

<p><b><u>1. Discussion of Average Charge</u></b></p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> Both ALTA and HUD seem to be on the same page regarding the desirability of a technical amendment. Minor differences in the wording were discussed. ALTA indicated that its wording preference would allow more of its members to adopt and use the average charge provisions of the Rule. Final wording to be provided by HUD.</p>							
<p><b><u>2. Page 3 Comparison Documentation – Different Vendors for Portions of Line 1101/GFE Box 4 Charges</u></b></p> <p>Question: What is the proper way to show GFE Box 4/ HUD-1 Line 1101 charges when one portion of such services are provided by a vendor shown on the lender’s provided list and another portion of the services are provided by a vendor <u>not</u> shown on the lender’s provided list? (See sample HUD-1 provided.)</p> <p>Answer: No answer was provided by HUD at the meeting. HUD’s guidance is sought.</p> <p>Possible Suggested Answer: One possible solution might be to amend GFE Box 4 to make it similar to GFE Box 6, which provides for a separate listing of charges for different items. Each item could then be compared individually on Page 3. Below is an illustration of the possible change:</p> <table border="1" data-bbox="191 1019 1035 1292"> <tr> <td colspan="2" data-bbox="191 1019 831 1219"> <p>4. Title Services and lender’s title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required Service Charge</p> </td> <td data-bbox="831 1019 1035 1219" rowspan="3" style="text-align: center; vertical-align: middle;"> <p>1,070.00</p> </td> </tr> <tr> <td data-bbox="191 1219 615 1255"> <p>Settlement Fee</p> </td> <td data-bbox="615 1219 831 1255"> <p>\$500.00</p> </td> </tr> <tr> <td data-bbox="191 1255 615 1292"> <p>Lender’s Title Insurance</p> </td> <td data-bbox="615 1255 831 1292"> <p>\$570.00</p> </td> </tr> </table>	<p>4. Title Services and lender’s title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required Service Charge</p>		<p>1,070.00</p>	<p>Settlement Fee</p>	<p>\$500.00</p>	<p>Lender’s Title Insurance</p>	<p>\$570.00</p>	<p>No direct HUD FAQ on this subject.</p> <p><b><u>ALTA Issues Remaining:</u></b> ALTA Question not yet answered.</p> <p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> ALTA indicated that a split of services contained in the GFE \$ box occurs frequently, particularly in western states. ALTA reiterated its suggestion (see left) to add boxes to GFE 4 for the separation of major services comprising the total. HUD representatives deferred response pending further discussion and study.</p>
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### 3. Tolerance Violation Cure

The final RESPA Reform rule added a new subsection (I) to Section 3500.7 of Regulation X, which grants a loan originator the right to cure any tolerance violation by reimbursing the Buyer/Borrower (at settlement or within 30 calendar days after settlement) the amount by which the tolerance was exceeded. Guidance is sought regarding the following questions:

- (2) how such curative actions should be documented;
  - (3) whether the curative payment must always be paid to the Buyer/Borrower; and
1. If the tolerance is exceeded in a particular area, does the amount paid to remedy the violation only need to be enough to return the tolerance violation to less than 10%? Or does the entire amount have to be paid?
  2. What if borrower selected provider is stipulated in the contract (that was executed prior to the GFE) and then the lender list includes that same provider? Is that provider subject to the tolerance? Or would the lender just exclude them from the list? If there is a match between the list and provider selected by the borrower (no matter when), is that considered to be subject to the tolerance?

See FAQs, "Section 4 and 5 – Right to Cure and tolerance violations,

2) **Q:** Who is responsible for any tolerance violation?  
**A:** The lender is responsible for curing tolerance violations

5) **Q:** What happens if the charges are not properly calculated on the GFE and later result in a tolerance violation? Will the settlement agent be responsible for paying the difference to the consumer?

**A:** The lender is responsible for curing all tolerance violations; not the settlement agent. The lender must cure the violation at closing or within 30 days after settlement.

6) **Q:** If a loan originator pressures a settlement agent to reduce their charges or to cover the difference to bring the costs into compliance with the tolerances, is that considered a violation of RESPA Section 8(a)?

**A:** If a loan originator (or other settlement service provider) pressures a settlement agent (or other settlement service provider) to reduce their charges or otherwise cover the difference' to bring the costs into compliance with the tolerances as a condition of receiving future referrals of business, it may be considered a potential violation of RESPA Section 8(a). Please contact the Office of RESPA and ILS to file a complaint.

8) **Q:** If the lender refunds money to a borrower to correct a tolerance violation and does not inform the settlement agent, has the settlement agent violated Section 4 of RESPA by not providing a revised HUD-1?

