

# 2008 RESPA REFORM

## Finally a Final RESPA Rule

Phillip L. Schulman, Esq.  
Holly Spencer Bunting, Esq.  
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## Goals for Today's Webinar

- Explain main components of the final RESPA rule.
- Examine the rule's impact on your business operations.
- Identify industry concerns.
- Make some predictions.

## Background

- RESPA reform has been ongoing since 1992.
- It is never without controversy, as proposed changes typically pit settlement service providers against each other.
- This was certainly the case in 2002 when HUD introduced a proposed rule calling for a guaranteed mortgage package.
- Eventually settlement service industries, with help of Congress, got HUD to withdraw the 2002 proposed rule.

## Background

- In 2005, HUD conducted a series of roundtable discussions with industry representatives, trade associations, and consumer groups.
- Two and a half years later, HUD published its proposed RESPA rule on March 14, 2008. HUD received approximately 12,000 public comments in response to the proposed rule.
- HUD published its final rule on November 17, 2008.

## Summary of Final Rule

- **Main components of final RESPA rule.**
  - 3-page Good Faith Estimate
  - Disclosure of broker fees as a “credit” to consumer
  - Tolerance limitations on settlement charges
  - 3-page HUD-1 Settlement Statement
  - Average charges
  - No negotiated discount changes for now
  - Required use
- **Every settlement service provider will be affected.**

## 1. Good Faith Estimate – Proposed Rule

- Revise a one-page GFE into a four-page standardized form.
- Summary of key loan terms.
- Estimated total settlement charges.
- GFE to be provided within 3 days of “GFE application.”
- Estimated settlement charges to be available for 10 business days.

## Good Faith Estimate – Public Comments

- Consumer groups and trade associations submit GFE forms for HUD consideration.
- Proposed GFE is too long and confusing.
- Disclosure of fees on the GFE should be synchronized to the HUD-1.
- “GFE application” triggers obligations under other federal laws.
- Consumer groups advocate extending the lenders’ estimates beyond 10 days.

## Good Faith Estimate – Final Rule

- Final rule requires a three-page GFE.
- Includes a summary of key loan terms on page one.
  - Breaks out escrow information from summary.
- Estimates total settlement charges on page two.
  - Removes “optional” from owner’s title insurance
  - Separate categories for recording fees and transfer taxes.
  - Shuffles the order of settlement charges.



OMB Approval No. 2502-0265

## Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	Date of GFE
Originator Email	

### Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at [www.hud.gov/respa](http://www.hud.gov/respa). If you decide you would like to proceed with this loan, contact us.

### Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

### Important dates

1. The interest rate for this GFE is available through [ ] . After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through [ ] .
3. After you lock your interest rate, you must go to settlement within [ ] days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least [ ] days before settlement.

### Summary of your loan

Your initial loan amount is	\$	
Your loan term is		years
Your initial interest rate is		%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$	per month
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of %.	The first change will be in
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$	
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be in and the monthly amount owed can rise to \$ . The maximum it can ever rise to is \$	
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$	
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.	

### Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ [ ] .

Do we require you to have an escrow account for your loan?

No, you do not have an escrow account. You must pay these charges directly when due.

Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

### Summary of your settlement charges

<b>A</b>	Your Adjusted Origination Charges (See page 2)	\$
<b>B</b>	Your Charges for All Other Settlement Services (See page 2)	\$
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	\$

Good Faith Estimate (HUD-GFE) 1

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges					
1. Our origination charge This charge is for getting this loan for you.					
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [ ] for this interest rate of [ ] %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ [ ] for this interest rate of [ ] %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.					
<b>A</b> Your Adjusted Origination Charges	\$				
Your Charges for All Other Settlement Services					
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge			
Service	Charge				
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.					
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.					
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge			
Service	Charge				
7. Government recording charges These charges are for state and local fees to record your loan and title documents.					
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.					
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other [ ]					
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ [ ] per day for [ ] days (if your settlement is [ ]).					
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Policy	Charge			
Policy	Charge				
<b>B</b> Your Charges for All Other Settlement Services	\$				
<b>A + B</b> Total Estimated Settlement Charges	\$				

## Good Faith Estimate – Final Rule

- Provide a GFE within three days of receiving an “application.”
  - New definition of application.
- Settlement charges must remain open for 10 business days.
  - No change by HUD.
- Identifies that the initial interest rate is available until a specified date.
  - No change by HUD.
- Limits GFE fees to the cost of a credit report.
  - Legal authority?
- Removes 1% origination fee cap on FHA loans.
  - HUD thinks competition will lower fee.

