

# **AGENT UNDERWRITING BULLETIN**

## **NEW RESPA RULES**

The Department of Housing and Urban Development (HUD) has released its final rule on the Real Estate Settlement Procedures Act (RESPA). Following is a summary of the more significant rule changes, as well as copies of the new Good Faith Estimate and HUD 1/1A. Note that while most of the new rule requirements are effective immediately, the new Good Faith Estimate and HUD 1/1A forms won't be required until January 1, 2010, although they can be used anytime before then.

- The Closing Script has been dropped from the final rule. The HUD 1/1A will now contain a new third page which shows comparisons between the HUD 1/1A and the Good Faith Estimate. Originators are required to provide all information needed to complete the comparison chart and loan terms disclosure. It is expected that lenders will provide a copy of the Good Faith Estimate with the closing instructions.
- The explicit volume or negotiated discount language has been removed from the final rule. HUD explained that although they believe these discounts are not currently a violation of RESPA as long as they are passed on to the consumer, they will continue to explore methods to lower consumer costs outside of this rulemaking.
- The term optional has been removed from the description of owners' title insurance on both the Good Faith Estimate and the HUD 1/1A.
- The final rule allows all settlement service providers to utilize average costs for services excluding any service that is based on the value of the property or loan. Fees for services such as credit reports, courier fees, etc. can be averaged. Fees for any type of insurance cannot. There is a three year recordkeeping requirement and the total average costs over the utilized time period must not exceed the total price paid for those services.
- Tolerances remain in the final rule. Origination and lender costs are subject to a zero tolerance and may not increase. Settlement services recommended by the lender are subjected to a ten percent tolerance between the Good Faith Estimate and closing. Title charges are subject to this tolerance if the lender recommended title company is chosen by the borrower. The tolerance applies to the sum of all the included settlement services. Individual services may exceed the tolerance as long as the total remains under ten percent. Recording fees are now part of the ten percent category while transfer taxes remain in the zero tolerance category.
- Right to cure is available to lenders if they repay the consumer any charges that exceed tolerances on settlement services estimated on the Good Faith Estimate. If these overages are not cured, a violation of RESPA has occurred. The onus is on the lender for repayment and they have 30 days after closing to discover and repay the overages. Closing agents also have 30 days to cure any errors or omissions on the HUD 1/1A.
- The Good Faith Estimate and HUD 1/1A have been amended. The Good faith estimate has been shortened to three pages from four. The HUD 1/1A now has references on each line to the corresponding area of the Good Faith Estimate for easier consumer comparison. The HUD 1/1A has a new third page that includes a chart comparing the amounts listed for particular settlement costs on the Good Faith Estimate with the total costs listed for those charges on the HUD-1/1A.

- The HUD 1/1A continues to require disclosure of the agent/underwriter split, even after strong arguments made by ALTA and others against it. HUD determined that this breakdown will help consumers better understand their title charges.

To review the rule and new forms, please follow this link:

[http://www.hud.gov/offices/hsg/sfh/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm)

For individual questions, please contact your local Chicago Title Underwriter.