yes. You'd check off the box, yes, and you would indicate the amount that it could rise and the maximum amount throughout the history or the life of the loan that it could rise," Schulman explained. He added that if there are any pre-payment penalties or balloon payments, then the lender would provide that information to the consumer in this section as well.

The fifth sub-heading on Page 1 is **Escrow account information**. This is where the escrow information is disclosed to the consumer to answer the question of whether or not money needs to be set aside for taxes and insurance.

"Consumers are told here that some lenders require that you escrow money for property taxes and other property-related charges, usually homeowners' insurance," Schulman said. This money is in addition to the consumer's monthly mortgage payment for principle and interest, he added.

The last sub-heading on Page 1 is the **Summary of your settlement charges**. This is where the lender would put the adjusted origination charge, which is broken down and figured on Page 2 of the GFE, and the charges for all other settlement services, which are also detailed and figured on Page 2.