## 2. Disclosure of Yield Spread Premiums – Proposed Rule

- HUD proposed to require premiums paid to mortgage brokers by lenders to be disclosed on the GFE as a credit to borrower's origination costs.
- HUD proposed the inclusion of a comparison chart to demonstrate the consequences should a borrower wish to lower interest rate or settlement charges paid at closing.

## **Disclosure of Yield Spread Premiums – Public Comments**

- Disclosure of “credit” is misleading and confusing.
- GFE makes unfair distinctions between mortgage lenders and mortgage brokers.
- HUD’s testing of consumers’ understanding of the disclosure did not go far enough.
- HUD should work with the Federal Reserve Board to ensure YSP disclosure is consistent with TIL disclosure.

## Disclosure of Yield Spread Premiums – Final Rule

- YSP disclosure remains largely unchanged.
- A YSP is disclosed as a “credit” to the lender or broker’s “origination charge.”
- Discount points are disclosed as a “charge,” which is added to the lender or broker’s “origination charge.”
- HUD retains the comparison chart on page three of final GFE.
  - A lender’s completion of this chart is now optional.

### 3. Tolerances – Proposed Rule

- 3 buckets of settlement charges  
(Items 3-10 on page 2 of proposed GFE)
  - **Fixed fees**
  - **10% tolerance**
  - **No restrictions**
  
- Absent “unforeseeable circumstances.”
- Government recording fees in fixed fees category.

## Tolerances – Public Comments

- Tolerances are the equivalent of settlement cost guarantees, instead of statutorily required “estimates.”
- Exact amount of recording fees cannot be determined at the GFE stage.
- Tolerances will have anti-competitive effects.
  - In an effort to control costs, lenders will seek guaranteed prices from large settlement service providers.

## Tolerances – Final Rule

- Questionable statutory authority.
- 3 buckets of settlement charges  
(Items 3-11 on page 2 of final GFE)
  - **Fixed fees**
  - **10% tolerance**
    - HUD moves government recording fees from the fixed category to the 10% tolerance category.
  - **No restrictions**
- Absent “changed circumstances.”
  - HUD expands the circumstances that will justify a new GFE.
- HUD gives lenders a 30-day cure period.

## Instructions

### Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> <li>Our origination charge</li> <li>Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate)</li> <li>Your adjusted origination charges (after you lock in your interest rate)</li> <li>Transfer taxes</li> </ul>	<ul style="list-style-type: none"> <li>Required services that we select</li> <li>Title services and lender's title insurance (if we select them or you use companies we identify)</li> <li>Owner's title insurance (if you use companies we identify)</li> <li>Required services that you can shop for (if you use companies we identify)</li> <li>Government recording charges</li> </ul>	<ul style="list-style-type: none"> <li>Required services that you can shop for (if you do not use companies we identify)</li> <li>Title services and lender's title insurance (if you do not use companies we identify)</li> <li>Owner's title insurance (if you do not use companies we identify)</li> <li>Initial deposit for your escrow account</li> <li>Daily interest charges</li> <li>Homeowner's insurance</li> </ul>

### Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$	\$	\$
Your initial interest rate <sup>1</sup>	%	%	%
Your initial monthly amount owed	\$	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ <b>more</b> every month	You will pay \$ <b>less</b> every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be <b>reduced</b> by \$	Your settlement charges will <b>increase</b> by \$
How much your total estimated settlement charges will be	\$	\$	\$

<sup>1</sup> For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

### Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

### If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.



Good Faith Estimate (HUD-GFE) 3

## **Penalties for Violation of GFE**

- Violates Section 5 of RESPA.
- No private right of action.
- UDAP.

#### **4. HUD-1 Settlement Statement – Proposed Rule**

- Modifies page two to allow consumers to compare the settlement charges with the GFE.
- Groups previously itemized lender and title insurance charges into single fees.
- Proposes the disclosure of title agent's and title underwriter's portion of title premium.

## HUD-1 Settlement Statement – Public Comments

- Better comparison needed between GFE & HUD-1.
- Disclosure of single origination and title fees raises concerns under TILA.
- Bundled fees do not promote a consumer's ability to shop.
- Disclosure of title premium split is not required on the GFE and is a matter of private contract.

