New RESPA Rule FAQs

(New items are in **bold**)

General

1) **Q:** When does the new RESPA Rule take effect?
A: The November 2008 RESPA Rule was effective January 16, 2009. Implementation of the provisions are as follows:

Provision	Implementation Date
Average Charge (optional)	January 16, 2009
Servicing Disclosure Statement	January 16, 2009
Other technical changes	January 16, 2009
New GFE	January 1, 2010
New HUD-1/HUD-1A (for all transactions in which the new GFE is used)	January 1, 2010
Tolerances	January 1, 2010
Elimination of FHA Cap On Origination Fees	January 1, 2010

2) **Q:** When does the revised required use definition take effect?
A: The revised required use definition was withdrawn by a separate final rule published May 15, 2009.

3) **Q:** Can a loan originator e-mail a GFE to a borrower?
A: Yes; as long as the borrower consents and the other specific requirements for consumer disclosures under the Electronic Signatures in Global and National Commerce Act (ESIGN) are met, a loan originator may e-mail, fax, or send by other electronic means the GFE (and other RESPA disclosures, such as the HUD-1/1A). See section 101(c) of ESIGN, 15 U.S.C. § 7001(c); also see 24 CFR § 3500.23. The loan originator may also continue to deliver the GFE to the borrower by hand delivery or by placing it in the mail, as provided by RESPA.

4) **Q:** RESPA and HUD's RESPA regulations require that certain records be retained for a period of time. Can those records be retained electronically?
A: Yes, if the person responsible for retaining records under RESPA and HUD's RESPA regulations meets the specific requirements and limitations applicable to the retention of electronic documents set out in the Electronic Signatures in Global and National Commerce Act (ESIGN), that person's responsibility will be satisfied by the retention of electronic records. See sections 101(d) and (e) of ESIGN, 15 U.S.C. § 7001(d) and (e); also see 24 CFR § 3500.23.

5) **Q:** Can we translate the GFE and the HUD-1 into languages other than English?
A: Yes, it is permissible to translate the GFE and the HUD-1 as long as the form has been translated accurately.

LAST UPDATE: September 9, 2009

6) **Q:** The term "monthly" is used throughout the GFE and HUD-1 forms. The requirements stated in terms of "monthly" do not work well for loans on which payments are not made monthly (e.g., are made biweekly or quarterly). In such transactions, can an appropriate payment period be substituted whenever requirements on the forms are stated in terms of "monthly"?

A: No, the GFE and HUD-1 are prescribed forms. The instructions for the GFE provide that the standardized form is the required form. HUD's regulations provide that language and terms used on the HUD-1 may not be changed, except in limited circumstances which do not include changes to the standardized language (see 24 CFR § 3500.9). The intent of the standardized GFE and HUD-1 is to provide borrowers an easier means of comparing loan offers, and to determine that they are getting the loan at settlement that they were offered in the GFE. For loans with payment plans that are not monthly, the periodic payments should be converted to a monthly basis (e.g., payments for a biweekly plan with 26 payments per year would be multiplied by 26/12, quarterly payments would be divided by 3, etc.).

7) **Q:** If a borrower applies for a first and second mortgage before January 1, 2010 and the loan originator issues a GFE using the new form for the first mortgage, does the loan originator have to issue the second mortgage GFE on the new GFE form also?

A: No, the loan originator does not have to issue the GFE for the second mortgage on the new GFE form prior to January 1, 2010 even if the loan originator issues the GFE for the first mortgage on the new GFE form. To avoid consumer confusion, the loan originator may choose to issue new GFEs for both the first and second mortgage, or old GFEs for both the first and second mortgages. If the loan originator issues the old GFE, the old HUD-1 must be used. If the loan originator issues the new GFE, the new HUD-1 must be used.

8) **Q:** What is a "no cost" loan for purposes in the new RESPA Rule?

A: Information about "no cost" loans may be found in Appendix A, Instructions for Completing HUD-1 and HUD-1A Settlement Statements and 24 CFR part 3500, Appendix C – GFE Instructions.

9) **Q:** The definition of "Origination service" does not explicitly include all of the services provided by mortgage brokers in the definition of "Settlement services". Are all "Settlement services" considered "Origination services"?

A: No, all "Settlement services" are not considered "Origination services". However, all "Origination services" are "Settlement services".

10) Q: How may applications under a preapproval program as defined by Section 203.2(b)(2) of Regulation C be treated?

A: For the purposes of RESPA, "application" is defined at 24 CFR § 3500.2(b). The RESPA rule does not address preapprovals or the information required in relation to preapprovals. The Federal Reserve is responsible for promulgating, interpreting and enforcing Regulation C.

GFE

GFE - General

1) **Q:** What happens if a GFE is not provided to a borrower?
A: In a transaction involving a federally related mortgage, the loan originator is required to provide a GFE to the borrower. Failure to provide a GFE as required is a violation of Section 5 of RESPA.

2) **Q:** When will the use of the new GFE and HUD-1 forms be required?
A: The new GFE and HUD-1 forms must be used as of January 1, 2010. The new GFE and HUD-1 forms may be used before this date. Please note that if a loan originator issues a GFE on the new form, then the settlement agent must use the new HUD-1 form and the tolerances and other requirements in the revised RESPA regulations will apply.

3) **Q:** If a GFE is issued on the old form prior to January 1, 2010, and the loan will close after January 1, 2010, which HUD-1 form is to be completed by the settlement agent?
A: If a GFE is issued on the old form prior to January 1, 2010, then the old HUD-1 form must be used even if closing will occur after January 1, 2010. For GFEs issued on the old form, the loan originator has the option to reissue the GFE (with the same terms and charges) on the new form, in which case the settlement agent must complete the new HUD-1 form.

4) **Q:** When does a loan originator have to issue a GFE?
A: A loan originator must issue a GFE no later than 3 business days after the loan originator receives an application or information sufficient to complete an application. Application is defined as the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include 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) estimate of value of the property; (6) loan amount and (7) any other information deemed necessary by the loan originator.

5) **Q:** What is a loan originator?
A: "Loan originator" means a lender or a mortgage broker.

6) **Q:** What fees can a loan originator charge before issuing a GFE?
A: Prior to issuing a GFE, the loan originator may, at its option, collect a fee limited to the cost of a credit report.

7) **Q:** I am a mortgage broker. Can I provide the GFE?
A: Yes, a mortgage broker can provide the GFE, however the lender is ultimately responsible for ascertaining that the GFE was provided to the applicant.

8) **Q:** There are not enough lines on the GFE or the HUD-1 to show all of the charges that are appropriate for some of the categories. Where should these charges be listed?

A: Additional lines may be added to Blocks 3, 6 and 11 of the GFE. Additional lines may also be added to the HUD-1.

9) **Q:** Is a GFE a loan commitment?

A: No, the GFE is not a loan commitment. A GFE is an estimate of settlement charges a borrower is likely to incur to obtain a specific loan.

10) **Q:** At what point can a loan originator charge a loan applicant fees for services other than the cost of obtaining a credit report?

A: After a loan applicant both receives a GFE and indicates an intention to proceed with the loan covered by the GFE, the loan originator may collect fees beyond the cost of a credit report for origination-related services.

11) **Q:** If the borrower is taking out two loans to finance the purchase, how should the loan originator disclose the charges from each loan on the GFE and the HUD-1?

A: Each loan must have a separate GFE and a separate HUD-1. However, the principal amount of the second loan and a brief explanation of the second loan should be listed on Lines 204 – 209 of the HUD-1 for the first loan.

12) **Q:** What are processing and administrative services?

A: Processing and administrative services are those services required to perform the functions involved in title service and origination service. Processing and administrative services include, but are not limited to the following: document delivery, document preparation, copying, wiring, preparing endorsements, document handling and notarization.

13) **Q:** Can items be listed as "Paid Outside of Closing" or "P.O.C." on the GFE?

A: No, the totals included in the column on page 2 of the GFE must be the sums of the prices or fees, by category, for all settlement services that are required to be shown on the GFE. Where individual components of these totals are required to be itemized, each third party settlement service must be identified and the estimated total price or fee to be paid for that service must be stated to the left of the column. The standardized GFE form does not allow information to be included on any part of those totals that would be paid outside of closing. Such information would not help borrowers to shop for loans and would not facilitate comparison of the charges on the GFE with the charges on the HUD-1.

14) **Q:** The definition of application includes the social security number as one of six pieces of information. Foreign nationals do not have social security numbers. Is a Tax Identification Number (TIN) an acceptable substitution?

A: Before a loan originator issues a GFE, the loan originator will often evaluate the credit worthiness of a potential borrower by pulling an "in-file" or a credit report. The social security number is typically the unique identifier used to pull a credit report. If the social security number is not the appropriate unique identifier necessary to determine a borrower's credit worthiness, another unique identifier may be substituted.

LAST UPDATE: September 9, 2009

15) **Q:** Is an approved loan correspondent approved under 24 CFR § 202.8 for Federal Housing Administration programs considered a lender or a mortgage broker?

