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To: Clients and Friends

From: Regina M. Uhl

Subject: Updated RESPA FAQs, dated April 2, 2010

On April 2, 2010, HUD released *New RESPA Rule FAQs*, an update to the January 28, 2010, FAQs. The April 2, 2010, FAQs may be found, in their entirety, via the following link <http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf> and some of the updates within the FAQs are briefly addressed below:

1. GFE, General, #33 & #34 (pgs. 11-12). These two FAQs address preapprovals. HUD states that a preapproval is never to be used as a substitute for a GFE, and that the RESPA rules do not address preapprovals. HUD reiterates that once the loan originator has the information that triggers a GFE, they must still provide the GFE. A lender may never issue only a preapproval for a refinance loan; the lender must also issue a GFE.
2. GFE, General, #35 & #36 (pg. 12). These two FAQs address the use of a worksheet without a GFE and in conjunction with the GFE. They clarify that a worksheet may be used provided that the worksheet does not look like a GFE and does not lead the consumer to believe it is a GFE. The worksheet may be used without a GFE if the consumer has not provided the information necessary to generate a GFE. The worksheet may also be used in conjunction with a GFE, but never in lieu of a GFE.
3. GFE, Important Dates, #5 (pg. 23). This FAQ changes HUD's previous position on how Line 1 of the Important Dates section on the GFE should be completed when a lender does not offer a rate lock. The January 28, 2010, FAQ #5 stated, in pertinent part, "[i]f the rate is not available for any period of time, then Line 1 should state 'Not Available' or 'NA.'" The April 2, 2010, FAQ #5 removes the use of "Not Available" or "NA" and states "Line 1 is completed the same way whether or not the lender offers a rate lock. In Line 1, the loan origination must state the date, and if applicable, time until which the interest rate for the GFE will be available."(emphasis added) **Our Comments:** There is no requirement under RESPA to make a rate available for a certain amount of time, provided the rate is not locked. Therefore, the loan originator may complete Line 1 with a date (including the date of the GFE) and time within that date during which the interest rate is available.
4. GFE, Block 1, #7 (pg. 28). This FAQ addresses specifically that a loan originator's commitment fee (an administrative fee to provide a loan commitment) is included in Block 1 of the GFE, "Our origination charge."
5. GFE, Block 1, #8 (pg. 28). HUD has revised this FAQ and eliminated the reference to change of loan program affecting Block 1. The January 28, 2010, FAQ #8 stated, in pertinent part, "Block 1 may also increase if the borrower either requests a different loan product or the borrower is no longer eligible for the loan product contained in the initial GFE, but is eligible for a different loan product."

The April 2, 2010, FAQ #8 does not address a change in loan program. ***Our Comments:*** The question was reworded to specifically address the impact of changing the loan amount on the Origination Charge. It does not appear that HUD is limiting increases in the Origination Charge to changes in loan amount. Another FAQ provides that the Origination Charge may increase if there is a “changed circumstance” as defined in 24 CFR §3500.2. (See FAQ #3, page 27) Furthermore, 24 CFR §3500.7(f) provides the instances that issuance of a revised GFE is permissible, e.g. borrower requested change, borrower ineligibility, changed circumstance, etc.

6. GFE, Block 1, #11 (pg. 29). This FAQ provides two examples how YSP is included in Block 1. ***Our Comments:*** If broker intends to receive all of the YSP, that entire amount should be included in Block 1, along with all other appropriate fees. This does not apply when the YSP in Block 2 is increased on a revised GFE. In that event the amount of YSP disclosed in Block 1 of the original GFE may not increase.
7. GFE, Block 1, #12 (pg. 30). This FAQ clarifies that if the amount on Line 801 on the HUD-1 decreases from the amount disclosed in Block 1 of the GFE, there is no potential tolerance violation. ***Our Comments:*** Be very cautious of not equating Block 1 with Block A and Line 801 with Line 803, when applying this general rule. A decrease from Block A on the GFE to Line 803 on HUD-1 may be a violation of the zero tolerance if a credit or YSP is improperly reduced.
8. GFE, Block 3, #5 (pg. 32). This FAQ provides that if a loan originator knows at the time it provides the GFE that there will likely be a charge by the borrower’s employer or banking institution for the VOE or VOD, the amount of that charge should be estimated in Block 3 of the GFE. ***Our Comments:*** Discovering this charge after the initial GFE is provided, however, may be a changed circumstance permitting a revised GFE.
9. GFE, Block 8, #1 & #2 (pg. 34). These two FAQs address transfer taxes, previously unaddressed in the FAQs. ***Our Comments:*** Remember transfer taxes are subject to a zero tolerance.
10. Sections 4 and 5- Right to cure and tolerance violations, #9 & #12 (pgs 42 and 43). The January 28, 2010, FAQ #9 referred to “the charges shown on pages 2 and 3 of the HUD-1.” (emphasis added) The April 2, 2010, FAQ #9 removes the reference to page 3. The January 28, 2010, FAQ #12 stated, in pertinent part, “[t]he comparison chart on page 3 of the HUD-1 should reflect the credit given for that service to cure the potential tolerance violation in the appropriate tolerance category.” The April 2, 2010, FAQ #12 removes that sentence completely and a recent HUD webinar indicated this change would occur. ***Our Comments:*** Previously, the comparison chart on page 3 of the HUD-1 could show a tolerance credit, thereby reflecting and confirming that the tolerance violation had been cured. Based on the April 2, 2010, changes to FAQs #9 and #12, if a lender is curing a tolerance violation by either of the methods described in revised FAQ #9 or #12, the comparison chart will continue to show the tolerance violation, and the tolerance cure will need to be clearly identified on page 2 or page 1 of the HUD-1, as applicable.

11. HUD-1 800 Series, #12 (pg. 12). This new FAQ addresses the application and itemization of a credit on Line 803 to other third party settlement services in a no-cost or reduced cost loan. A lender may itemize the charges for third party settlement services on an additional page to the HUD-1 or may itemize those charges outside the columns on a blank line in the 800 series. **Our Comments:** This is important if the loan program and/or investor require an itemization of what third party settlement charges are covered by the credit in Line 803.

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