



August 13, 2009

Ivy M. Jackson, Director
U.S. Dept. of Housing and Urban Development
Office of RESPA and Interstate Land Sales
452 7th Street SW, Room 9158
Washington, DC 20410

Dear Director Jackson:

This is a follow-up to my letter dated June 12, 2009 on behalf of ALTA's RESPA Implementation Task Force and items pending clarification as a result of our initial meeting on April 28, 2009. In addition to the questions submitted to HUD in ALTA's previous communication, a few additional questions have been raised that warrant further clarification from HUD (see attached).

The industry is very much in need of interpretation and guidance on many issues related to HUD's new RESPA Rule. As you can imagine, time will be needed in order to update software, integrate systems, train title industry professionals, and establish protocols and best industry practices in order to comply with the new Rule. While the industry continues to move ahead with implementation plans, these outstanding issues must be resolved in order to fully implement the Rule. With the final deadline of January 1, 2010 for the new GFE and HUD-1/1A forms, the industry is mindful of the fact that only a few months remain and yet a number of key issues are still pending guidance from HUD.

As time is of the essence, ALTA's RESPA Implementation Task Force is requesting a written response to its initial inquiry as well as the attached as quickly as possible. This guidance is critical to ensure a smooth transition with the new forms and implementation of the Rule.

Best regards,

A handwritten signature in blue ink, reading "Kurt Pfothauer". The signature is fluid and cursive, with a long horizontal line extending to the right.

Kurt Pfothauer
Chief Executive Officer

ADDITIONAL QUESTIONS

1. Items Shown in Comparison Section of New HUD-1

Question: The new HUD-1/1A Settlement Statement contains an additional page which, in part, is intended to provide a comparison of charges shown on the Good Faith Estimate (GFE) with those charged to the buyer/borrower and shown on the settlement statement. While most items shown on the settlement statement can be compared to a GFE related “Box”, certain items shown in the Borrower’s column (i.e. payment of credit card accounts as a condition of the loan; repair work on the subject property required by the lender prior to funding or other similar expense as a result of a lender underwriting requirement; or other borrower selected services) may not have such a relationship.

In preparing the HUD-1/1A settlement statement Comparison Chart section should a settlement agent show all items charged to and paid by the buyer/borrower in one of the three available sections on page 3? If less than all items charged to the borrower should be included in the Comparison chart section, what are the factors for determining which items are included and which are not?

Discussion:

For each of the 3 sections contained in the comparison chart, the instructions provide:

The amounts shown on the HUD– 1/1A for each line must be entered in the HUD–1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. (Emphasis added)

2. Items Shown Separately in Section 800

Question: 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?

Discussion: 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.

3. Documentation Needed to Complete Page 3 of New HUD-1 Form

Question: In completing page 3 of the new HUD-1 settlement statement form (page 2 of HUD1-A form), a settlement agent may rely on information provided by the lender regarding various pieces of information necessary for the completion of such page without the delivery of a copy of the applicable Good Faith Estimate form (and/or other original documentation) to the settlement agent.

Suggested Answer: True. The settlement agent may rely upon information from the lender, including information on the contents of the GFE provided to the borrower without having been provided a copy thereof. Such information from the lender may include (1) the original contents of the loan terms section of the GFE; (2) the contents of the Adjusted Origination Charges and All Other Settlement Services sections of the GFE; and (3) the designations made by the lender of service providers which may be required under the new regulations.

Discussion: Lender groups have expressed a desire to provide settlement agents with a streamlined document for the transmission of information necessary for the completion of the third page of the new HUD-1 form. ALTA is in favor of such a proposal and believes that such an orderly transmission of information without the necessity of additional original documentation will provide more cost efficient handling of such matters.

However, certain provisions in the new rule seem to require the actual receipt of the GFE and other accompanying documents from the lender for transcription to the new HUD-1 form and for verification thereof. Those references include the following:

New Rule, page 68230, Federal Register

The second half of the new page sets forth the loan terms for the loan received at settlement in a format that reflects the summary of loan terms on the first page of the GFE, but with additional related information that would be available at closing. By presenting the comparison chart and the loan terms on the new page of the HUD–1, the borrower will be made aware of any changes to the settlement charges or loan terms and be able to confirm those changes.

New Rule, page 68241, Federal Register

The loan originator must transmit to the settlement agent all information necessary to complete the HUD–1 or HUD–1A.

New Rule, page 68246, Federal Register

“Charges That Cannot Increase”. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower’s GFE must be entered in the appropriate line in the Good Faith Estimate column. ... If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number...

“Charges That Cannot Increase More Than 10%”. A description of each charge included in Blocks 3 and 7 on the borrower’s GFE must be entered on separate lines in this section, with the

amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. ...The amounts shown on the HUD- 1/1A for each line must be entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. ...

"Charges That Can Change". The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section...

We would appreciate your clarification on this subject.