A: A loan correspondent approved under 24 CFR § 202.8 for the Federal Housing Administration programs is considered a mortgage broker.

16) **Q:** If the mortgage broker receiving the application is an exclusive agent of the lender (similar to the requirements of Regulation Z per Comment 19(b)-3), will the lender be considered to have received the application when its exclusive agent received it?

A: The loan originator must issue a GFE when it receives information sufficient to be considered an application under RESPA. The mortgage broker may issue the GFE, but the lender is responsible to ascertain whether the GFE has been provided. Timely communication between the lender and the mortgage broker is essential to assure compliance.

HUD cannot interpret regulations promulgated by another federal agency, such as Regulation Z (12 CFR part 226). Please refer to the Board of Governors of the Federal Reserve System for interpretations of Regulation Z.

17) **Q:** If the mortgage broker purports to permit a borrower to lock in a rate, but the mortgage broker does not lock that rate with the lender, what tolerances apply to the lender for the credit or charge for the interest rate chosen and the adjusted origination charge?

A: If the lender accepts the GFE issued by the mortgage broker, the lender is subject to the loan terms and settlement charges. Charges for the credit or credit for the interest rate chosen and the adjusted origination charge may not change (zero tolerance). Timely communication between the lender and the mortgage broker is essential to assure compliance.

18) Q: If the mortgage broker has failed to provide the GFE on a timely basis, may the lender issue its own GFE?

A: The lender is responsible for ascertaining whether or not the GFE has been provided. If the GFE has not been provided by the mortgage broker, the lender must provide the GFE. The failure to provide a GFE to a borrower within 3 business days of receipt of the borrower's application is a violation of Section 5 of RESPA.

GFE – Seller paid items

1) **Q:** If at the time a GFE is issued it is known that the seller will pay settlement charges typically paid by the borrower, how are the charges disclosed on the GFE?

A: All charges typically paid by the borrower must be disclosed on the GFE regardless of whether the charges will be paid for by the borrower, the seller, or other party.

2) **Q:** Are charges to the seller listed on the GFE?

A: RESPA requires that only the borrower receive a GFE. The GFE is defined as an estimate of settlement charges a borrower is likely to incur in connection with the settlement. Charges that typically would not be charged to the borrower, but would be charged to another party—such as the seller—do not have to be included on the GFE. If the borrower typically

would incur charges for title services and lender's and owner's title insurance, the GFE instructions make it clear that those charges are required to be listed regardless of whether, for example, the contract requires the seller to pay for the service. If there is a question about whether the borrower or seller is to pay for a particular settlement service, the charge for that service should be disclosed on the GFE.

GFE – Interest rate expiration

1) **Q:** If the availability of the interest rate (shown in item 1 of "Important dates" on page 1 of the GFE) expires, does a revised GFE have to be issued if the borrower locks a different interest rate before the expiration of the estimate for the settlement charges (shown in item 2 of "Important dates")?

A: If the interest rate offer on the GFE expires and the borrower later locks the interest rate, before the expiration of the estimate for the settlement charges, a revised GFE must be issued if any interest rate dependent charges and terms change. If a revised GFE is issued only the following changes may be made: (1) "Charge or credit (points) for interest rate chosen"; (2) "Adjusted origination charges"; (3) "Daily interest charges"; and (4) other interest rate related loan terms. "Our origination charge" and all other charges must remain the same from the prior GFE.

GFE – Expiration

1) **Q:** When does a GFE expire?

A: If a borrower does not express an intent to continue with an application within ten business days after the GFE is provided (or such longer time period specified by the loan originator), the loan originator is no longer bound by the GFE.

GFE – Denial

1) **Q:** If a loan originator denies the loan before the end of the three business day period after application, does the loan originator need to issue a GFE?

A: No, the loan originator is not required to issue a GFE if, before the end of the three business day period, the loan originator denies the application or the loan applicant withdraws the application.

2) **Q:** Section 3500.7 of RESPA states that the GFE need not be provided if mortgage broker or lender declines the application or the applicant withdraws the application within the three business day period after application. The provisions for the Special Information Booklet state that the lender need not provide the Special Information Booklet if the lender denies the application before the end of the three business day period. Does the Special Information Booklet need to be provided if the mortgage broker declines the application or the applicant withdraws the application within the three business day period?

A: No, the Special Information Booklet does not need to be provided if the loan originator declines the application or the applicant withdraws the application within the three business day period.

GFE – Written list of providers

1) **Q:** When do loan originators have to provide the borrower with a written list of identified providers?

A: When a loan originator permits a borrower to shop for third-party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

2) **Q:** Does the borrower have to select a settlement service provider from the loan originator's written list of settlement service providers?

A: No. If the loan originator permits a borrower to shop for a settlement service provider, the borrower may choose a qualified provider that is not on the originator's written list.

3) **Q:** If the borrower chooses a settlement service provider that is not on the written list, does the tolerance apply?

A: No, if the borrower chooses a settlement service provider that is not on the loan originator's written list of providers, the amount paid for that service is not subject to a tolerance.

4) **Q:** The GFE Instructions require that where a loan originator permits a borrower to shop for third party settlement services covered in Blocks 4, 5, or 6, the loan originator must provide the borrower with a separate written list of settlement service providers at the time of the GFE. Is inclusion on the written list of identified providers considered a referral under Section 3500.14?

A: Yes, the inclusion of a specifically identified settlement service provider on the "written list" is considered to be a referral under 24 CFR § 3500.14(f).

5) **Q:** If a mortgage broker provides the GFE and the "written list" of settlement service providers and the borrower chooses to use a provider identified on the "written list" for a service, is the lender subject to tolerances for those services?

A: Yes, if the lender permits a mortgage broker to issue the GFE and the "written list" of providers, the lender is subject to the tolerances for the services in which the borrower chooses to use the identified provider.

6) **Q:** In lieu of providing the "written list" of providers, may the loan originator disclose to the borrower that if they specifically wish to shop for their own provider, but have difficulty finding a provider for a service at the disclosed price that they may contact the loan originator to ask the loan originator to identify a provider?

A: No. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement service providers at the time of the GFE, on a separate sheet of paper.

7) Q: Must the loan originator provide names only of those settlement service providers known to do business in the locality of the mortgage property or may the loan

originator provide a list of national settlement service providers who may or may not do business in the locality of the mortgaged property?

A: The requirements for the new GFE form provide that "[w]here the loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers." The list should contain settlement service providers that are likely available to provide the settlement service for the borrower.

GFE – "Changed circumstances"

1) Q: Once a GFE is issued are there any circumstances under which the loan terms or charges can change?

A: Yes. The loan terms or charges can change in the event that there are changed circumstances. "Changed circumstances" is now defined in § 3500.2 as: (1) Acts of God, war, disaster, or other emergency; (2) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided, which information 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; (3) New information particular to the borrower or transaction that was not relied on in providing the GFE; or (4) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

None of the information collected by the loan originator prior to issuing the GFE may later become the basis for a "changed circumstance" upon which a loan originator may offer a revised GFE, unless the loan originator can demonstrate that there was a change in the particular information or that it was inaccurate, or that the loan originator did not rely on that particular information in issuing the GFE. In addition, the loan originator is presumed to have relied on 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 by the loan originator before providing the GFE. The loan originator cannot base a revision of the GFE on this information, unless it changed or is later found to be inaccurate.

2) **Q:** Would the discovery of additional documents (such as releases) that must be recorded causing an increase in government recording fees be considered a "changed circumstance" allowing the loan originator to provide a revised GFE?

A: The discovery of previously undisclosed circumstances affecting settlement costs such as unreleased liens could be considered a "changed circumstance." A loan originator may choose to issue a revised GFE reflecting only the increased charges resulting from the "changed circumstance" or may choose not to reissue a GFE if the increase is minimal. If the loan originator chooses to issue a revised GFE, only the increase in recording fees may change on the GFE: all other charges must remain the same.

3) **Q:** If there is a "changed circumstance," when does the loan originator issue a new GFE?

A: When there is a "changed circumstance" and the loan originator intends to issue a revised GFE, the loan originator must do so within three business days of receiving the information sufficient to establish changed circumstances.

4) **Q:** If a loan originator issues a revised GFE based on changed circumstances, how long must the loan originator retain documentation for providing a revised GFE?

A: The documentation that establishes changed circumstances must be retained for no less than three years after settlement of the loan.

5) **Q:** If circumstances change, may a loan originator issue a revised GFE with changes to all of the charges and terms related to the loan?

A: No, the loan originator may only change those charges and terms that are affected by the specific changed circumstance.

6) **Q:** If a revised GFE is provided due to changed circumstances or a borrower requested change, then how would line 1 of the Important Dates section be completed if the borrower has already locked the rate shown on the revised GFE?

A: The revised GFE must only reflect the affected loan terms and settlement charges from the changed circumstance. If the rate lock period has not been affected, the same information from the preceding GFE should be entered in Line 1 in the "Important dates" section on the GFE.

