



RESPA Summary 2010

In November 2009, HUD published its final rule amending Regulation X of the Real Estate Settlement Procedures Act (RESPA). The final rule includes significant changes to the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement (HUDI).

The new GFE and HUD-1 must be used on loan applications dated on or after January 1, 2010. If the loan application was taken prior to January 1, 2010 AHE will accept and close the loan with 2009 GFE and HUD-1 (we will require the initial application to be signed and dated prior to January 1, 2010 and a copy of the credit report to support the application date).

APPLICATION

Under the new RESPA rule, the term "application" means the submission of a borrower's financial information in anticipation of a credit decision related to a federally related mortgage loan, which must include all of the following:

1. Borrower's Name
2. Borrower's Monthly income
3. Borrower's Social Security Number to obtain a credit report
4. Property Address
5. An estimate of the value of the property
6. The Mortgage Loan Amount
7. Any other information deemed necessary to the loan originator

The loan originator (Broker) is required to issue the new GFE form no later than three (3) business days after the loan originator received an application or information sufficient to complete the loan application.

- There is no requirement that the Borrower(s) sign the GFE (in fact there is no signature lines on the form)
- Except for interest rate dependent charges, the loan originator is bound by the GFE for a minimum of ten (10) business days after the GFE is provided (or longer if so specified by the loan originator)
- The loan originator may not charge any fee, except for a credit report fee, until after the applicant has received the GFE and **indicates an intention to proceed with the loan request**



- Fees paid outside of closing will no longer be designated as POC on the GFE. All fees typically paid by the borrower must be shown on the GFE as if paid by the borrower at closing
- All charges for settlement services must be placed in the appropriate categories on the GFE

CHANGED CIRCUMSTATED – UPDATED GFE

American Home Equity will no longer re-issue the initial/early GFE upon receiving the loan submission from the Broker. However, American Home Equity will be responsible for re-disclosing (issuing a revised GFE) if a valid changed circumstance occurs that affects an increase in fees. Brokers should not re-issue a GFE at any time after the initial GFE. In the event that there is a changed circumstance AHE will require that the form **Request for Reissuance of Revised GFE** as well as the **Changed Circumstance Form** be completed. We will require that the completed forms (Request for Reissuance of Revised GFE and Changed Circumstance) be provided to your Account Manager within twenty-four (24) hours of the changed circumstance, which will allow AHE to reissue the revised GFE with the allotted three (3) business day requirement.

The following will address the topic of changed circumstances.

Except for any permitted tolerances, loan originators must be accurate when disclosing initial settlement charges to the borrower on the GFE. A revised GFE may only be issued to the borrower prior to closing where there exists "changed circumstances" as defined in the final rule and as clarified by HUD in their FAQ's dated December 30, 2009.

Missing valid changed circumstances, the originator is bound by the amounts shown on the last disclosed GFE subject to any permitted tolerances.

- Only charges or terms directly related to the changed circumstances may be changed
- The revised GFE must be issued within three (3) business days of receiving information sufficient to establish the changed circumstances. The three (3) business day requirement is triggered from the time of receipt by whichever loan originator (either Broker or Lender) received the information first.
- Documentation evidencing the changed circumstance must be kept in the loan file and retained. (AHE will require that the **Changed Circumstance Form** be completed and provided to the borrower with the revised GFE).



The term "**changed circumstances**" means:

- Acts of God, war, disaster or other emergency
- Information particular to the borrower or transaction that was relied on in providing the GFE that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property or any other information that was used in providing the GFE;
- New information particular to the borrower or transaction that was not relied on in providing the GFE
- Other circumstances that are particular to the borrower or transaction including boundary disputes, the need for flood insurance or environmental problems

"**Changed circumstances**" does not include:

- The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought and information contained in any credit report obtained by the loan originator prior to providing the GFE, **unless the information changes or is found to be inaccurate after the GFE has been provided** or market fluctuations by themselves.

TOLERANCE LIMITATIONS

HUD has created limitations which restrict the amount that settlement charges to borrowers can change between the GFE and the actual fees charged at settlement. These tolerance limitations are designed to help borrowers receive a more accurate GFE and to enable the borrower to easily compare the fees noted on the GFE with those on the HUD-1.

Tolerance limitations have three (3) categories:

1. **Settlement charges that cannot increase:** origination charges (including Broker fees), borrower's credit or charge for specific interest rate chosen (after locking the rate) and transfer taxes
2. **Settlement charges that can increase up to 10%:** required services selected by the originator, title services and lender's title insurance (if selected by loan originator or borrower uses companies identified by loan originator), owner's title insurance (if borrower uses companies identified by the loan originator) and government recording charges



- 3. Settlement charges that can increase without restriction:**
required services that borrower shops for, title services and lender's title insurance and owner's title insurance (where the borrower does not use companies identified by the loan originator), initial deposit for escrow deposits, daily interest charges and homeowner's insurance.

These tolerances are described to the borrower on the page three (3) of the GFE and carry over to the HUD-1.

SETTLEMENT SERVICE PROVIDER LIST

A list of service providers must be given to the Borrower with the GFE (this is a separate document).

For blocks, 4, 5 and 6 of the new GFE, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select settlement service providers. The estimated charge to be paid to the provider of each service must also be disclosed.

Where a 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 service providers at the time the GFE is issued. This list must be provided on a separate sheet of paper. The list must include those services addressed in Blocks 4, 5 and 6 of the GFE and contain settlement service providers that are likely available to provide the settlement service in the borrowers locale.

If a borrower selects a provider identified on the list, the amount paid for that service would fall within the 10% tolerance for that category. If the borrower chooses a different provider, the amount paid for that service is not subject to any tolerance restriction.

MORTGAGE BROKER FEE AGREEMENT

American Home Equity will continue to require the completion of the Mortgage Broker Fee Agreement.



HUD-1

The HUD-1 form has been updated to reflect the new rule changes. The second page of the new HUD-1 mirrors the way the fees are placed in the GFE by including the line number of the fee as it appears on the GFE on the HUD-1. This will allow the borrower to compare the costs that appear on their GFE with their actual closing costs and to identify any changes. Page three (3) of the new HUD-1 reflects a comparison of loan changes and key loan terms between the GFE and the HUD-1. **The loan originator will be responsible to communicate to the settlement agent all the information needed to complete the HUD-1.**