

WHOLESALE BULLETIN **- RESPA REFORM 2010 -** **SUMMARY OF CHANGES**

- Effective with Broker/Wholesale Applications on or after January 1, 2010 -

The Department of Housing and Urban Development (HUD) has implemented significant changes to the requirements for the Good Faith Estimate and the HUD-1 Settlement Statement, effective for applications dated on or after January 1, 2010. These revisions place new requirements on lenders and brokers to ensure that applicants understand the terms and fees of the mortgage transaction that they are considering. Approved Brokers will be responsible for complying with all new RESPA regulations and disclosure requirements.

Failure to provide complete, accurate and timely information and documentation on a transaction as required by the new RESPA guidelines may result in: 1) rejection of the loan submission package; or, 2) partial or full forfeiture of any broker rebate and/or broker origination charges (as a credit to the borrower) at time of closing.

For more information, please access HUD's RESPA page at:

http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm

The above link will provide more detailed information on RESPA guideline changes, including samples and instructions for the new Good Faith Estimate (GFE) and Settlement Statement (HUD-1), restrictions on fee increases from the initial GFE to settlement, as well as new terms and definitions.

RESPA REFORM'S MAIN COMPONENTS:

- **New definition of an application**
- **Standardized Good Faith Estimate (GFE)** – a three (3) page form that now provides more detailed information regarding rates, key loan terms and settlement fees (charges).
- **Standardized HUD-1 Settlement Statement (HUD-1)** – includes an additional third page with a chart to compare charges on the most recent GFE to the actual charges at closing.
- **Limits the amount charges can increase without a circumstance** that allows a change from application (GFE Insurance) to closing (HUD-1).
 - This limitation to an increase is referred to as a “tolerance”. Fees are now categorized into different levels of tolerances. The levels of tolerance include: zero tolerance, 10% tolerance, and no tolerance limitation.
 - The Broker is liable for any credit to the borrower at closing, due to the improper disclosure of fees on the GFE.
 - The circumstance in the transaction that allows a GFE change is referred to as a “changed circumstance”.
- **If a borrower is allowed to shop for a third-party settlement service provider**, the Broker/Lender must provide at least one provider option for this third party settlement service provider on a Settlement Service Provider List.
- The new GFE and HUD-1 form must be used for all applications taken on or after January 1, 2010. **DO NOT USE THE NEW FORMS PRIOR TO JANUARY 1, 2010.**
- Applications taken prior to January 1, 2010, utilizing the old GFE form will require the use of the old HUD-1 at closing, even if the loan closes after January 1, 2010.

RESPA REFORM CREATES CHANGES TO THE LOAN PROCESS IN THE FOLLOWING WAYS:

1. Interest Rate Locks

- a. All loans must be locked with WMC a minimum of seven (7) days prior to closing.

2. Application

- a. A loan must meet RESPA's definition of an application prior to a GFE being issued. A transaction will be considered an application by WMC when the following six (6) data elements are obtained and the prospect has the intent to apply:
 - i. Borrower's Name(s)
 - ii. Social Security Number
 - iii. Gross Monthly Income (excluding some non qualifying streamlines)
 - iv. Subject Property Address (not TBD)
 - v. Estimate of Subject Property's Value
 - vi. Loan Amount
- b. If there is an application, the Broker must provide the initial GFE, **and if applicable**, a Settlement Service Provider List.