7) **Q:** If a revised GFE is provided due to changed circumstances affecting the loan or a borrower requested change, how would line 1 of the Important Dates section be completed if the borrower has not locked the rate shown on the revised GFE?

A: For changed circumstances affecting the loan or borrower-requested changes, if the borrower has not locked in the interest rate, Line 1 in the "Important dates" section on the GFE may be updated to accurately reflect the correct dates and time periods.

8) Q: Are the following sufficient to establish "changed circumstances" consistent with 24 CFR § 3500.7(f)?

i) A mortgage broker issues a GFE that a lender does not accept and the lender does not receive the application within three days of the date the broker received the application.

A: This does not constitute a changed circumstance.

ii) If a GFE is issued without a property address, the later identification of a property address.

A: If a loan originator issues a GFE without identifying a property address, the subsequent identification of the property address is not considered a changed circumstance.

iii) The borrower does not proceed to closing quickly upon final approval or does not act diligently in providing information to the lender.

A: The particular facts of each situation must be examined to determine if the facts constitute a changed circumstance.

iv) GSE, FHA or Mortgage Insurance program changes.
A: This could constitute a changed circumstance if the loan originator did not have notice of the GSE, FHA or other mortgage insurance program change prior to the issuance of the GFE.

v) The property address provided by the applicant, turns out to not be the correct, legal address.
A: This could constitute a changed circumstance.

vi) After the GFE is issued, parties are added to or removed from title or the property is moved into or out of trust.
A: These situations could be considered changed circumstances.

vii) During or as part of the transaction, it is determined that the property use may change, such as from owner-occupied to rental property.
A: This could constitute a changed circumstance. It should be noted that business purpose loans are not covered by RESPA. See 24 CFR §3500.5.

viii) After the GFE is issued, it is determined that a party will be using a POA to sign, which may require additional work and additional fees.
A: This could be considered a changed circumstance.

ix) Credit policy is required to change after the GFE is issued due to regulatory changes such as fees charged by government agencies for recording fees or taxes change after the GFE is issued.
A: This could constitute a changed circumstance if the loan originator did not have notice of the regulatory change prior to the issuance of the GFE.

x) The loan does not close by the close date in the original Purchase Agreement or Construction Agreement provided to the lender.
A: The particular facts of each situation must be examined to determine if the facts constitute a changed circumstance.

xi) The vendor originally selected to perform a settlement service goes out of business or stops offering the service.
A: The particular facts of each situation must be examined to determine if the facts constitute a changed circumstance.

xii) AVMs are commonly used for the property type and loan amount requested, but the AVM request comes back with a "no hit," necessitating the use of a more expensive valuation method.
A: This could constitute a changed circumstance.

xiii) After the GFE is issued, it is determined that an additional service such as an additional pest, structural or other inspection, upgraded appraisal, certification, survey

or other requirement is required by the loan originator in connection with the transaction.

A: This could constitute a changed circumstance.

xiv) The borrower's credit score changes.

A: This could constitute a changed circumstance.

GFE – New construction

1) **Q:** If a transaction involves new construction in which the loan may not close for months, how does this affect the issuance of a GFE?

A: In transactions involving new home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator may not issue a revised GFE in the absence of changed circumstances or another event as provided in 24 CFR § 3500.7(f).

GFE – Page 1

GFE – Name of originator

1) **Q:** Should the name of the individual loan originator or the name of the loan origination entity go in the "Name of Originator" box at the top of page 1 of the GFE?

A: The name of the loan originator entity (such as ABC Loan Originator) must go in the box at the top of page 1 of the GFE. In addition to the name of the entity, the name of the individual loan originator may also be added.

2) Q: If an application is submitted through a mortgage broker but the lender is issuing the GFE, may either the mortgage broker or the lender be listed in the "Name of Originator" box at the top of page 1 on the GFE?

A: The loan originator that issues the GFE is the loan originator listed in the "Name of Originator" box at the top of page 1 of the GFE.

GFE – Important dates

1) **Q:** In the "Important dates" section of the GFE, where it states "The interest rate for this GFE is available through _____", does the loan originator have to leave the interest rate open for a specific amount of time, like 10 days?

A: There are no restrictions on the amount of time the interest rate must remain available. The interest rate can be available for any period of time that the loan originator chooses, including for example, a period of time within one day or for several days.

2) **Q:** In the "Important dates" section of the GFE, line 2, for how long must the estimate for all other settlement charges be available?

A: The estimate for "all other settlement charges" in the "Important dates" section of the GFE must be available for at least ten business days.

3) **Q:** What charges can change before the interest rate is locked?

A: With the exception of interest rate-dependent charges and terms, the charges and terms for all settlement services on the GFE must be available for 10 business days from when the GFE is provided, or for such longer period of time as the loan originator provides in item 2 of the "Important dates" section of the GFE. The interest rate-dependent charges and terms cannot change before the expiration of the period indicated by the loan originator in item 1 of the "Important dates" section of the GFE. Between the period of time indicated in item 1 and item 2 of the "Important dates" section, only interest rate-dependent charges may change until the interest rate is locked. After the expiration of the period indicated in item 2 of the "Important dates" section, the loan originator is permitted to change all of the charges and terms on the GFE (assuming that the interest rate is no longer available, as indicated in item 1 of the "Important dates" section). Interest rate-dependent charges and terms include: (1) "Your charge or credit (points) for the specific interest rate chosen," in Block 2 on page 2 of the GFE; (2) "Your adjusted origination charges" on Line A on page 2 of the GFE; (3) "Daily interest charges" in Block 10 of the GFE; and (4) interest rate-related loan terms, such as monthly amount owed.

4) **Q:** If the interest rate is locked at the time the GFE is issued, how should the loan originator complete Lines 1, 3, and 4 in the "Important dates" section on the GFE?

A: Pursuant to the GFE Instructions in Appendix C, if the interest rate is locked before the GFE is issued, the information in Lines 1, 3 and 4 in the "Important dates" section on the GFE must be completed with the information that corresponds to the locked rate.

5) Q: If a lender does not offer a rate lock, how should Line 1 in the "Important dates" section on the GFE be completed?

A: In Line 1, the loan originator must state the date, and if applicable, time until which the interest rate for the GFE will be available. If the rate is not available for any period of time, then Line 1 should state "Not Available" or "NA."

6) Q: If a lender does not offer a rate lock, how should Lines 3 and 4 in the "Important dates" section on the GFE be completed?

A: If the lender does not offer a rate lock, then Lines 3 and 4 of the "Important dates" section should state "Not Available" or "NA."

7) Q: If a revised GFE is provided due to changed circumstances or a borrower requested change, is it necessary to complete Line 3 of the "Important Dates" section of the GFE if the borrower has already locked the rate shown on the revised GFE?

A: Yes, the loan originator must complete Line 3 in the "Important dates" section with the information that was on the preceding GFE, unless the rate lock period was the basis for the issuance of a revised GFE.

GFE – Summary of your loan

1) **Q:** In a refinance, does the prepayment penalty in the "Summary of your loan" section of the GFE refer to the loan being paid off or the new loan being applied for?

A: The prepayment penalty refers to the new loan the borrower is applying for.

2) **Q:** How should the loan originator complete the "Your initial monthly amount owed for principal, interest, and any mortgage insurance is" in the "Summary of your loan" section of the GFE for a loan that begins as an interest-only and then becomes fully amortized?

A: Regardless of the type of loan, the loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment.

3) **Q:** May discretionary charges such as credit insurance be included in the "Your initial monthly amount for principal, interest, and any mortgage insurance is _____"?

A: No. "Your initial monthly amount for principal, interest and any mortgage insurance is _____" may not contain discretionary amounts such as credit insurance. It should only contain the combined charges of principal, interest, and mortgage insurance.

4) **Q:** What is meant by "initial loan amount."?

A: The initial loan amount is the amount of the principal loan balance on the date of closing.

5) **Q:** Why did HUD use the term "initial loan amount"?

A: HUD used the term "initial loan amount" because some loans allow for negative amortization that will increase the loan balance over time. Negative amortization occurs when the interest accrued during a payment period is greater than the scheduled payment and the excess amount is added to the outstanding loan balance.

6) **Q:** What is meant by "initial interest rate"?

A: The initial interest rate is the interest rate that is applicable on the date of closing.

7) **Q:** If a loan contains a conditional preferred rate feature (such as a lower interest rate to an employee as long as the employee still works for the same employer), what is the "initial interest rate"? What is the first change date on loans containing conditional preferred rate features?

A: The initial interest rate is the interest rate that is applicable on the date of closing. If the first interest rate change date is not known due to a conditional preferred rate feature, the first change date box should state "unknown."

8) **Q:** Are programs such as payment assistance programs, which can increase the borrower's loan balance, to be taken into consideration in answering the question, "Even if you make payments on time, can your loan balance rise"?

