

**COMPARISON OF PROPOSED GOOD FAITH ESTIMATE (GFE)
AND GUARANTEED MORTGAGE PACKAGE AGREEMENT (GMPA) REGIMES
AS APPLIED TO TITLE AND RELATED SERVICES**

LENDER PERSPECTIVE

	Issue	GFE Treatment	GMPA Treatment	Comments
1	Do lenders have to guarantee to applicant estimated price for 1100 series charges?	<ul style="list-style-type: none"> • Yes, if use of non-affiliated title company is required by lender. • Estimate may be exceeded by 10% if applicant is permitted to choose title company and selects company recommended by lender (including an affiliated title company). • No tolerance limit if applicant selects her own provider not recommended by lender or elects to purchase more expensive services. 	<p>No and yes.</p> <ul style="list-style-type: none"> • No, since lender only guarantees total GMP price. • Yes, because the GMP price must include all settlement services and charges required to complete the loan. 	What happens if: some 1100 series service providers are selected by applicant (e.g., escrow company) but other providers (title) are selected by lender?
2	Can lenders require the use of a particular provider (title company)?	<p>Yes, but:</p> <ul style="list-style-type: none"> • provider cannot be affiliated with lender, and estimate for Category III(D) services has 0% tolerance; • lender can recommend affiliate and, if consumer ultimately decides to use affiliate, estimate for Category III(D) services may be exceeded by 10%. 	<p>Yes. Lender can require the use of an affiliated or independent title company and does not have to provide AfBA notice because § 8 does not apply.</p>	
3	Can lenders mark-up any discounts from providers or receive things of value from provider?	No. § 8 continues to apply.	Yes. § 8 does not apply.	

	Issue	GFE Treatment	GMPA Treatment	Comments
4	Will lenders have incentive to negotiate lower prices from providers?	<p>Perhaps.</p> <ul style="list-style-type: none"> • Having a lower price for Category III(D) charges may provide some competitive advantage. • If other lenders are negotiating for lower prices, all lenders may have to do so to remain competitive. • Lenders with affiliated title companies face a trade off (possible competitive advantage from lower III(D) charge <u>vs.</u> less revenue for affiliated title company). 	<p>Yes, either because of</p> <ul style="list-style-type: none"> • profit incentive, or • need to meet GMP prices of other lenders. 	
5	Will lender want title company to swallow any cost overruns?	<ul style="list-style-type: none"> • Almost certainly if lender requires the use of the non-affiliated title company. • If use of company is not required, lenders are very likely to look to title company to guarantee total Category III(D) estimate and to assume risk of actual costs exceeding estimate by more than 10%. • Lender may put pressure on title company not to utilize 10% tolerance, even if needed. 	<p>Yes if title company quote to lender includes all 1100 series charges, since any cost overrun that lender has to assume would decrease lender's profit on the GMP.</p>	

	Issue	GFE Treatment	GMPA Treatment	Comments
6	What obligations does lender have with regard to the loan identified in the GFE or GMPA	<ul style="list-style-type: none"> • GFE must remain "valid" for 30 days (not clear what this means). • Loan terms may change until borrower locks in the rate. • Decision to make the loan still subject to normal loan underwriting. • New GFE must be provided if loan terms have changed, but estimates for settlement service Categories cannot change unless the charge in the Category (such as Category II(B), which includes the discount points) is dependent on the interest rate. 	<ul style="list-style-type: none"> • GMPA offer must remain open for at least 30 days. • Until lock in, loan terms may only change based on a verifiable index or other appropriate measure. • Decision to make the loan still subject to normal loan underwriting. 	<ul style="list-style-type: none"> • Lenders may be unable to comply with the GMPA requirement regarding changes in the interest rate because changes are tied to changes in the bond markets, not to a verifiable index.
7	Will new regimes affect a lender's decision to use or recommend affiliated business providers?	<p>Only difference from incentives under current GFE regime is if a lender believes that:</p> <ul style="list-style-type: none"> • it can obtain the needed services at a lower charge by requiring or recommending a lower cost non-affiliated provider, and • by lowering its Category III(D) estimate it will attract more borrowers and make more money than if it continues to use affiliated provider. 	<p>Yes, if:</p> <ul style="list-style-type: none"> • lender can obtain the services at lower cost from a non-affiliated provider; • the reduction in costs more than offsets the return it realizes on its AfBA investment above what it might otherwise earn on its capital; and • competition does not force the lender to reduce its GMP price to reflect the lower costs. 	<ul style="list-style-type: none"> • Lenders may still use AfBAs if they believe there are efficiencies or other benefits even if the services can be obtained at a somewhat lower price from non-affiliated providers.