**A:** If the lender does not inform the settlement agent of the changes, the settlement agent is not in violation of Section 4 of RESPA for not providing an accurate HUD-1. The lender is responsible for informing the settlement agent of any changes

that would necessitate a revised HUD-1 because the lender is responsible for transmitting to the settlement agent all information necessary to provide an accurate HUD-1. After the lender informs the settlement agent of changes, the settlement agent must correct the HUD-1 and provide copies of the corrected HUD-1 to the borrower, seller, and lender, as applicable.

9) **Q:** How is a potential tolerance violation that is corrected by the lender shown on the HUD-1?

**A:** The settlement agent must prepare a revised HUD-1 that states the actual charges paid by the borrower and seller. If the lender pays for a portion of a charge to cure a potential tolerance violation, the amounts for the charge shown on pages 2 and 3 of the HUD-1 must be corrected to show the actual amount charged to the borrower. The settlement agent should include on a blank line in the applicable series a notation that the lender has made a P.O.C. payment of a specified amount to correct a potential tolerance violation. After the revised HUD-1 has been prepared by the settlement agent, the settlement agent must provide the revised HUD-1 to the borrower, the lender, and the seller as appropriate.

The example below illustrates how a cure for \$200.00 of transfer tax charges should be listed:

**[See end of Chart]**

10) **Q:** Is the tolerance threshold for HUD-1 Lines 801, 802 and 803 separate or is the tolerance threshold the aggregate of the three lines?

**A:** HUD-1 Lines 801, 802 and 803 each have a separate tolerance threshold.

**ALTA Issues Remaining:**

ALTA Question 2: The FAQs do not completely address this question and to the extent they do, they do so in an unworkable

manner and need FAQ correction. The chart accompanying FAQ 9 above, shows a tolerance correction of \$200.00 by deducting the amount from the previous 1203 line item and substituting a new number in its place. To do so will make the file out of balance since the cure was done POC. Further, it incorrectly shows the payment made for the settlement services. Also, this change will also necessitate a change to the Comparison Chart on Page 3. We believe that cures of tolerance violation are more appropriately shown on page 1, Section 200, as originally proposed to HUD by ALTA.

ALTA Question 3: Not answered, especially in connection with tolerance violations where the buyer/borrower is not paying (or receives a credit) for the charge upon which tolerance was exceeded.

**Discussion at HUD Meeting 10-6-09:** (1) **Tolerance Cures all on Page 1 of HUD** – HUD representatives were receptive to suggestion that all tolerance cures appear on Page 1 of the Settlement Statement in the 200 section, but needed to confirm internally. (2) **Tolerance Violation on Services Not Paid for By Borrower:** ALTA questioned whether tolerance cure payments should be made solely to the borrower where some or all of the items out of tolerance were paid for (by credits or otherwise) by parties other than the borrower. HUD indicated that a discussion had occurred internally on this subject and that an FAQ would soon be issued. (3) **Is a cure of the 10% aggregate tolerance limited to the amount over 10%:** HUD indicated yes, the cure is to the amount which exceeds the 10% limitation

**4. Disclosure of the Closing Fee Charged Separately to the Buyer/Borrower and Seller**

Question:

What is the proper way to address charges paid for by the Seller, whether by custom and practice, contract or otherwise, including the disclosure of the closing fee charged separately to Buyer/Borrower and Seller?

In many jurisdictions, whether by custom or contract, the Seller and the Buyer/Borrower are separately charged for various items. For instance, a separate closing or settlement fee (or a prescribed portion of a singular fee) is often charged for the closing of the sale and separate fee for the financing of the Buyer/Borrower. If the Seller and the Buyer/Borrower are separately charged a settlement or closing fee, will the Seller's charge:

(1) appear in the Seller's column of the HUD-1 on Page 2, line 1102; or

(2) will the entire amount of the closing or settlement fees for both the Seller and the Buyer/Borrower be shown outside the column in line 1102, included in the total of line 1102, and then appropriately apportioned in the columns?

See FAQs, "HUD-1 – Seller – paid items" -

1) **Q:** What if at closing the seller is paying for a settlement service that was listed on the GFE, such as the Owner's title insurance policy? How is this shown on the HUD-1?

**A:** If the seller is paying for a service that was on the GFE, such as Owner's title insurance, the charge remains in the borrower's column on the HUD-1. A credit from the seller to the borrower to offset the charge should be listed on the first page of the HUD-1 in Lines 204-209 and Lines 506-509 respectively.