A: No, this question on the HUD-1 is intended to educate borrowers about certain potentially high risk loans, such as negative amortization loans. A borrower making monthly payments on these loans needs to be aware, e.g., that to the extent that the monthly payments do not cover the full amount of the interest owed during that month, the unpaid interest will be added to the loan balance. The instructions for completing this item on the GFE provide that repayment of assistance from federal, state, local, or tribal housing programs should be excluded from consideration in completing this item on the GFE.

GFE – Escrow account information

1) **Q:** How does the loan originator complete the "Escrow account information" section on the GFE?

A: On the GFE, in the "Escrow account information" section, the first box is for the monthly payment that the borrower will owe for principal, interest, and mortgage insurance (i.e., the same amount shown above on the GFE as "Your initial monthly amount owed for principal, interest, and any mortgage insurance is"). If the lender does not require an escrow account, the loan originator should check the box for "No, you do not have an escrow account. You must pay these charges directly when due." If the lender does require an escrow account, the loan originator should check the box for "Yes, you have an escrow account. It may or may not cover all of these charges. Ask us."

2) **Q:** On the GFE, in the "Escrow account information" section, does the first block for the monthly amount owed include the amount of the estimated escrow payment?

A: No, the first block is for the monthly amount that will be owed for principal, interest, and mortgage insurance only. Additional information on charges relating to the escrow account is in Block 9 on page 2 of the GFE.

GFE – Page 2

GFE – Block 1

1) **Q:** If there is a lender and a mortgage broker in the same transaction, where does the loan originator put the lender and mortgage broker charges?

A: The total of all charges for all loan originators (lenders and mortgage brokers) must be contained in Block 1, "Our origination charge" on page 2 of the GFE, except for any charge for the specific interest rate chosen.

2) **Q:** Where does the loan originator put the lender's processing fee on the GFE?

A: All loan originator charges—including processing, application, administration fees, underwriting, document preparation, wire, lender inspection, mortgage broker, loan handling, and other miscellaneous fees—are contained in Block 1, "Our origination charge".

3) **Q:** Can the charge shown on the GFE, Block 1, "Our origination charge", increase after the GFE has been issued?

A: No. Block 1, "Our origination charge" cannot increase unless there is a "changed circumstance" as defined in 24 CFR § 3500.2.

4) **Q:** Where should fees such as loan originator's Processing Fee, Underwriting Fee, and Wire Transfer Fee be disclosed on the GFE?

A: All origination charges for lenders and mortgage brokers, including fees for administrative and processing services, are included in the charge in Block 1 of the GFE, "Our origination charge" and should not be itemized separately.

5) **Q:** If a loan originator contracts loan document preparation to a third party, is this a separate charge on the GFE and the HUD-1?

A: No, loan document preparation is a processing and administrative service in the origination of a loan and is included in Block 1 of the GFE, "Our origination charge" (and in Line 801 of the HUD-1), and may not be separately itemized. See 24 CFR § 3500.8(b)(1).

6) **Q:** Are attorney's fees charged to prepare loan documents for the lender considered part of the charge for origination services disclosed on Block 1 of the GFE?

A: Yes, attorney's fees charged to prepare loan documents for the lender are considered part of the charge for origination services disclosed on Block 1 of the GFE and should not be separately itemized.

GFE – Block 2

1) **Q:** How does a loan originator show a "no cost" loan on the GFE?

A: Where a "no cost" loan encompasses the loan origination charge and some or all third party fees, a credit should be listed in Block 2 of the GFE to offset all fees encompassed in the "no cost" loan resulting in a negative number in Block A to cover the intended third party fees, listed in Blocks 3 thru 11 as appropriate.

2) **Q:** I am a mortgage broker. If a lender is paying a yield spread premium through the loan, how do I show the charge for discount points on the GFE?

A: There may not be a credit for a yield spread premium and a charge for discount points in the same transaction. Only one box in GFE Block 2, "Your credit or charge for the specific interest rate chosen," may be checked.

3) **Q:** How is a fee paid by the borrower to temporarily buy down the interest rate disclosed on the GFE? For example: how is a 3-2-1 buy down, in which the interest rate is below the note rate by 3 points for the first year, 2 points for the second year and 1 point for the third year, disclosed on the GFE?

A: A temporary buy-down of the interest rate is a charge to the borrower for the interest rate chosen on the loan and as shown in Block 2 of the GFE. A lender could check either the first or the third box in Block 2 of the GFE. A mortgage broker must check the third box in Block 2 of the GFE. If entered in the third box, the charge for the buy-down is entered in the blank space for the charge, and, whether entered in either the first or third box, the initial interest rate should be entered in the blank space for the interest rate.

GFE – Block 3

1) **Q:** Where should a VA funding fee be disclosed on the GFE?
A: Fees specific to government loan programs, such as a VA Funding Fee, should be disclosed in Block 3, "Required services that we select."

2) **Q:** What services belong in Block 3, "Required services that we select"?
A: Block 3 of the GFE contains the charges for all third-party settlement services (except title services) for which the loan originator requires and selects the provider of the service. Examples of these charges for services generally include but are not limited to, appraisal, credit report, tax service, flood certification and up-front mortgage insurance premiums.

GFE – Block 4

1) **Q:** Where should the quote for the Lender's title insurance policy premium be disclosed on the GFE?
A: The Lender's title insurance premium is part of Block 4, "Title services and lender's title insurance" on the GFE, along with any fees for title searches, examinations, endorsements and all charges associated with the title services and settlement (closing) agent services.

2) **Q:** Are delivery fees included in "Title services" and therefore included in Block 4 of the GFE?
A: Yes, delivery fees are included in the definition of "title services" and are included in the charge shown in Block 4 of the GFE.

3) **Q:** Are notary fees included in "Title services" and therefore included in GFE Block 4?
A: Yes, notary fees are included in the definition of "title services" and are included in the charge shown in Block 4 of the GFE.

4) **Q:** Does "title services" include the settlement fee?
A: Yes, "Title services" is defined to include the service of conducting a settlement. See 24 CFR § 3500.2.

5) **Q:** How is the charge for conducting the settlement disclosed on the GFE?
A: The charge to the borrower for conducting the settlement must be included in the total of the charges in Block 4 for "Title services and lender's title insurance".

6) **Q:** Where do I put the charge for the title commitment on the GFE?
A: The term "title services" is defined to include any service involved in the preparation and issuance of the title commitment. See 24 CFR § 3500.2. On the GFE, the charge for title services is part of the total charges in Block 4 of the GFE.

7) **Q:** If it is common practice in the locality to charge both the seller and the borrower a separate charge for the service for conducting the settlement, how should the charges for that service be disclosed on the GFE?

A: The charge to the borrower for conducting the settlement must be included in the total for Block 4 of the GFE. Charges that the seller pays as a matter of common practice and experience are not disclosed on the GFE.

GFE – Block 5

1) **Q:** Do loan originators have to provide a price for Owner's title insurance on the GFE?

A: Loan originators must provide an estimate of the charge for an Owner's title insurance policy in Block 5, "Owner's title insurance" on the GFE on all purchase transactions. For non-purchase transactions, the loan originator may enter "NA" or "Not Applicable" in this Block.

2) **Q:** If a seller typically pays for the Block 5, "Owner's title insurance", does the charge still have to be shown on the GFE?

A: Yes, an estimate of the cost must be shown in Block 5, "Owner's title insurance" for all purchase transactions regardless of who is selecting or paying for it.

3) **Q:** If a borrower was quoted a basic owner's title insurance policy, but requests an enhanced owner's title insurance policy or an endorsement to the owner's title insurance policy, should the loan originator issue a revised GFE?

A: If the borrower requests an enhanced owner's title insurance policy or an endorsement to an owner's title insurance policy after the loan originator issues the GFE, the loan originator may choose to treat such a request by the borrower as a changed circumstance. The loan originator may then choose to provide a revised GFE to the borrower to disclose the increased charges. If the increased charges do not exceed tolerances, the loan originator may opt not to issue a revised GFE.

4) **Q:** Should the loan originator quote the charge for a basic owner's title insurance policy or an enhanced owner's title insurance policy on the GFE?

A: The GFE is a disclosure of charges the borrower is likely to incur in connection with the settlement. The loan originator should quote the rate for a basic owner's title insurance policy. If the borrower chooses an enhanced owner's title insurance policy before the loan originator issues the GFE, the loan originator should quote the rate for an enhanced owner's title insurance policy.

GFE – Block 11

1) **Q:** What types of insurance are included on the GFE, Block 11, "Homeowner's insurance"?

A: Block 11 of the GFE contains estimates for premiums for all types of insurance (other than title insurance) that must be purchased to meet the loan originator's requirements to protect the property from loss, such as hazard insurance (homeowner's insurance), flood insurance, and earthquake insurance.

2) **Q:** Where should the charge for flood insurance go on the new GFE?
A: Flood insurance is a type of insurance that would protect the property from loss. The charge for flood insurance should be itemized in Block 11 on the GFE and included in the Block 11 total.

