

MORGAN STRAUSE

RESPA - NEW GFE, TIL AND HUD-I REQUIREMENTS - JANUARY, 2010

Introductory Information

In November 2008, HUD published its final rule amending Regulation X of the Real Estate Settlement Procedures Act ("RESPA"). The final rule includes significant changes to the Good Faith Estimate ("GFE") form and the HUD-I Settlement Statement ("HUD-I").

Application

Under the new RESPA rule, the term "application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which must include all of the following: 1) Borrower's Name, 2) Borrower's Monthly Income, 3) Borrower's Social Security Number to obtain a credit report, 4) property address, 5) an estimate of the value of the subject property, 6) the mortgage loan amount sought, and any other information deemed necessary by the loan originator.

GFE

Morgan Strause is required to issue the new GFE form **no later** than **3** business days after the application is received or information sufficient to complete an application (the 6 items listed above). There is no requirement that the borrower sign the GFE. No GFE disclosure is required if the application is withdrawn or denied within **3** business days of application.

Except for interest rate dependent charges, Morgan Strause is bound by the GFE for at least **10** business days after the GFE is provided. Morgan Strause may not charge any fee, except for a credit report fee, until after the applicant has received the GFE and indicates an intention to proceed with the loan request.

Fees paid outside of closing will no longer be designated as "POC" on the GFE. All fees typically paid by the borrower **must** be shown on the GFE as if paid by the borrower at closing. All charges for settlement services must be placed in the appropriate categories on the GFE.

Changed Circumstances

Except for any permitted tolerances, Morgan Strause must be accurate when disclosing initial settlement charges to the borrower on the GFE. A revised GFE may only be issued to a borrower prior to closing where there exists "changed circumstances". Absent valid changed circumstances, Morgan Strause is bound by the amounts shown on the last disclosed GFE subject to any permitted tolerances.

The term "changed circumstances" means:

Acts of God, war, disaster or other emergency; Information particular to the borrower or transaction that was relied on in providing the GFE that changed or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE; New information particular to the borrower or transaction that was not relied on in providing the GFE; or other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance or environmental problems.

"Changed circumstances" do not include:

The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or market price fluctuations by themselves.

Tolerance Limitations

HUD has created limitations which restrict the amount that settlement charges to borrowers can change between the GFE and the actual fees charged at settlement. These tolerance limitations are designed to help borrowers receive a more accurate GFE and to enable the borrower to easily compare the fees noted on the GFE with those on the HUD-I. The tolerance limitations are divided into three categories:

- 1) Settlement charges that cannot increase: origination charges, borrower's credit or charge for specific interest rate chosen (after locking in the rate), and transfer taxes (not applicable in CA) - all are mandated at 0% tolerance.
- 2) Settlement charges that can increase up to 10%; required services selected by the originator, title services and lender's title insurance (if selected by Morgan Strause or if borrower uses companies identified by Morgan Strause), owner's title insurance (if borrower uses companies identified by Morgan Strause), required services that the borrower shops for (if borrower uses companies identified by Morgan Strause), and government recording charges. - Up to 10% tolerance.

3) Settlement charges that can increase without restriction: required services that borrower shops for, title services and lender's title insurance, and owner's title insurance (where the borrower does not use companies identified by Morgan Strause); initial deposit for escrow deposit, daily interest charges, and homeowner's insurance. - No Tolerance allowed.

These tolerances are described to the borrower on the third page of the GFE and carry over to page 3 of the HUD-I.

Itemization of Fees

Certain fees must be consolidated into a single block on the new GFE form and a single line on the new HUD-I. For example, the total of all charges assessed on the transaction, except any charge for the specific interest rate chosen must be shown in Block 1 "our origination charge" on the GFE and line 801 on the HUD-I.

Lender/Seller Paid Fees & Credits

All charges typically paid by the borrower must be disclosed on the GFE regardless of whether the charges will be paid by the borrower, the seller or other party. However, in order to promote comparability between the GFE and HUD-I, if Morgan Strause pays for a charge that is included on the GFE, the charge should be listed in the borrower's column on Page 2 of the HUD-I. That charge must also be offset by listing a credit in that amount to the borrower on lines 204-209 on Page 1 of the HUD-1.

Similar to lender/broker paid fees, fees and charges typically paid by the borrower that are paid by the seller must also be disclosed on the GFE. If a seller pays for a charge that was included on the GFE, the charge must be listed in the borrower's column on Page 2 of the HUD-I. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on Page 1 of the HUD-I, and by a charge to the seller in lines 506-509 on Page 1 of the HUD-I.

On a transaction in which the borrower requests a Lender Credit to be applied to closing costs in exchange for a higher interest rate, the premium pricing credit must be reflected as a negative number in Block 2 of the GFE and on line 802 on the HUD-I.

This detail is necessary in order to correctly re-calculate the APR and test compliance with Federal and state high cost restrictions.

HUD-I General

The HUD-I form has been updated to reflect the new rule changes. The second page of the new HUD-I parallels the way the fees are placed in the GFE by including the line number of the fee as it appears on the GFE on the HUD-I; this makes it easy for borrowers to compare the costs that appeared on their GFE with their actual costs and to identify any changes. The third page of the new HUD-I presents a comparison of loan charges and key loan terms between the GFE and HUD-I. It is Morgan Strause's responsibility to communicate to the settlement agent all the information needed to complete the HUD-I

TRUTH IN LENDING (TIL)

Initial Disclosures must be provided to all borrowers **no later than 3 business days** after receipt of an application. Business days exclude Sundays and federal holidays but includes Saturday.

The only fee that can be collected at application is the credit report fee. After the initial disclosures, including the TIL are mailed, payment information may be obtained & credit card information can be processed to collect the appraisal fee & any other fees **on or after the 4th business day**.

After initial disclosures, including the TIL, are provided to all borrowers by mail or in person, the loan can close **on or after the 7th business day**.

If the APR on the initial or previous TIL changes **more or less than .125%** re-disclosure with a corrected TIL is required. After a corrected TIL is **delivered in person** to all borrowers, the loan can close **on or after the 3rd business day** after delivery. After a corrected TIL is delivered **by mail** to all borrowers, the loan can close **on or after the 6th business day**.