## HUD-1 Settlement Statement – Final Rule

- Modifies page two of HUD-1 to compare final settlement charges with the GFE.
  - Includes “(from GFE #\_)” next to itemized charges
  - Uses language consistent with GFE (i.e., removes “optional” from owner’s title insurance)
  
- Groups previously itemized lender and title insurance charges into single fees.
  - Breaks out settlement fee from bundled title services fee.
  - Continues to itemize title agent’s and title underwriter’s portions of premium.



## A. Settlement Statement (HUD-1)

OMB Approval No. 2502-0265

<b>B. Type of Loan</b>		
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.	
6. File Number:		7. Loan Number
8. Mortgage Insurance Case Number:		
<b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "B" or "C" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.		
D. Name & Address of Borrower:		E. Name & Address of Seller:
		F. Name & Address of Lender:
G. Property Location:		H. Settlement Agent:
		Place of Settlement:
		I. Settlement Date:

J. Summary of Borrower's Transaction	
<b>100. Gross Amount Due from Borrower</b>	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1403)	
104.	
105.	
<b>Adjustment for items paid by seller in advance</b>	
106. City/town taxes	to
107. County taxes	to
108. Assessments	to
109.	
110.	
111.	
112.	
<b>120. Gross Amount Due from Borrower</b>	
<b>200. Amounts Paid by or in Behalf of Borrower</b>	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
<b>Adjustments for items unpaid by seller</b>	
210. City/town taxes	to
211. County taxes	to
212. Assessments	to
213.	
214.	
215.	
216.	
217.	
218.	
219.	
<b>220. Total Paid by/for Borrower</b>	
<b>300. Cash at Settlement from/to Borrower</b>	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

K. Summary of Seller's Transaction	
<b>400. Gross Amount Due to Seller</b>	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
<b>Adjustments for items paid by seller in advance</b>	
406. City/town taxes	to
407. County taxes	to
408. Assessments	to
409.	
410.	
411.	
412.	
<b>420. Gross Amount Due to Seller</b>	
<b>500. Reductions in Amount Due to Seller</b>	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1403)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
<b>Adjustments for items unpaid by seller</b>	
510. City/town taxes	to
511. County taxes	to
512. Assessments	to
513.	
514.	
515.	
516.	
517.	
518.	
519.	
<b>520. Total Reduction Amount Due Seller</b>	
<b>600. Cash at Settlement to/from Seller</b>	
601. Gross amount due to seller (line 420)	
602. Less reductions in amount due seller (line 520)	( )
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated to average 35 minutes per response for collecting, reviewing, and reporting the data. This agency will not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges							
<b>700. Total Real Estate Broker Fees</b>							
Division of commission (line 700) as follows:							
701.	\$		to			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
702.	\$		to				
703.	Commission paid at settlement						
704.							
<b>800. Items Payable in Connection with Loan</b>							
801.	Our origination charge	\$			(from GFE #1)		
802.	Your credit or charge (points) for the specific interest rate chosen	\$			(from GFE #2)		
803.	Your adjusted origination charges				(from GFE #1)		
804.	Appraisal fee to				(from GFE #3)		
805.	Credit report to				(from GFE #3)		
806.	Tax service to				(from GFE #3)		
807.	Flood certification				(from GFE #3)		
808.							
<b>900. Items Required by Lender to Be Paid in Advance</b>							
901.	Daily interest charges from	to	@ \$	/day	(from GFE #13)		
902.	Mortgage insurance premium	for	months to		(from GFE #3)		
903.	Homeowner's insurance	for	years to		(from GFE #11)		
904.							
<b>1000. Reserves Deposited with Lender</b>							
1001.	Initial deposit for your escrow account				(from GFE #9)		
1002.	Homeowner's insurance	months @ \$	per month	\$			
1003.	Mortgage insurance	months @ \$	per month	\$			
1004.	Property taxes	months @ \$	per month	\$			
1005.		months @ \$	per month	\$			
1006.		months @ \$	per month	\$			
1007.	Aggregate Adjustment			-\$			
<b>1100. Title Charges</b>							
1101.	Title services and lender's title insurance				(from GFE #4)		
1102.	Settlement or closing fee	\$					
1103.	Owner's title insurance				(from GFE #2)		
1104.	Lender's title insurance	\$					
1105.	Lender's title policy limit \$						
1106.	Owner's title policy limit \$						
1107.	Agent's portion of the total title insurance premium	\$					
1108.	Underwriter's portion of the total title insurance premium	\$					
<b>1200. Government Recording and Transfer Charges</b>							
1201.	Government recording charges				(from GFE #7)		
1202.	Deed \$	Mortgage \$	Releases \$				
1203.	Transfer taxes				(from GFE #8)		
1204.	City/County tax/stamps	Deed \$	Mortgage \$				
1205.	State tax/stamps	Deed \$	Mortgage \$				
1206.							
<b>1300. Additional Settlement Charges</b>							
1301.	Required services that you can shop for				(from GFE #6)		
1302.		\$					
1303.		\$					
1304.							
1305.							
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>							