GFE – Page 3

GFE – Tradeoff table

1) **Q:** Are loan originators required to complete the Tradeoff table?
A: The loan originator must complete the left-hand column ("The loan in this GFE") of the Tradeoff table with the information pertaining to the loan as shown on page 1 of the GFE. The loan originator, at its option, may also complete the remaining sections in the Tradeoff table with the same information showing an alternate loan with a higher interest rate and one with a lower interest rate, if the loan originator has those loans available and would issue a GFE based on the same information provided by the applicant. The alternative loans must use the same loan amount and be identical to the loan in the GFE except for the interest rate and closing costs.

2) Q: If a loan originator offers an adjustable interest rate (ARM) loan in which interest rate related charges may also be used to affect the margin of the loan; will the loan originator be prohibited from using the tradeoff table because of the different margin?
A: The loan originator is required to complete only the left hand column on the tradeoff table, with information respective to the loan terms and settlement charges contained on the GFE. If the loan originator chooses to complete the remaining columns in the tradeoff table, the alternative loans must use the same loan amount and must be otherwise identical to the loan offered, including the margin.

<u>Average Charge</u>

1) **Q:** What services can be estimated and charged using an average charge?
A: Third party charges for services that are not based on the property value or loan amount may be estimated, charged, and reported using an average charge. These third party charges are permitted for services that include but are not limited to: appraisals, credit reports, flood certificates, tax service, and recording documents (such as charges by a locality on a per page basis).

Average charges may not be used for items such as transfer taxes, interest charges, escrow reserves and insurances (including title insurance).

2) **Q:** How long does the settlement service provider have to keep documentation on how it calculated an average charge?
A: A settlement service provider must keep documentation used to calculate an average charge for at least three years after any settlement for which that average charge was used.

3) **Q:** What if the use of an average charge is not permitted under state law?

A: The use of an average charge is only one option under HUD's RESPA rule. HUD's average charge provision does not preempt state law. If a state in which a settlement service provider does business prohibits average charges, the settlement service provider may not use an average charge in that state.

4) **Q:** How is an average charge calculated?

A: The settlement service provider using an average charge must define a specific class of transactions for a specific time period (not less than 30 calendar days, nor more than 6 months), for a specific geographical area, and for a specific loan type. The average charge is based on a calculation of the average amount paid for the settlement service for the particular class of transaction. HUD does not prescribe a particular method for calculating the average charge, but it must be determined in such a way that the total amounts paid by borrowers and sellers through use of an average charge will not exceed the total amounts paid to the applicable settlement service providers in the particular class of transactions.

5) **Q:** If in using the average charge method of calculating and disclosing settlement charges, a settlement service provider charges borrowers and sellers (in the aggregate) too much for the settlement service, does the excess amount need to be refunded or is it permissible for the provider to keep the excess amount?

A: The excess amount does not have to be refunded, but it is not permissible to retain the excess amount. The excess may be applied to the next average charge period, for example. When such a procedure is followed, the average charge applied for the subsequent class of transactions must be adjusted, so that the sum of the previous excess amount and the total amount paid by the borrowers and sellers in the subsequent class does not exceed the total amount paid to the applicable settlement service providers.

Section 4 and 5 – Right to cure and tolerance violations

1) **Q:** If there is an inadvertent or technical error on the HUD-1, is this considered a violation of Section 4 of RESPA?

A: As long as a revised HUD-1 is provided to all parties within 30 calendar days after settlement, it would not be considered a violation of RESPA Section 4.

2) **Q:** Who is responsible for any tolerance violation?

A: The lender is responsible for curing tolerance violations.

3) **Q:** Does the settlement agent have to stop the closing if a tolerance would be violated?

A: No, the settlement agent does not need to stop the closing. While HUD recommends that the lender cure the tolerance violation at closing, the lender has 30 calendar days to cure.

4) **Q:** If a charge on the HUD-1 is less than the charge on the GFE, is this a tolerance violation?

A: No. It is permissible for charges to the borrower to decrease. This is not considered a violation.

5) **Q:** What happens if the charges are not properly calculated on the GFE and later result in a tolerance violation? Will the settlement agent be responsible for paying the difference to the consumer?

A: The lender is responsible for curing all tolerance violations; not the settlement agent. The lender must cure the violation at closing or within 30 days after settlement.

6) **Q:** If a loan originator pressures a settlement agent to reduce their charges or to 'cover the difference' to bring the costs into compliance with the tolerances, is that considered a violation of RESPA Section 8(a)?

A: If a loan originator (or other settlement service provider) pressures a settlement agent (or other settlement service provider) to reduce their charges or otherwise 'cover the difference' to bring the costs into compliance with the tolerances as a condition of receiving future referrals of business, it may be considered a potential violation of RESPA Section 8(a). Please contact the Office of RESPA and ILS to file a complaint.

7) **Q:** If the lender does not cure a tolerance violation at closing but does cure the violation within the 30-day right-to-cure period, who sends the borrower the reimbursement? Who prepares the revised HUD-1?

A: The lender is responsible for making the reimbursement, but either the lender or a third party authorized by the lender (including the settlement agent) may send the reimbursement to the borrower. RESPA and § 3500.8 of HUD's regulations require the settlement agent (person conducting the settlement) to complete the HUD-1 Settlement Statement. Therefore, a HUD-1 that is revised to adjust charges, such as to cure a tolerance violation, is also completed by the settlement agent.

8) **Q:** If the lender refunds money to a borrower to correct a tolerance violation and does not inform the settlement agent, has the settlement agent violated Section 4 of RESPA by not providing a revised HUD-1?

A: If the lender does not inform the settlement agent of the changes, the settlement agent is not in violation of Section 4 of RESPA for not providing an accurate HUD-1. The lender is responsible for informing the settlement agent of any changes that would necessitate a revised HUD-1 because the lender is responsible for transmitting to the settlement agent all information necessary to provide an accurate HUD-1. After the lender informs the settlement agent of changes, the settlement agent must correct the HUD-1 and provide copies of the corrected HUD-1 to the borrower, seller, and lender, as applicable.

9) **Q:** How is a potential tolerance violation that is corrected by the lender shown on the HUD-1?

A: The settlement agent must prepare a revised HUD-1 that states the actual charges paid by the borrower and seller. If the lender pays for a portion of a charge to cure a potential tolerance violation, the amounts for the charge shown on pages 2 and 3 of the HUD-1 must be corrected to show the actual amount charged to the borrower. The settlement agent should include on a blank line in the applicable series a notation that the lender has made a P.O.C. payment of a specified amount to correct a potential tolerance violation. After the revised HUD-1 has been prepared by

the settlement agent, the settlement agent must provide the revised HUD-1 to the borrower, the lender, and the seller as appropriate.

The example below illustrates how a cure for $200.00 of transfer tax charges should be listed:

1200. Government Recording and Transfer Charges					
1201. Government recording charges			(from GFE #7)		
1202. Deed $	Mortgage $	Release $			
1203. Transfer taxes			(from GFE #8)	$800.00	
1204. City/County tax/stamps	Deed $ 1000.00	Mortgage $			
1205. State tax/stamps	Deed $	Mortgage $			
1206. Transfer taxes	$200 P.O.C (lender) to meet tolerance				

HUD-1

HUD-1 – General

1) **Q:** How are courier and overnight delivery fees shown on the HUD-1 Settlement Statement?

A: Courier and overnight delivery fees are considered to be fees for administrative or processing services. They are part of a primary service, such as the origination service or title service, and may not be separately itemized.

2) **Q:** Does voluntarily using the HUD-1 in a transaction that otherwise is not subject to RESPA result in RESPA applying to the transaction?

A: No, using the HUD-1 form does not subject a transaction to coverage under RESPA.

3) **Q:** Does "conducting a settlement" (from the definition of "title service") have the same meaning as "conducting the closing"?

A: Yes. The terms "conducting a settlement" and "conducting the closing" have the same meaning under HUD's RESPA regulations and are subject to identical requirements under the regulations.

4) **Q:** May separate HUD-1s be given to the seller and the borrower with only their own information on each HUD-1?

A: Yes. It is permissible to have two separate HUD-1s in a transaction; one with the buyer's credits and charges only, and one with the seller's credits and charges only. The settlement agent must provide the lender with a copy of both HUD-1s when the borrower's and the seller's copies differ.

5) **Q:** If an addendum is used, can the following text be added to the HUD-1: "See attached addendum for additional information."?

A: It is acceptable to insert such a reference where appropriate on the HUD-1 for the purpose of making it clear to the parties what the complete HUD-1 comprises.

6) **Q:** How should payments by the seller or real estate agent that are for settlement services included on the GFE be shown on the HUD-1?

A: If a seller or real estate agent pays for a charge that was included on the GFE, the charges should be listed in the borrower's column, with an offsetting credit reported in Lines 204-209 of the HUD-1, identifying the party paying the charge. For a seller-paid charge, the charge should also be listed in Lines 506-509. For a charge paid by the real estate agent, the name of the person paying the charge must also be listed.

7) **Q:** The instructions in Appendix A to Part 3500 for completing the HUD-1 indicate how fees that are paid outside of closing should be designated on the HUD-1. Can the convention "P.O.C. (B*)" be used instead, with the following footnote at the bottom of the page: "*Paid outside of closing by borrower"?