2) **Q:** If the seller has agreed to pay charges that were disclosed on the borrower's GFE, how are these charges listed on the HUD-1?

**A:** The charge for any service which is disclosed on the borrower's GFE is listed in the borrower's column on the HUD-1. The amount charged to the borrower is offset by a credit in that amount in Lines 204-209 and by a charge to the seller in that amount in Lines 506-509 on page 1 of the HUD-1.

**See also** FAQs, "GFE – Block 4" –

7) **Q:** If it is common practice in the locality to charge both the seller and the borrower a separate charge for the service for conducting the settlement, how should the charges for that service be disclosed on the GFE?

**A:** The charge to the borrower for conducting the settlement must be included in the total for Block 4 of the GFE. Charges that the seller pays as a matter of common practice and experience are not disclosed on the GFE.

**See also** FAQs, "HUD-1 – 1100 Series":

13) **Q:** If the title agent conducts the settlement, should the charge for conducting the settlement be included in Line 1101 of the HUD-1, with the itemized charge listed outside the column on Line 1102?

**A:** Yes, the charge for conducting the

settlement must be included in the total on Line 1101. If the charge is paid to a third party, the charge must be itemized outside of the columns on Line 1102.

16) **Q:** How is the charge for conducting the settlement disclosed on the HUD-1?

**A:** The charge to the borrower for conducting the settlement must be included in the total stated in the borrower's column on Line 1101 of the HUD-1. In addition, the total in the borrower's column on Line 1101 must include any amount for conducting the settlement that was paid by another person on behalf of the borrower. In such a case, an offsetting credit must be shown on page 1 of the HUD-1. If the seller paid the amount, a credit to the borrower in that amount must be listed in Lines 204-209, and a charge to the seller must be listed in Lines 506-509. If another person pays the amount an offsetting credit is reported in Lines 204-209, identifying the person paying the charge.

**ALTA Issues Remaining:** The answers for Questions 13 and 16 under "HUD-1 – 1100 Series" seem inconsistent. While Question 13 seems to indicate that itemization of the settlement charge should occur only when a 3<sup>rd</sup> party conducts the settlement, whereas the Question 16 answer appears to require itemization in all cases.

ALTA continues to believe that the settlement charge to the borrower should be itemized on line 1102, outside of the column and that either amendments to existing FAQs or new FAQs should be made to establish this procedure.

**Discussion at HUD Meeting 10-6-09:** ALTA again indicated its preference for disclosure of both the settlement service provider and the borrower's portion of the settlement fee, outside of the column, on line 1102 to avoid inconsistent treatments. HUD indicated they would consider this request and get back to us.

<p><b><u>5. Changed Circumstances from Local Custom and Practice</u></b></p> <p>Question: If a GFE was issued with either (1) no owner's title insurance amount shown in Box 5 and/or (2) no settlement amount or only a portion of the settlement fee is included in Box 4, in an area where by local custom or contract it could reasonably be expected that the Buyer/Borrower would not pay this cost, but the Buyer/Borrower contracts to pay such item(s), would the Buyer/Borrower's contracting to do so constitute a changed circumstance?</p> <p>Answer: Yes, a changed circumstance would exist, allowing the lender to provide a new GFE on the basis of changed circumstances in order to avoid a tolerance violation.</p>	<p>See FAQs, "GFE – Block 5" -</p> <p>3) <b>Q:</b> If a borrower was quoted a basic owner's title insurance policy, but requests an enhanced owner's title insurance policy or an endorsement to the owner's title insurance policy, should the loan originator issue a revised GFE?</p> <p><b>A:</b> If the borrower requests an enhanced owner's title insurance policy or an endorsement to an owner's title insurance policy after the loan originator issues the GFE, the loan originator may choose to treat such a request by the borrower as a changed circumstance. The loan originator may then choose to provide a revised GFE to the borrower to disclose the increased charges. If the increased charges do not exceed tolerances, the loan originator may opt not to issue a revised GFE.</p> <p><b><u>ALTA Issues Remaining:</u></b> ALTA Question not yet answered.</p> <p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> ALTA and HUD representatives agreed that a borrower request for enhanced coverage over that coverage estimated in the GFE can be shown as a borrower selected service as to the additional charge for the enhanced coverage. The additional charge should be shown on a separate 1100 series line, in the column, as well as an entry in the "Charges That Can Change" section on page 3 of the HUD-1 form.</p>
<p><b><u>6. Prep of HUD 1 v. Disbursement</u></b></p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> HUD indicated that no charge could be made for a revised/amended HUD-1, but that legitimate additional disbursement services paid for by the lender could be charged.</p>
<p><b><u>7. Itemization of 1100 v. 800</u></b></p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> ALTA indicated that certain states require more itemization of service that contained on the HUD-1 form. In connection with the 800 section, HUD has offered an FAQ that defers to state law requirements. ALTA indicated that a similar FAQ regarding 1100 section charges might be advisable. HUD indicated they have been working with various states to align their statutes and regulation more with the</p>