## 5. Closing Script – Proposed Rule

- Proposed as a new addendum to the HUD-1.
- Settlement agent to read aloud at closing and provide in writing to consumer.
- Requires settlement agent to:
  - Explain specific loan terms
  - Compare settlement charges on GFE to HUD-1
  - Notify consumer if final settlement charges exceed applicable tolerances
  - Explain if mortgage documents differ from GFE loan terms.

## Closing Script – Public Comments

- Explaining loan terms raises unauthorized practice of law concerns.
- Closing script presumes all closings are conducted face-to-face with borrowers.
- Closing script will increase time required for closing, which could result in higher closing fees.
- If closing script highlights inconsistencies between the GFE and HUD-1, it is too late to make changes.

## Closing Script – Final Rule

- Adds page three to the HUD-1 and eliminates closing script.
  - Requires comparison chart between GFE fees and final settlement charges on HUD-1.
  - Includes a summary of loan terms.
- Obligates lender to supply settlement agent with sufficient information to complete page three.



## 6. Average Cost Pricing – Proposed Rule

- HUD proposed to allow lenders and brokers to use average cost pricing for settlement services.
- Average cost pricing may be determined by either:  
(i) actual six-month average; or (ii) tiered pricing approach.

## Average Cost Pricing – Public Comments

- General support for average cost pricing.
- All settlement service providers should be allowed to use average cost pricing; not just loan originators.
- The proposed methods for calculating average cost are too restrictive.

## Average Cost Pricing – Final Rule

- “Average cost pricing” renamed “average charges.”
- Final rule permits any settlement service provider to use average charges for settlement services obtained from third parties.
  - Average charge not allowed for services that are priced based on loan amount or price of home, or for a provider’s own internal charges.

## Average Cost Pricing – Final Rule

- No specific method prescribed to determine average charges
  - Must be recalculated every 6 months.
  - Average charge must be used for every transaction within a specific class of transactions.
  - If average charge used, must retain documentation of calculation.

## 7. Negotiated Discounts – Proposed Rule

- HUD proposed to modify definition of “thing of value” to exclude discounts negotiated by settlement service providers from third party vendors.
- Any discount must be passed on to the borrower and disclosed on the HUD-1.

## Negotiated Discounts – Public Comments

- Support for concept, but concern that discounts could lead loan originators to steer customers to certain providers.
- Negotiated discounts could disadvantage small businesses.
- State title insurance laws may prohibit discounts.

## Negotiated Discounts – Final Rule

- HUD declines to amend the definition of “thing of value” to allow negotiated discounts, but will give it further consideration.
- HUD makes clear that “discounts negotiated between loan originators and other settlement service providers, or by an individual settlement service provider on behalf of a borrower, where the discount is ultimately passed on to the borrower in full, is not, depending upon the specific circumstances of a particular transaction, a violation of Section 8 of RESPA.”

## 8. Required Use – Current Rule

- Person must use and pay for particular provider of settlement service in order to have access to some distinct service or property.
- Exception for offering discounts or rebates to consumer for purchase of combination of settlement services provided:
  - Package is optional
  - True discount.

## Required Use – Proposed Rule

- Does 4 things:
  - 1) Says required use includes both economic incentives and disincentives
  - 2) Only borrowers may receive discounts, not sellers
  - 3) Prohibits owners of affiliated businesses from linking incentives to use of their affiliates
  - 4) Restricts ability to offer rebates to “settlement service providers,” thereby excluding homebuilders.

## Required Use – Public Comments

- Only borrowers are allowed to receive discounts under the proposed definition. What about sellers?
- The rule excludes homebuilders from offering discounts to their customers.
- The proposed rule appears to prohibit incentives in the form of gift cards, free home inspections, etc.
- The revised definition would promote consumer shopping.

## Required Use – Final Rule

- Changes HUD made were minimal:
  - 1) Economic incentives and disincentives made part of final rule – that stayed.
  - 2) HUD expands discounts to “persons” not just buyers – so sellers now included.
  - 3) HUD lifted ban on linking incentives to use of affiliates for everyone but homebuilders.
  - 4) HUD left ability to offer incentives to “settlement service providers” only – homebuilders did not make the cut.