A: Yes, the HUD-1 Instructions require that P.O.C. items be listed on the HUD-1 by the settlement agent with an indication whether P.O.C. items are paid by the borrower, seller, or other party by marking the items paid for by whoever made the payment identified in parentheses, such as P.O.C. (borrower) or P.O.C. (seller). P.O.C. (B*) may also represent P.O.C. (borrower) and P.O.C. (S*) may also represent P.O.C. (seller) as long as a footnote is added to the HUD-1 clearly noting the party paying for the item such as *Paid outside of closing by borrower or *Paid outside of closing by seller.

8) **Q:** Where should fees for processing and administrative services be listed on the HUD-1 Settlement Statement?

A: Processing and administrative services are services to perform origination and title services functions. For the loan origination function, charges for such services are included in the total on Line 801. For the title services function, charges for such services must be included in the title underwriter's or title agent's charge and are shown in the total on Line 1101. Examples of processing and administrative services include, but are not limited to, the following: document delivery, document preparation, copying, wiring, preparing endorsements, document handling, and notarization.

9) **Q:** Where should the survey fee be disclosed on the HUD-1?

A: The location of the survey fee on the HUD-1 is determined as follows:

(a) if the loan originator required a survey as a condition of the loan and selected the settlement service provider, the charge for the survey must be listed on a blank line in the 800 series in the borrower's column;

(b) if the loan originator required a survey as a condition of the loan and the borrower selected the settlement service provider, the charge for the survey must be listed as part of the total in Line 1301 of the HUD-1 and itemized as applicable;

(c) if a survey was required to issue a lender's or owner's title insurance policy, the charge for the survey is part of the charge in Line 1101 and must be further itemized if performed by a third party;

(d) if the borrower elected to obtain a survey that was neither required by the loan originator nor required to issue a lender's or owner's title insurance policy, then the charge is listed in the borrower's column on a blank line in the 1300 series.

10) **Q:** May an addendum be added to the HUD-1 to list additional fees and other information?

A: Yes, an additional page may be attached to the HUD-1 to add sequentially numbered lines as needed to accommodate the complete listing of all items required to be shown on the HUD-1, and for the purpose of including customary recitals and information used locally in real estate settlements (for example, breakdown of payoff figures, a breakdown of borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred).

11) **Q:** The General Instructions indicate that if a charge has been shown on the GFE as payable by the borrower but at closing it is paid by another person, including by the loan originator in a loan other than a no-cost loan, the fee should be shown in the borrower's column on the HUD-1 and be offset by listing a credit to the borrower on lines 204-209 of the HUD-1. If a HUD-1A form is being used, lines 204-209 do not exist. How should the credit be shown on a HUD-1A form?

A: Use of the HUD-1A form is an optional form to be used by the settlement agent in a transaction in which there is not a seller and as otherwise appropriate. If the use of a HUD-1A form is not appropriate, such as if there is a credit given by a loan originator or other party, the settlement agent must use the HUD-1 form.

12) **Q:** In a transaction that is closed in the mortgage broker's name but is table funded by the lender, must the name and address of the funding lender be shown in Section F (consistent with definition of "lender" under 24 CFR § 3500.2(b)) or may the mortgage broker's name and address be shown?

A: The HUD-1 Instructions for Section F state that the name and address of the lender must be stated in this section. Therefore the name of the lender and not the mortgage broker must be stated in Section F on the HUD-1.

HUD-1 – Page 1

HUD-1 – Seller-paid items

1) **Q:** What if at closing the seller is paying for a settlement service that was listed on the GFE, such as the Owner's title insurance policy? How is this shown on the HUD-1?

A: If the seller is paying for a service that was on the GFE, such as Owner's title insurance, the charge remains in the borrower's column on the HUD-1. A credit from the seller to the borrower to offset the charge should be listed on the first page of the HUD-1 in Lines 204-209 and Lines 506-509 respectively.

2) **Q:** If the seller has agreed to pay charges that were disclosed on the borrower's GFE, how are these charges listed on the HUD-1?

A: The charge for any service which is disclosed on the borrower's GFE is listed in the borrower's column on the HUD-1. The amount charged to the borrower is offset by a credit in

that amount in Lines 204-209 and by a charge to the seller in that amount in Lines 506-509 on page 1 of the HUD-1.

HUD-1 – 200 series

1) **Q:** When the borrower is using a second loan to help finance the purchase of a home, may both loans go on one HUD-1?

A: No, each loan must have a separate GFE and a separate HUD-1. The principal amount of the second loan must be listed outside the borrower's column with a brief explanation on Line 204-209 of the HUD-1 for the primary loan. If the net proceeds of the second loan are less than the principal amount, the net proceeds may be listed on the same line in the borrower's column.

The example below illustrates how the fields in this question may be completed.

204. Second loan (principal balance $30,000)	$29, 400.00

2) **Q:** What types of loans can be shown in Line 202 of the HUD-1?

A: Line 202 of the HUD-1 is used to state the amount of the loan in the mortgage transaction. The loan could be a purchase money loan, refinance, home equity loan, construction loan, or a manufactured home purchase loan.

3) Q: Where should the transferred escrow balance in a refinance transaction be listed on the HUD-1?

A: The transferred escrow balance should be listed as a credit in lines 204-209 of the HUD-1.

HUD-1 – Page 2

HUD-1 – 700 series

1) **Q:** Where do I put the percentage of commission to the real estate agents on the HUD-1?

A: The percentage used to compute the sales commission has been removed from the HUD-1 to better reflect current practices in the real estate industry. The total amount of the commission to each real estate broker or agent must be shown on Lines 701 and 702. The amount of the commissions disbursed at settlement must be shown inside the columns on Line 703.

2) **Q:** If a real estate agent is retaining some of the borrower's earnest money deposit as part of the agent's commission, is that amount listed in the 700-series on the HUD-1?

A: Yes, if a real estate agent is holding the borrower's earnest money deposit, the amount of the earnest money deposit applied towards the commission and the party holding the earnest money must be identified on Line 704 of the HUD-1 as Paid Outside of Closing or P.O.C. Only the amount of the commission disbursed at settlement is entered in the columns on Line 703.

HUD-1 – 800 series

1) **Q:** What charges are included in "Our origination charge" on Line 801 of the HUD-1?
A: Line 801 includes all charges received by a loan originator, except for any additional charge ("points") for the interest rate chosen on the loan. The amount on Line 801 also includes all amounts received for any service, including administrative and processing services, performed by or on behalf of the lender or any mortgage broker. (The amount on Line 801 is not listed in the columns.)

2) **Q:** If an attorney prepares loan documents for a lender, where does that charge go on the HUD-1?
A: Loan document preparation done on behalf of the loan originator is a processing and administrative service in the origination of a loan and is included in the charge on Line 801 of the HUD-1, and may not be separately itemized. See 24 CFR § 3500.8(b)(1).

3) **Q:** How does a settlement agent show a "no cost" loan on the HUD-1?
A: In the case of "no cost" loans where "no cost" refers only to the loan originator's fees, a credit equal to the amount shown in Line 801 on the HUD-1 must be given in Line 802 of the HUD-1 so that the adjusted origination charge in Line 803 of the HUD-1 equals zero. In the case of "no cost" loans where "no cost" encompasses some or all third party fees and the origination charge, a credit should be listed in Line 802 of the HUD-1 to offset all fees encompassed in the "no cost" loan, resulting in a negative number for the adjusted origination charge on Line 803 of the HUD-1. The third party services covered by this offset must be itemized and listed in the borrower's column.

4) **Q:** If a borrower pays some of the origination charge prior to closing, how should it be disclosed on the HUD-1?
A: The full charge for origination, except for any charge for the specific interest rate chosen (points), must be shown on Line 801 of the HUD-1 to the left of the borrower's column. If the borrower pays some of the origination charge before settlement, an offsetting credit in that amount is shown on the first page of the HUD-1 in Lines 204 – 209. Lines 801, 802, and 803 of the HUD-1 may not contain any "Paid Outside of Closing" (P.O.C.) items.

5) **Q:** How is a payment from the lender to the mortgage broker that will be "paid outside of closing" (P.O.C.) shown on the GFE and HUD-1?
A: All payments from a lender to a mortgage broker must be shown as a credit to the borrower in Block 2 of the GFE and on Line 802 of the HUD-1. These payments may not be shown as P.O.C.

6) **Q:** What fees are to be recorded in the 800 series of the HUD-1, beginning on Line 804?
A: When the loan originator selects the settlement service provider, fees for third party settlement services that are required by the loan originator are recorded in the 800 series beginning on Line 804. These third party services and fees most often include appraisals, credit reports, flood searches, tax service, and governmental loan program charges, such as VA, FHA, Rural Housing Service, or state bond loan programs. Processing or administrative services are

part of "Our origination charge" and may not be separately itemized. The HUD-1 Instructions for the 800 series explain which fees go on which lines.