3. GFE

- a. NOTE: The Broker's initial GFE to the borrower will be the binding GFE. As the lender, we require all sections of the GFE to be complete, accurate and correspond to the loan terms and fees noted on the Loan Brokerage Agreement and the Loan Application.
- b. **Under no circumstances can the broker compensation increase from the amount disclosed on the initial GFE.**
- c. For instructions on completing the GFE, see HUD's RESPA page :
http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm
- d. Since an application now requires a property address, and a GFE can only be issued in connection with an application, **a GFE can no longer be issued without a property address.** Issuing a GFE now implies you have an application with the required pieces of information – property address being one of them
- e. Upfront fees (excluding a credit report fee) cannot be collected until the Borrower receives the Broker's GFE and WMC's TIL.
- f. Limitation on increasing charges (fee tolerances) now apply. Most charges disclosed on a GFE cannot increase (zero tolerance), or are limited to a 10% increase (10% tolerance), unless there is an acceptable *changed circumstance*.
 - i. No limit (no tolerance limitation) to amount of charges from providers selected by Borrower that are not recommended by the Broker/Lender on a Settlement Service Provider List.
- g. If there is an acceptable changed circumstance, a new GFE may be issued. Only fees and terms impacted by the changed circumstance can be changed on the revised GFE (refer to the Change Circumstance Request form).
- h. Revised/Rediscovered GFE's are to be completed by WMC upon receipt and approval of the change (refer to the Change Circumstance Request form).
- i. If the Borrower is given the option to select a third party settlement service provider, the Broker/Lender is required to furnish a Settlement Service Provider List showing at least one provider option for the Borrower.

- j. WMC will review and manage fees and fee changes in this section based on an assumption that the Broker selected the service provider and/or the Borrower used a company identified by the Broker UNLESS evidence, such as a letter from the Borrower, acknowledging their selection of the service provider is submitted with the GFE.
- k. **New Construction Purchases Only**– if settlement is expected to be more than 60 calendar days from initial GFE issuance, the GFE Construction Loan Disclosure must be provided so that a revised FFE may be issued without a changed circumstance. This revised GFE can be issued up to 60 days prior to settlement without a changed circumstance as long as this disclosure was delivered to the Borrower along with the initial GFE.
- l. **Initial Application Disclosure Request Package** – at time of loan submission to WMC the Broker must provide a completed loan application (to include 1003 and all other documents required on the initial application disclosure checklist found under the wholesale lending section of wintrustmortgage.net), GFE, a Settlement Service Provider List (if applicable) and a Loan Brokerage Agreement. **NOTE: The broker is not responsible for issuing a Truth-in-Lending disclosure.** WMC will prepare this disclosure, based on the fees listed on the Loan Brokerage Agreement and the Good Faith Estimate.
- m. **Fee Disclosure and Accuracy:**
 - i. All broker origination fees, including broker compensation, disclosed on the GFE should match those fees listed on the Loan Brokerage Agreement (LBA) form.
 - ii. Under no circumstances can the broker compensation increase from the amount disclosed on the initial GFE.
 - iii. All charges (including points) typically paid by a Borrower must be disclosed on the GFE, even though the Seller/Broker/Lender/Third Party may be paying for the charge on the subject transaction.
 - iv. Broker's YSP must be disclosed on the GFE (charged in Block 1, then credited in Block 2).
 - v. Brokers are responsible for ensuring that the LBA is kept current with the GFE should any changed circumstance occur that impacts the fees on the LBA.
 - vi. Maximum Broker Compensation on the LBA can only increase if the Loan Program or Product changes; the Rate changes as the result of a lock or re-lock; or if the borrower requests changes to the loan amount or terms. The broker compensation can **never increase** from the amount disclosed on the initial GFE.
 - vii. Under the new rule, the LBA is critical as the new GFE does not provide a breakdown of broker fees and compensation. The LBA supplements the GFE – and it will help ensure the borrower can clearly determine broker fees and compensation.
 - viii. **Transfer taxes are included in the category of fees that cannot increase (zero tolerance).** The Broker must ensure that they are disclosing the proper amount, as they will be liable for any difference that must be refunded to the borrower at closing.

4. HUD-1

- a. Page one has only minor changes (refer to http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm).
- b. Page two renumbers/consolidates many HUD-1 line items.
 - i. Each designated line in Section L includes a reference to the corresponding section on the GFE.
- c. Page three has a chart that allows a side-by-side comparison of recent GFE charges to those shown on the HUD-1.
 - i. This page shows three tolerance limitation (increase) categories: zero tolerance, 10% tolerance, no tolerance limitation.
 - ii. Key loan terms are also shown on this page.
- d. WMC will provide a sample HUD-1 in the closing package to assist the settlement agent in preparing the final HUD-1.