## 9. Miscellaneous Amendments

- HUD finalizes its proposals to:
  - Update mortgage servicing disclosures
  - Remove expired provisions of escrow regulations
  - Recognize the applicability of ESIGN

## Effective Dates of Final Rule

- January 16, 2009
  - New definition of “required use”
  - Use of average charges
  - Miscellaneous amendments
- January 1, 2010
  - GFE (disclosure of YSP and tolerances)
  - HUD-1
  - All revised definitions (except “required use”)

## **The Good, the Bad, and the Ugly – Mortgage Lenders**

- The Good
  - 30-day cure period for amounts in excess of tolerances.
  - Softer language regarding lender's sale of loans in secondary market.
  - No two-tiered application system.
  - Expanded list of “changed circumstances.”
  
- The Bad (and Ugly)
  - HUD did not collaborate with Federal Reserve.
  - No changes to tolerances (except for recording fees).
  - No changes to disclosure of broker fees.
  - GFE fee limited to a credit report fee.

## **The Good, the Bad, and the Ugly – Mortgage Brokers**

- The Good
  - Required Use.
- The Bad (and Ugly)
  - No change to YSPs/backend fees.

## The Good, the Bad, and the Ugly – Title Insurance and Settlement Companies

- The Good
  - Closing script out.
  - No amended definition to allow negotiated discounts.
  - HUD removed “optional” from owner’s title insurance.
  - Lender responsible for explaining loan terms.
  - 30-day cure means the loan can close.
  
- The Bad
  - HUD still requires title agent’s and title underwriter’s premium split to be disclosed on HUD-1.
  
- The Ugly
  - New page 3 to HUD-1 with “closing script” information.
  - Will lengthen time of settlement.

## **The Good, the Bad, and the Ugly – Real Estate Brokerage Industry**

- **The Good**
  - HUD redrafted some language on GFE to make it easier to understand.
  - No amended definition to allow negotiated discounts.
  - Synchronization.
  - Not perfect rule, but greater transparency and clarity.
  
- **The Bad (and Ugly)**
  - HUD did not collaborate with Federal Reserve on disclosures.

## **The Good, the Bad, and the Ugly – Builders and their Affiliated Business Arrangements**

- The Good
  - HUD modified definition of “required use” to ensure both buyers and sellers can take advantage of discounts and incentives.
  - HUD emphasized that any provider can offer discounts on its own services.
  
- The Bad (and Ugly)
  - The definition refers only to “settlement service providers.”
    - Builders cannot offer direct incentives to their customers for the use of affiliate companies, but all other providers can.
  - January 16, 2009 effective date leaves little time for builders to change day-to-day operations (sales contracts, etc.).

## Scorecard

### Overall Winners

- Title industry
- Real estate industry

### On the Short End

- Builders and their affiliated business arrangements
- Mortgage brokers

### Unhappy

- Mortgage lenders

## Where Do We Go From Here?

- HUD not likely to extend January 16, 2009 effective date.
- Will any of the settlement service industries file a lawsuit?
- RESPA rule not likely to be the Obama Administration's top priority.

# QUESTIONS?

[www.klgates.com](http://www.klgates.com)

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges					
1. Our origination charge This charge is for getting this loan for you.					
2. Your credit or charge (points) for the specific interest rate chosen <input type="checkbox"/> The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ [ ] for this interest rate of [ ] %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ [ ] for this interest rate of [ ] %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.					
<b>A</b> Your Adjusted Origination Charges	\$ [ ]				
Your Charges for All Other Settlement Services					
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge			
Service	Charge				
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.					
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.					
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge			
Service	Charge				
7. Government recording charges These charges are for state and local fees to record your loan and title documents.					
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.					
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input type="checkbox"/> all property taxes, <input type="checkbox"/> all insurance, and <input type="checkbox"/> other [ ]					
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ [ ] per day for [ ] days (if your settlement is [ ]).					
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Policy	Charge			
Policy	Charge				
<b>B</b> Your Charges for All Other Settlement Services	\$ [ ]				
<b>A + B</b> Total Estimated Settlement Charges	\$ [ ]				

# 2008 RESPA REFORM

## Finally a Final RESPA Rule

Phillip L. Schulman – [phil.schulman@klgates.com](mailto:phil.schulman@klgates.com)  
Holly Spencer Bunting – [holly.bunting@klgates.com](mailto:holly.bunting@klgates.com)

[www.klgates.com](http://www.klgates.com)