	<p>new HUD-1 form and asked ALTA to provide a list of those states which may pose a problem.</p>
<p><b>8. <u>Items Shown Separately in Section 800</u></b></p> <p><b>Question:</b> Are all third party lender required fees properly shown in Box 3 of the GFE (and on lines 808 or below on the HUD-1)? Other than the lenders own charges, must a lender include any other third party required fees as part of the Origination Charge in Box 1 of the GFE (and on line 801 on the HUD-1)? If so, what are the factors for determining which third party items are included in the Origination Charge?</p> <p><b>Discussion:</b> During ALTA’s meeting with HUD, HUD representatives indicated their belief that some items paid to third parties by a lender would be included in the Origination Charge rather than being separately shown as an item on a separate line. As an example, we believe HUD’s direction was to NOT separately include an entry for the attorneys fees of the lender’s attorney to prepare loan documents, even if such attorney would be separately paid through the closing and that such charge would be added to the Origination Charge in Box1/Line 801 without segregation. Other charges not generally paid through closing are separately itemized on the new settlement statement form, including flood certification and tax service. In addition, many of our members asked regarding the distinction between a flood certification fee and a MERS registration fee and why they would be treated differently. One of the obvious concerns for lenders and settlement agents is the different treatment of such charges for tolerance compliance depending on how they are characterized, with Origination Charges having a “zero tolerance” while the other an aggregate 10% tolerance standard.</p>	<p>See FAQs, “HUD-1 – 800 Series”-</p> <p>6) <b>Q:</b> What fees are to be recorded in the 800 series of the HUD-1, beginning on Line 804?  <b>A:</b> When the loan originator selects the settlement service provider, fees for third party settlement services that are required by the loan originator are recorded in the 800 series beginning on Line 804. These third party services and fees most often include appraisals, credit reports, flood searches, tax service, and governmental loan program charges, such as VA, FHA, Rural Housing Service, or state bond loan programs. Processing or administrative services are part of “Our origination charge” and may not be separately itemized. The HUD-1 Instructions for the 800 series explain which fees go on which lines.</p> <p>7) <b>Q:</b> If state law requires further itemization of loan originator fees such as a commitment or underwriting fee, how should these fees be listed on the HUD-1?  <b>A:</b> If state law requires further itemization of loan originator fees than required under RESPA, those fees may be treated as other required disclosures and itemized on Line 808 and additional lines in the 800 series on the HUD-1 with the charge listed outside the borrower’s column.</p> <p><b><u>ALTA Issues Remaining:</u></b> ALTA Question not yet answered. Need further clarification regarding the difference between an administrative or processing expense (and therefore included in 801) and a 3<sup>rd</sup> party settlement service required by the lender (and therefore listed separately in the columns). Is the only distinction that the service is performed by a 3<sup>rd</sup> party?</p>

	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> ALTA expressed its concern that certain lender fees may be shown separately in the GFE 3/800 section rather than be considered as administrative services and included in line 801 amount. HUD generally believed that we are not a “policeman” of these services, but wanted to confer further prior to a definitive response.</p>
<p><b>9. <u>Provider Lists:</u></b></p> <p>(a) How many names have to be included on the lenders’ list(s) of providers?</p> <p>(b) What should be on the list of providers – name and contact information only? Or fees?</p>	<p>According to conversations with HUD, a list must have at least one provider (need FAQ)</p> <p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> (a) HUD indicated that only one provider need be shown; however, if the provider listed was an affiliated company, HUD “strongly suggested” that an additional provider be listed. (b)</p>
<p><b>10. <u>Use of Affiliated Businesses/GFE Block</u></b></p> <p>If the use of affiliated businesses cannot be required (due to affiliated business rules), does a charge that would normally go in block 3 then go in block 6 on the GFE in instances in which an affiliated provider is selected?</p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> No clear answer from HUD. Possibly the subject of an FAQ.</p>
<p><b>11. <u>Showing Appropriate Title Premiums in GFE</u></b></p> <p>Seeking further clarification when doing simultaneous issue re: title insurance premium. Should the lender’s premium be listed as an actual amount (as a stand alone) and the owner’s would be the difference? If a change were made later to omit owner’s policy, then the owner’s insurance premium would then increase.</p> <p>Page 37, FAQs dated September 18, question 21 addresses this but not entirely. Both the owner’s and lenders would be in the aggregate group subject to the overall tolerance. Would we put the simultaneous issue rate in owner’s policy so there wouldn’t be an out of tolerance situation?</p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> Both ALTA and HUD seemed to agree that if a simultaneous issue rate was shown as part of GFE 4 and an owner’s policy was later refused, the increased charge for a stand alone lender’s policy would still be less.</p>
<p><b>12. <u>Lender Acceptance of Broker-Originated GFE</u></b></p> <p>If mortgage broker issues GFE and lender does not accept and</p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> Not discussed</p>