5. Changed Circumstance Request Form (Loan Terms and/or Fees)

Wintrust Mortgage will be bound to fees disclosed on the broker's initial GFE except in certain situations where there are 'changed circumstances' associated with the loan. In the event a changed circumstance occurs, WMC will redisclose a revised GFE within three (3) business days of evaluating the changed circumstance information. If a revised GFE is provided, any increase in charges will be limited to only those charges where the changed circumstance resulted in a higher charge.

- The definition of 'Changed Circumstances' includes:
 - Acts of God, war, or disaster.
 - Information particular to the borrower or transaction relied on in providing the GFE is found to be inaccurate or changes after the GFE was provided, including information about the credit quality, the amount of the loan, the estimated value, or other information used to provide the GFE.
 - New information regarding the borrower or transaction that was not relied upon for issuing the GFE.
 - Other circumstances, including the need for flood insurance.
- **The broker must notify Wintrust Mortgage promptly (via disclosures2000@wintrustmortgage.com for Schaumburg office, or via disclosures2001@wintrustmortgage.com for Kansas office) of any known changed circumstances, including borrower requested changes, which would result in an increased fee. The broker must not re-issue a GFE at any time after the initial GFE.**
- **The broker must use the new Wintrust Mortgage Change Circumstance Request form to notify us:**
(Schaumburg Office: disclosures2000@wintrustmortgage.com
Kansas Office: disclosures2001@wintrustmortgage.com)
of any such change and include any and all applicable increased fees and charges. The broker is not required to provide decreases in fees on the Change Circumstance Request form, but if the broker does provide decreases in fees, then those reduced fees will be disclosed on any revised GFE. Any revised GFE disclosed by Wintrust Mortgage based on the broker's Change Circumstance Request form will then become the binding GFE.
- **An authorized representative of the broker's company must:**
 - Acknowledge completion and accuracy of the form.
 - Acknowledge and authorize Wintrust Mortgage to deduct any dollar amount that exceeds any allowed tolerance at closing/settlement (based on a comparison of the GFE to the final HUD) from the broker's rebate and/or origination charges and credit it to the borrower.
 - The Change Circumstance Request form will not be considered complete without the broker's signature.
- **The broker will be notified of the receipt and result of any Change Circumstance Request form.**
 - In the event Wintrust Mortgage determines that an increased fee is supported by the evidence of a changed circumstance, we will re-disclose a revised GFE. A copy of the re-disclosed GFE will be forwarded to you for your records.
 - Any re-disclosed revised GFE issued by Wintrust Mortgage based on your Change Circumstance Request will then become the binding GFE.



6. Settlement Service Provider List

- a. If a third-party settlement service is required by the Broker and the borrower is given the option to select the provider (items appearing in GFE Blocks 4, 5, and 6), the Broker must deliver a Settlement Services Provider List along with the GFE.
- b. The list must include at least one provider for each required service being selected by the Borrower.
- c. The Borrower is not required to select from the list, but if a provider is selected from the list, the charge for the provider's service is limited to a 10% increase (tolerance) unless there is a changed circumstance. If the Borrower does not select from the list and chooses his/her own provider, then there is no limitation to the amount the charge can increase (no tolerance limitation).

All Brokers will be required to execute an “Amendment to Mortgage Broker Agreement” or a new “Wholesale Agreement” prior to or concurrent with the submission of the first Initial Application Disclosure Request to WMC.

ALL NOTIFICATIONS SHOULD BE SENT TO:

Schaumburg Office: disclosures2000@wintrustmortgage.com
Kansas Office: disclosures2001@wintrustmortgage.com

****** CONTACT YOUR ACCOUNT EXECUTIVE DIRECTLY WITH ANY QUESTIONS ******