7) Q: If state law requires further itemization of loan originator fees such as a commitment or underwriting fee, how should these fees be listed on the HUD-1?

A: If state law requires further itemization of loan originator fees than required under RESPA, those fees may be treated as other required disclosures and itemized on Line 808 and additional lines in the 800 series on the HUD-1 with the charge listed outside the borrower's column.

HUD-1 – 900 series

1) **Q:** Where is the charge for flood insurance shown on the HUD-1? What if the borrower pays it prior to settlement?

A: Flood insurance should be disclosed on Line 904 of the HUD-1 with the charge in the borrower's column. If the borrower pays the insurance prior to closing, the item should be shown on Line 904 of the HUD-1 noted as "Paid Outside of Closing" or P.O.C. with the charge to the left of the column.

2) **Q:** On some loans a borrower will make a full regular payment within less than a month and receive an interest credit at closing. May the interest credit, instead of the collection of interim interest, be listed in Line 901 on the HUD-1?

A: Yes, an interest credit may be listed (as a negative number) in Line 901 on the HUD-1.

HUD-1 – 1000 series

1) **Q:** Does Line 1001 reflect the total of all other lines in the 1000 series?

A: Yes, Line 1001 is the total of all escrow items contained in the 1000 series of the HUD-1.

2) **Q:** May additional lines be added to the 1000 series on the HUD-1?

A: Yes, additional lines may be added to the 1000 series if needed. If lines are added, Line 1007, Aggregate Adjustment, must be moved down (and renumbered accordingly) so that it remains the last line item in the series.

HUD-1 – 1100 series

1) **Q:** What are title services?

A: The term "title services" includes:

1. Any service involved in the provision of title insurance, including but not limited to:

   - title examination and evaluation
   - preparation and issuance of commitment
   - clearance of underwriting objections

- preparation and issuance of policies
- all processing and administrative services required to perform these functions (e.g. document delivery, preparation and copying, wiring, endorsements, and notary); and

2. The service of conducting a settlement.

2) **Q:** Where should the settlement agent list the commitment fee, wire fee and other miscellaneous title fees on the HUD-1?

A: The commitment fee, wire fee, and other miscellaneous fees are included as processing and administrative fees that are part of the definition of "title services." All of these types of fees must be included in the charges shown on Line 1101 of the HUD-1, and are not to be itemized separately.

3) **Q:** Are document preparation fees included in "title services" or would they appear as separate line item charge in the borrower's column?

A: Document preparation fees are part of administrative or processing fees which are included in the charge in Line 1101 of the HUD-1 and may not be separately itemized.

4) **Q:** Are delivery fees included in "Title services" and therefore included in Line 1101 of the HUD-1?

A: Yes, delivery fees are included in the definition of "title services" and are included in the charge shown in Line 1101 of the HUD-1.

5) **Q:** Are notary fees included in "Title services" and therefore included in Line 1101 of the HUD-1?

A: Yes, notary fees are included in the definition of "title services" and are included in the charge shown in Line 1101 of the HUD-1.

6) **Q:** What is the Lender's title policy limit on Line 1105 of the HUD-1?

A: The Lender's title policy limit, Line 1105 of the HUD-1, is the maximum dollar amount of coverage available under the policy.

7) **Q:** Where should the quote for the Lender's title insurance policy premium be disclosed on the HUD-1?

A: The Lender's title insurance premium is part of the charge shown on Line 1101, "Title services and lender's title insurance" on the HUD-1, along with any fees for title searches, examinations, endorsements and all charges associated with the title services and settlement (closing) agent services.

8) **Q:** Do the disclosures of the title agent's and the title underwriter's portions of the title insurance premium on Lines 1107 and 1108 of the HUD-1 Settlement Statement also contain the charges for the title policy endorsements?

A: Yes, disclosure of the agent's and the underwriter's portions of the title insurance premium on Lines 1107 and 1108 of the HUD-1 Settlement Statement also contains any charges for title policy endorsements that are retained by the title agent or title underwriter.

9) **Q:** If a title insurance underwriter is also the title agent, what should be shown on Lines 1107 and 1108 of the HUD-1?

A: If there is no premium split between the title underwriter and a separate title agent, all of the title insurance premium (including charges for endorsements) would be shown on Line 1108, and $0 would be shown on Line 1107.

10) **Q:** Where should the Lender's title insurance premium be disclosed on the HUD-1?

A: The amount of the premium for Lender's title insurance and related endorsements must be included in the total for title services and lender's title insurance on Line 1101 of the HUD-1. The charge for the Lender's title insurance policy and its related endorsements must also be itemized on Line 1104 with the charge to the left of the columns.

11) **Q:** If a borrower selects an attorney to represent the borrower's personal interests at settlement, where is this attorney's fee disclosed on the HUD-1?

A: If a borrower selects an attorney to represent the borrower's personal interests at settlement, and the service provided by that attorney is separate from the functions necessary to conduct the closing, provide title services or issue the lender's title insurance policy, this attorney's charge may be separately listed on a blank line in the 1100 series in the borrower's column along with the name of the attorney and the type of service provided. Accordingly, the amount of this attorney's fee should not be included in the charge listed on Line 1101.

12) **Q:** How is the premium recorded on the HUD-1 if the borrower purchases an enhanced owner's title insurance policy, rather than a basic policy?

A: Regardless of whether the borrower chooses to purchase a basic or an enhanced owner's title insurance policy, the premium must be listed in the borrower's column on Line 1103.

13) **Q:** If the title agent conducts the settlement, should the charge for conducting the settlement be included in Line 1101 of the HUD-1, with the itemized charge listed outside the column on Line 1102?

A: Yes, the charge for conducting the settlement must be included in the total on Line 1101. If the charge is paid to a third party, the charge must be itemized outside of the columns on Line 1102.

14) **Q:** Where do I put the charge for the title commitment on the HUD-1?

A: The term "title services" is defined to include any service involved in the preparation and issuance of the title commitment. See 24 CFR § 3500.2. On the HUD-1, the charge to the borrower for title services, including the charge for services related to the title commitment, must be included in the total in the borrower's column on Line 1101. If a third party prepares and issues the title commitment, the disbursement for this service also must be itemized outside the columns on a blank line in the 1100-series.

15) **Q:** What items are included in the amount disclosed on Line 1101 of the HUD-1?

A: Line 1101 is the total of the charges for "Title services and lender's title insurance," which includes: all charges for conducting a settlement (Line 1102); any premiums paid for lender's title insurance and its related endorsements (Line 1104); all charges for title searches and examinations; and charges for all other services itemized in the 1100 series if those services are included in the definition of "title service." The total on Line 1101 should *not* include the amount of any premium for owner's title insurance and its related endorsements, which must be listed in the columns on Line 1103.

16) **Q:** How is the charge for conducting the settlement disclosed on the HUD-1?

A: The charge to the borrower for conducting the settlement must be included in the total stated in the borrower's column on Line 1101 of the HUD-1. In addition, the total in the borrower's column on Line 1101 must include any amount for conducting the settlement that was paid by another person on behalf of the borrower. In such a case, an offsetting credit must be shown on page 1 of the HUD-1. If the seller paid the amount, a credit to the borrower in that amount must be listed in Lines 204-209, and a charge to the seller must be listed in Lines 506-509. If another person pays the amount an offsetting credit is reported in Lines 204-209, identifying the person paying the charge.

Any separate charge to a seller for conducting the settlement is listed in the seller's column in Line 1102. The borrower's charge for conducting the settlement should be itemized outside the borrower's column in Line 1102.

17) **Q:** If state law requires further itemization of title service or title insurance related fees such as a commitment fee or fees for endorsements to a title insurance policy, how should these fees be listed on the HUD-1?

A: If state law requires further itemization of title service or title insurance related fees than required under RESPA, those fees may be itemized on blank lines in the 1100 series on the HUD-1 with the charge listed outside the borrower's column. Endorsements to a title insurance policy may also be listed in Lines 1103 and 1104 as applicable, with the charge listed outside the borrower's column.

18) Q: Under the Truth In Lending Act, a settlement or closing fee is generally included in the finance charge, but if a settlement agent charges for a service that the lender does not require and as to which the lender retains no portion of the fee, the fee is not a finance charge. Should fees charged by a settlement agent for services that are not required by the lender or requested by the borrower be listed on Line 1101 and/or Line 1102 on the HUD-1, or separately itemized on a blank line?

A: "Title service" is defined to include "the service of conducting a settlement." If a settlement agent requires an additional service involved in the provision of title insurance, the charge for that service would be included with the total charge on Line 1101 on the HUD-1. If a fee for the additional service is not a processing or administrative service paid to a third party, it must be itemized outside the columns on a blank line in the 1100-series.

HUD cannot interpret regulations promulgated by another federal agency, such as Regulation Z (12 CFR part 226). Please refer to the Board of Governors of the Federal Reserve System for interpretations of Regulation Z.

HUD-1 – 1200 series

1) **Q:** If there are additional government recording fees, such as to record a power of attorney or road maintenance agreement, are they included in Line 1201 of the HUD-1 or can they be charged separately?