<p>doesn't receive application within 3 days, it is not a changed circumstance. What does that mean? The loan doesn't close and the broker is in trouble?</p> <p>Page 14, FAQ's dated September 18, Question 8, xv states the answer is no, it would not constitute a changed circumstance. Would there be a new GFE? Seeking clarification on this.</p>	
<p><b>13. <u>Broker Earnest Money – Excess Deposit</u></b></p> <p>Does earnest money retained by the broker appear on line 501 or 506? Want to confirm that the Instructions (pg 68244) state, "Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of the excess deposit should be entered on line 501 and the amount of the total deposit (including commissions) should be entered on line 201." Is this correct?</p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> Not discussed</p>
<p><b>14. <u>Electronic Recording Charges</u></b></p> <p>How are charges for electronic recording addressed on the GFE (if at all) and the HUD-1? Does it depend on whether or not it is a county charge or a charge from a 3<sup>rd</sup> party provider? In the case of a county charge, should it be incorporated in 1201 as an administrative charge to be absorbed by the settlement agent? If it's a charge from a 3<sup>rd</sup> party provider to process and perform the electronic recording, is it broken out in 1206 outside the columns (and additional sequentially numbered lines) and rolled into 1201?</p> <p>E-recordings aren't directly addressed on GFE but the general idea is really the same. A county charge would be included in</p>	<p><b><u>Discussion at HUD Meeting 10-6-09:</u></b> Charges of governmental entities go in the 1200 section. Charges of private entities to assist in such governmental functions would be considered administrative services of the closing and included (without itemization in line 1101.</p>

<p>Box 7, Government recording charges. Transfer Taxes for e-recordings would be included in GFE 8.</p>	
<p><b><u>15. Split Closings</u></b></p> <p>How should charges for owner’s title insurance premiums be disclosed when Borrower and Seller close with different Settlement Agents and the Seller is obligated to provide the owner’s title insurance and such policy is being purchased through the Settlement Agent with which it closes? How should the split of such premiums between the title insurance agent and the underwriter be disclosed?</p> <p>The HUD-1 Settlement Statement is to be used as a statement of actual charges and adjustments paid by the Borrower and Seller. HUD has indicated that owner’s title insurance is an item that should be quoted on the GFE in a purchase transaction and as such it should also be shown as a Borrower’s charge on the HUD-1 for comparison with the GFE, regardless of who is contractually obligated to pay such charges. In the event that the Seller is obligated to pay for owner’s title insurance, the charge would still be showing on Line 1103 of the HUD-1 as a Borrower’s charge with an offsetting credit being shown in the 200s section of the HUD-1 for the Borrower and a debit for the same amount being shown in the 500s section of the HUD-1 for the Seller. However, that assumes that both Borrower and Seller are closing with the same Settlement Agent.</p> <p><u>Suggested Answer:</u></p> <p>Where the Borrower and Seller close with different Settlement Agents, the Settlement Agent for the Borrower should reflect the charge for owner’s title insurance as being \$0 on its HUD-1 since the premium for such policy is not being processed by it nor is it making any related disbursements. To do otherwise would render the HUD-1 as an inaccurate accounting of the funds which</p>	

the Borrower's Settlement Agent is responsible for handling. The Settlement Agent for the Seller should show the premium for owner's title insurance as a Seller's charge on Line 1103 of the HUD-1 and reflect the proper split of that premium on Lines 1107 and 1108 of the HUD-1 since it will be collecting and disbursing the subject premium.

Example from Tolerance Area

1200. Government Recording and Transfer Charges			
1201. Government recording charges			(from GFE #7)
1202. Deed \$	Mortgage \$	Release \$	
1203. Transfer taxes			(from GFE #8) \$800.00
1204. City/County tax/stamps	Deed \$ 1000.00	Mortgage \$	
1205. State tax/stamps	Deed \$	Mortgage \$	
1206. Transfer taxes \$200 P.O.C (lender) to meet tolerance			