**COMPARISON OF GFE AND GMPA REGIMES
AS APPLIED TO TITLE AND RELATED SERVICES**

CONSUMER PERSPECTIVE

	Issue	GFE Treatment	GMPA Treatment	Comments
1	Will consumer know what services are included so as to be able to determine if her interests in the purchase transaction will be protected?	<p>With regard to what is included in the Category III(D) price, perhaps not (at least without changes to the proposed regulations).</p> <ul style="list-style-type: none"> • Not clear whether HUD expects this price to include only “all fees and charges for title and settlement agent services and [loan] title insurance” (HUD instructions for completing new GFE), or HUD expects all 1100 series charges (e.g., fees for the lender’s, seller’s or borrower’s attorney, express delivery charges, doc prep fees; Torrens registration fees) to be included. • While title agent and title insurance charges have to be identified in Attachment A-1 (and this may reveal something about the nature of the title protection that the lender is contemplating), the GFE form does not require the lender to indicate if its estimate reflects a non-traditional type of protection for the mortgage loan. 	<p>Probably not.</p> <ul style="list-style-type: none"> • Lender has no obligation to disclose anything about what services are, or are not, included in the package. • While lender must indicate if it “anticipates” loan title insurance being included in the package, this may not provide the borrower with the information she needs about the type of title examination that is included in the package. 	<ul style="list-style-type: none"> • Will lenders seek non-traditional forms of title protection in loan transactions involving a purchase/sale of property? • While HUD is not requiring lenders to identify nature of, and amounts paid, for specific services, final regulations could permit lenders to make such disclosures in response to market demands from buyer/borrowers and their real estate agents or attorneys.

	Issue	GFE Treatment	GMPA Treatment	Comments
2	Is there a need for the GFE/GMPA to take into account situations where the borrower has already selected a provider of closing or title services before submitting the loan application?	<ul style="list-style-type: none"> • Perhaps, at least in the case where the borrower has selected a company to provide escrow closing services or attorney services for the real estate transaction. • Estimate for Category III(D) will obviously not reflect what borrower has agreed to pay for such services. • While this does not cause lender to be in violation of new GFE rules, it may pose a problem for consumer shopping for provider of title-related services, unless HUD permits certain services to be excluded from the Category III(D) estimate. • Without knowing what the lender's preferred provider will charge for the other services that the borrower has not separately arranged to acquire (e.g., escrow closing), borrower will be unable to tell whether the lender's other charges in Category III(D) are competitive. 	<ul style="list-style-type: none"> • Yes, in order to ensure that borrower does not pay twice for services that she has separately (or together with the seller) arranged to purchase. • GMPA regime needs to provide a credit against GMPA price for any service that borrower has decided to obtain from a provider other than the one included in the lender's GMPA. 	<ul style="list-style-type: none"> • It is not clear in the GMPA proposal whether a lender/packager can exclude services other than owner's title insurance from the coverage of its package (e.g., escrow closing services). • It is not clear whether HUD can make appropriate changes to its final regulations to take these concerns into account.

**COMPARISON OF GFE AND GMPA REGIMES
AS APPLIED TO TITLE AND RELATED SERVICES**

TITLE COMPANY PERSPECTIVE

	Issue	GFE Treatment	GMPA Treatment	Comments
1	Will title company have to guarantee to the lender that final amount for total 1100 series charges will not exceed estimates provided?	<ul style="list-style-type: none"> • Nothing in proposed regs suggests an answer, but lenders will likely look for such assurances. • If use of title company is not required, final charges could exceed estimate for Category III(D) by 10%. Lenders may want to avoid having that happen. 	<ul style="list-style-type: none"> • Nothing in proposed regs suggests an answer, but lenders will almost certainly look for such assurances because any increase at settlement will reduce profit on the GMP price or cause lender to have to reduce its charges. 	
2	How will the new regimes affect marketing of services?	<ul style="list-style-type: none"> • Because lenders may require the use of a non-affiliated provider, becoming the preferred provider for a lender may become the most effective marketing approach. • Not clear if consumers, armed with a GFE from a lender, will use that to shop for providers of 1100 series services. 	<ul style="list-style-type: none"> • Becoming part of a lender package may be the only effective means of securing business. 	