A: Line 1201 is used to record the total government recording charges. Additional items the lender requires to be recorded, other than those already enumerated in Line 1202, must be itemized on Line 1206. The charges for these additional items must be stated outside the column.

2) **Q:** What items are included in the amount listed on Line 1201 of the HUD-1?

A: Line 1201 is the total of the government recording charges. Examples of such charges include but are not limited to state and local fees for recording the deed, mortgage, deed of trust, releases, and any other instrument or document recorded to preserve marketable title or to perfect the lender's security interest in the property.

3) **Q:** What items are included in the amount listed on Line 1203 of the HUD-1?

A: Line 1203, "Transfer taxes," is the total of state and local government fees imposed for mortgages and home sales.

HUD-1 – 1300 series

1) **Q:** What charges are shown in the 1300 series of the HUD-1 Settlement Statement?

A: The 1300 series of the HUD-1 Settlement Statement is used to record the charges for settlement services that are disclosed in Block 6 of the GFE as well as charges that are not disclosed on the GFE. Examples of some of these services may include charges for home inspections, radon inspections, and homeowner's warranty.

2) **Q:** What charges are shown on Line 1301 of the HUD-1?

A: Line 1301 is the total of all charges for third party settlement services that the loan originator required but for which the borrower was permitted to select the service provider. The charge on Line 1301 is shown in the borrower's column. All charges included in the total amount on Line 1301 must be separately itemized outside of the columns in Lines 1302 and subsequent lines, identifying the type of service, the name of the provider, and the amount of the charge.

3) **Q:** If the loan originator does not allow the borrower to shop for any required services, can the settlement agent begin the itemized list of additional miscellaneous settlement charges in the 1300 series on Line 1302?

A: Yes, if Line 1302 and additional sequentially numbered lines will not be needed to record required services that the borrower can shop for; the settlement agent may list the itemized miscellaneous settlement services on Line 1302.

4) **Q:** If a loan originator permits a borrower to shop for services typically listed in Block 3 on the GFE, such as tax service or flood certificate, where should the services be listed on the HUD-1?

A: If a loan originator permits a borrower to shop for services typically listed in Block 3 on the GFE, such as tax service or flood certificate, the services would instead be listed in Block 6 of the GFE. The total amount charged for these services is listed in the borrower's column in Line 1301, and the charges are itemized outside the columns in Line 1302 and following lines on the HUD-1.

HUD-1 – Page 3

1) **Q:** How do settlement agents get the information to prepare page 3 of the HUD-1? Do they have to search through all of the loan documents to get this information?

A: The lender is required to transmit the information necessary to complete the HUD-1. The instructions for completing the HUD-1 state that the lender must provide information to the settlement agent in a format that permits the settlement agent to simply enter the necessary information to complete the loan terms section on page 3 of the HUD-1 without having to refer to the loan documents.

2) **Q:** Is it a violation of the tolerance if some of the items in the 10% category in the Comparison Chart exceed 10%, but other items in the category do not exceed 10%?

A: The tolerance applies to the total of all charges shown in the category "Charges That in Total Cannot Increase More Than 10%." A tolerance violation of this category means that the total of all actual charges in this category exceed the total of all estimated charges in this category by more than 10%.

3) **Q:** How are items that were "paid outside of closing" (P.O.C.) shown in the Comparison Chart on page 3 of the HUD-1?

A: The HUD-1 column in the Comparison Chart must include any amounts shown on page 2 of the HUD-1 in the column as paid by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

For example, if the borrower pays $300 towards required appraisal services, but the total charge for the appraisal is $500, then Line 804 on page 2 of the HUD-1 will show a P.O.C. amount of $300 outside the column and a charge of $200 in the borrower's column.

800. Items Payable in Connection with Loan			
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 A)	
804. Appraisal fee to Appraisal Company	P.O.C. $300 (borrower)	(from GFE #3)	$200.00
805. Credit report to		(from GFE #3)	
806. Tax service to		(from GFE #3)	
807. Flood certification		(from GFE #3)	
808.			

The total amount of $500 would be shown in the "HUD-1" column ($300 P.O.C. + $200 at settlement) on a separate line in the comparison chart for charges that cannot increase more than 10 percent on page 3 of the HUD-1.

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
Appraisal fee	# 804	$500.00	$500.00
	#		
	#		

4) **Q:** Can cross-references to the applicable Blocks on the GFE be included for each charge itemized in the Comparison Chart on the third page of the HUD-1?

A: Cross-references to the GFE Block numbers should not be added to page 3 of the HUD-1. The appropriate HUD-1 line number is entered to the left of the columns, and this information will allow the borrower to trace the charge to page 2 of the HUD-1 and then to the GFE. The itemization of each charge in the Comparison Chart must also include a description of the service, such as "appraisal fee" or "credit report."

5) **Q:** May the yes/no check boxes be removed from the Loan Terms section on page 3 of the HUD-1?

A: No. The Loan Terms section is part of the HUD-1 form and may not be altered except for formatting, such as margins or shading, adding additional lines and other options. Please refer to 24 CFR § 3500.9 of HUD's regulations (in title 24 of the Code of Federal Regulations) for rules applicable to reproduction of the HUD-1.

6) **Q:** Is the settlement agent required to compare the "Loan Terms" section of the HUD-1 with the "Summary of your loan" section of the GFE?

A: Settlement agents are not required to compare the information contained in the GFE with the information transmitted by the lender to the settlement agent for the purpose of completing the Loan Terms section of the HUD-1. If the settlement agent becomes aware of inconsistencies between the information contained in the HUD-1 and the GFE, in the interest of all parties the discrepancy should be communicated to the lender.

7) **Q:** Does page 3 of the HUD-1 have to be given to the seller since it only contains borrower information?

A: No, Section 4 of RESPA does not require that parts of the HUD-1 that relate only to the borrower's transaction be furnished to the seller. It is permissible to have two separate HUD-1s in a transaction; one with the buyer's credits and charges only, and one with the seller's credits and charges only. Page 3 of the HUD-1 pertains only to charges to the borrower and loan information and is not required to be given to the seller.

8) **Q:** When completing the Comparison Chart on page 3 of the HUD-1, are all GFE Block 3 items ("Required services that we select") combined into one charge on one line, or should each of the items contained in GFE Block 3 be itemized separately?

A: Each item included in Block 3 on the borrower's GFE must be separately itemized in the "Charges That in Total Cannot Increase More Than 10%" section of the Comparison Chart on page 3 of the HUD-1.

9) **Q:** Why doesn't the "Loan Terms" section on page 3 of the HUD-1 duplicate the "Summary of your loan" section on the GFE?

A: The "Summary of your loan" section of the GFE is usually written before a settlement date is chosen and before the amount of any escrow payment that the borrower will have to pay is known. The "Loan Terms" section of the HUD-1 includes certain information that may not have been known or may not have been available at the time that the GFE was prepared, but is known and included on the HUD-1.

10) **Q:** In the "Loan Terms" section on page 3 of the HUD-1, how should the information be completed for the item "Can your interest rate rise?"

A: If the interest rate cannot rise, the "No" box should be checked and no further information is required.

If the interest rate can rise, the "Yes" box must be checked and the applicable information must be entered in the blank spaces for: the maximum interest rate; the date of the first possible change in the interest rate; the frequency of subsequent changes; the date after which subsequent interest rate changes could occur; the amount, stated as a percentage, that the interest rate could increase or decrease at every change date; the lowest possible interest rate over the life of the loan; and the maximum possible interest rate over the life of the loan.

The example below illustrates how the fields in this question should be completed.

Can your interest rate rise?	☐ No. ☑ Yes, it can rise to a maximum of 11 %. The first change will be on 5/29/10 and can change again every year after 5/29/10 . Every change date, your interest rate can increase or decrease by 1 %. Over the life of the loan, your interest rate is guaranteed to never be lower than 2.5 % or higher than 11 %.

11) Q: How should the loan originator complete the answer to the question, "Every change date your interest can increase or decrease by ____%", on the HUD-1, if the loan does not contain a cap of periodic interest changes other than by setting the overall floor and ceiling?

A: If the loan offered does not contain a cap of periodic interest change other than by setting the overall floor and ceiling, the loan originator should complete the answer to the question, "Every change date your interest can increase or decrease by ____%" with the difference between the floor and the ceiling.

12) Q: How should the loan originator complete the answer on the HUD-1 to the question, "Every change date your interest can increase or decrease by ____%", if there is a cap on periodic increases, but not on periodic decreases?

A: If the loan offered does not contain a cap on decrease of periodic interest, the loan originator should complete the answer to the question, "Every change date your interest can increase or decrease by ____%" with the difference between the floor and the ceiling.

<u>Settlement cost booklet</u>

1) **Q:** When will the Settlement Cost Booklet be revised?

A: HUD is currently revising the Settlement Cost Booklet. The Booklet will be available on HUD's website and will be published in the Federal Register when it is completed.