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## HUD's New Settlement Cost Booklet

*Are lenders expected to use New Settlement Cost Booklet by Jan. 1?*

As the industry nears the Jan. 1 deadline for implementing the new Good Faith Estimate (GFE) and HUD-1 Settlement Statement forms, the Department of Housing and Urban Development (HUD) has delivered on its promise to release a revised Settlement Cost Booklet. This new 49-page informational guide, which lenders and brokers are required to give to consumers within three days of applying for a mortgage loan, was made available by HUD on Dec. 16, just two weeks before the implementation deadline. Are lenders expected to use it with the new forms beginning Jan. 1?

Brian Sullivan, spokesman for HUD, told *RESPA News* the answer is yes. "If they fail to give this booklet with the GFE," he explained, "it's a violation of Section 5 of RESPA."

Many in the industry have been critical of the time it took for HUD to release this revised version, which was updated to reflect the RESPA final rule, particularly the new GFE and HUD-1. HUD issued the final rule on Nov. 17, 2008, with the promise of providing a revised Settlement Cost Booklet to the industry for use with the new forms. With just two weeks left, loan originators have commented that this timeframe is not enough to have copies made and ready for consumers.

Sullivan indicated that this is not a good excuse. "It's out," he said. "Come and get it. It's ready to use right now before Jan. 1."

According to Sullivan, it should not be too difficult to have the booklet ready for the consumer by Jan. 1. He said a forms publisher called into HUD, making the staff aware that his company could run 100,000 copies immediately. In addition, Sullivan said if printed copies are not an option for a lender because of time constraints, then there are other options.

"This can be provided to borrowers electronically," he said. "Or, if they can't receive it electronically, print it and give it out when the GFE is presented. If electronically conveyed, the requirements of E-sign are in effect. Essentially originators must make certain the borrowers can receive an electronic copy."

According to attorney Howard Lax, only loan originators who use electronic disclosures will be able to have the booklet ready by Jan. 1. "If you need to have the booklet printed because you provide paper disclosures, unless you are willing to pay exorbitant charges for copying, printing and shipping, you are not going to have supplies ready at all of your offices by Jan. 1," cautioned Lax, a partner with Michigan-based Lipson, Neilson, Cole, Seltzer & Garin PC.

According to Phil Schulman, a partner with Washington, D.C.-based K&L Gates, failing to use the new booklet during HUD's 120-day period of "restrained enforcement" might be acceptable, as long as the loan originator has shown HUD it is making a good faith effort. On Nov. 13, HUD announced that, for the first four months of 2010, it will exercise restraint in enforcing the new GFE and HUD-1.

"I suppose that if a lender ordered several hundred gross of these, and the printer said it's going to take six or

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eight weeks, HUD would work with the lender,” Schulman said. “HUD said it’s going to give a reprieve to those who make a good faith effort. So if you get your order in around the end of the year and it takes six weeks to come in, I would hope that HUD would give you the benefit of the doubt.”

### Elements of the Book

The booklet contains 13 sections, including detailed explanations on the various line items of the new GFE and HUD-1 forms. The make-up of the booklet includes:

- An introduction describing the purpose of the booklet;
- A timeline of events that could take place from the time the consumer decides to purchase a house to the move-in date;
- Information on what the consumer should consider before buying a home;
- A section on determining what is affordable;
- What and who is involved in shopping for a house, *e.g.*, real estate broker, attorney, builder, etc.;
- Information on shopping for a loan;
- A line-by-line explanation of the Good Faith Estimate and HUD-1 forms;
- Information about the loan after settlement, home equity and refinancing; and
- A glossary of terms, HUD contact information and “do” and “don’t” tips from HUD.

Sullivan said overall the Settlement Cost Booklet is intended to provide consumers with the tools they need to make more informed decisions about the costs they will incur in the mortgage transaction.

Schulman said he thinks HUD compiled the information in a simple, easy-to-understand format. He added, however, that it is not likely consumers will read it cover to cover. “HUD did an excellent job in updating and modernizing the booklet, and also did a good job in tracking the new GFE and the new HUD-1,” he said. “It’s a good starting place for consumers. Having said that, it’s 49 pages long, and I seriously doubt that homebuyers will take the time to read it.”

Schulman added that, although HUD has provided a good reference, one area that he thinks lacks a thorough explanation to the consumer is the tolerance sections that HUD has built into the new GFE. “I’m not being critical of HUD, except to say that I really don’t think that by reading this book a consumer is going to be able to understand how the tolerances work,” Schulman commented. “It would require many more paragraphs. It would be impossible for a consumer to truly understand what the impact of exceeding the tolerances would be on them, and what percentage of the excess they would be entitled to.”

Schulman’s concern is that the consumer may not understand the amount of refund owed to them if the lender exceeds the 10 percent tolerance for the fees that fall under this restriction. He gave the following example: The HUD-1 requires you to explain to the consumer the total percentage that exceeds the estimate on the GFE. But the refund is not based on that total percentage that increased above the tolerance. The refund is based on the amount that’s above the 10 percent cushion,” he said. “If the total is \$1,000 on the GFE for all of the services and it ended up being \$1,150 on the HUD-1, that’s 15 percent [overage]. The increase between the GFE and the HUD-1 is \$150, or 15 percent. But that doesn’t mean that the consumer gets a check for \$150. He would get a check for \$50.”

Schulman further explained that it is acceptable to be over in the aggregate of the fees by 10 percent (for the 10 percent tolerance bucket), and no money is owed to the consumer unless the 10 percent tolerance is exceeded. Only then is the exceeded amount beyond 10 percent refunded.

### In the Consumers’ Hands

According to Sullivan, the booklet is given to the consumer, along with the Good Faith Estimate, within three days of application. But Schulman pointed out that it is not mandated that the two be given at the same time.

“It’s possible that somebody could get the booklet at the time of application, get the GFE two days later, and both would be in compliance. So it doesn’t necessarily follow that both documents would be handed out at the same time,” he said.

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Schulman pointed out that it would be a better service to consumers if the booklet was in their hands before they shopped for loans, not three days after their applications are taken. "The beginning of the book tells you about deciding if you're ready to be a homeowner, how to find a real estate agent, how to find a house, how to negotiate the terms and so forth. About a third of the book deals with issues that occur before you decide on making an application for a loan," he explained.

View the HUD booklet at:

<http://portal.hud.gov/portal/page/portal/HUD/documents/Settlement%20Booklet%20December%2015%20REVISED.pdf>

The Indiana Bankers Association supports Indiana banking through issues analysis, professional education, and products and services that enhance financial institutions' ability to serve their communities.

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