



Making Sense of the New GFE

With a new good-faith estimate required as of Jan. 1, it's wise to brush up on changes, page by page.

LIKE IT OR NOT, THE NEW GOOD-FAITH estimate (GFE) and U.S. Department of Housing and Urban Development (HUD)-1 settlement statement will be required beginning Jan. 1. Although HUD has published information to help mortgage professionals understand the rules, many still wonder how to complete certain sections of the new forms and how to comply with new regulatory details.

Here are some highlights and potential pitfalls of the changing rules.



Beginning with Page 1 of the GFE ([sctsm.in/HUDGFE](#)), what would appear to be an obvious section — the name of the originator — isn't what it may seem. It's actually the name of the company originating the loan that should be used wherever the form says "originator." The two exceptions to this rule are that the phone number may include a direct extension, and the e-mail address may be specific to the loan originator. Otherwise, list the company information wherever the GFE asks for originator information.

It also would be wise for loan originators to provide a level of detail not required in the "important dates" section of Page 1. Line No. 1 requires a date noting how long the interest rate used on the GFE will be honored. If the interest rate is not locked when completing the GFE, consider including not only a date but also a time until which the interest rate will be available. This practice will be acceptable, according



Illustration: Dennis Wunsch

to HUD, which provides no limitation or restriction on the time that must be listed in line No. 1. On the other hand, the date in line No. 2 must be at least 10 days from the GFE date.

Line No. 3 typically will reflect the rate-lock period related to the pricing of the interest rate used in the scenario disclosed

in the GFE. If the interest rate is locked for 15 days at the time of disclosure, print "15" in that field. If the rate wasn't locked at the time of disclosure, but the estimate was created using rate-sheet pricing based on a 30-day lock period, "30" would go in that field.

The next section of the GFE is "Summary of your loan," addressed well in HUD's frequently asked questions ([sctsm.in/GFEfaq](#)). But know that no changes can be made to the form itself without risk of invalidating the document. If the loan disclosed in the GFE has a biweekly-payment feature, the GFE must be completed as though the loan had a regular 12-month annual payment cycle. Because the wording in this section specifically mentions the "monthly amount owed," the loan information and payments must reflect monthly values.

If any monthly payments outside of the monthly amount owed shown in the summary of your loan section will be held by escrow, the "yes" checkbox in the "Escrow account information" section must be marked. Amounts held in escrow include payments for property taxes and other property-related charges.

Only mark the "no" checkbox here if the monthly loan payment only includes payments related to principal, interest and mortgage insurance.

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The escrow-account-information section directly follows the loan-summary section.

Listing fees

For many mortgage brokers, Page 2 of the new GFE causes the most questions and the greatest concern. Fortunately, the HUD FAQs provide a step-by-step process for completing this page.

For instance, HUD has made it clear that fees for mortgage brokers and lenders must be combined into a single fee to the borrower. The FAQ document explains that “all origination charges for lenders and mortgage brokers, including fees for administrative and processing services” must be included in “Our origination charge” at the top of Page 2 and “should not be itemized separately.”

HUD also has made it clear that there may be either a credit or charge related to the interest of the loan — but not both. As quoted from the FAQ document, “There may not be a credit for a yield spread premium and a charge for discount points in the same transaction.” Brokers must disclose this information in block No. 2 in the “Understanding your estimated settlement charges” section.

When developing your company’s compliance policies, consider this: If there is a credit from the seller, lender or anyone else involved in the transaction, the total estimated settlement charges listed on the GFE won’t match up with the loan application and may be out of sync with state-required disclosures, such as the California Mortgage Loan Disclosure Statement.

According to HUD, the new GFE was created to provide consumers a concise view of the total costs related to obtaining a loan. Therefore, the disclosure should represent all fees related to the loan, regardless of who pays the fee or when the fee is paid. In addition, no fees are allowed to be collected before issuing the GFE, except as related to obtaining a credit report. No items should be marked as paid outside of closing at the time of disclosure.

The implication here is that if an originator knew a fee was paid outside of closing upon issuance of the GFE, the fee must

have been paid before issuance — a clear violation. This is true even with revised GFEs.

Completing the HUD-1, however, is different. Because the HUD-1 reflects an itemization of the fees and must also indicate who paid the fee, any fee paid outside of closing must be indicated as paid outside of closing, in parentheses or both. In addition, fees paid by anyone other than the borrowers must be listed on the first page of the HUD-1 in lines Nos. 204 to 209. According to the FAQ document, however, “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.”

The tolerance related to fees and the

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opportunity for error should concern brokers, however. Brokers must have solid procedures to ensure originators are aware of all fees relating to the lender. In turn, lenders must be aware of the fees included on GFEs that loan originators provide.

Brokers who charge advance fees before issuing GFEs also will be required to refund those fees to the borrower before submitting the loan to the lender. If brokers fail to do so, lenders will deny the loan submission to stay compliant with the Mortgage Disclosure Improvement Act, the Truth in Lending Act and the Real Estate Settlement Procedures Act (RESPA).

Helping borrowers

Getting past fees and charges on Page 2, Page 3 can be interpreted with relative

ease. At the top of the page, three categories describe fees that can and cannot change at settlement and by how much.

Perhaps the most significant item is transfer taxes. This fee cannot change between initial disclosure and closing. Brokers and lenders, therefore, must solidify their relationships with third-party vendors — or create internal policies for verifying this information — or they may experience expensive long-term repercussions.

The tradeoff-table section on Page 3, intended to illustrate the seesaw relationship between closing costs and interest rates, should help loan originators discuss loan options with borrowers. The originator must accurately fill out the first column, “The loan in this GFE,” to reflect the parameters of the loan disclosed in the GFE.

Technically, the other two columns of the tradeoff table — “The same loan with lower settlement charges” and “The same loan with a lower interest rate” — can be left blank. The intention of the table, however, is to illustrate to borrowers that:

- **By accepting a higher interest rate,** they can pay lower upfront settlement charges, or
- **By paying greater settlement charges,** they can lower their interest rate.

Finally, the bottom of Page 3 provides a “shopping chart” section for borrowers to compare different GFEs provided by different lenders. Because columns for Loan 2, Loan 3 and Loan 4 are intended to be related to GFEs provided by other loan originators, there’s no requirement for their completion.

Other concerns

Beyond going page by page in the new GFE, there are additional important points of which brokers should be aware.

- **The official GFE** provided by HUD doesn’t contain a signature line for borrowers or co-borrowers. This is perhaps the only area that HUD has allowed for variation between its official form and those brokers, lenders or service-providers provide. HUD will allow signature lines to

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Potential Conflict

Rules interpretations can differ between regulators and industry professionals. Here are two such instances that relate in part to the good-faith estimate (GFE):

- **Prepayment penalties:** The U.S. Department of Housing and Urban Development has commented that payment of accrued interest upon payoff of a Federal Housing Administration (FHA) loan is not a prepayment penalty. Under the Truth in Lending Act (TILA) and Regulation Z, however, the Federal Reserve Board does consider the payment of accrued interest a prepayment penalty. Some

industry experts also are concerned that regulations regarding higher-priced mortgage loans, which can contain prohibitions on prepayment penalties, may limit FHA loans.

- **Itemizing amount financed:** The Federal Reserve has confirmed that disclosure of the GFE will continue to satisfy Regulation Z, despite the GFE containing aggregate values. Under Regulation Z, which implements TILA, providing the loan disclosures required under the Real Estate Settlement Procedures Act satisfies the requirements of providing an itemization of amount financed.

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appear on the forms and has confirmed that their appearance won't constitute a compliance violation.

- **HUD says no statements** may be added to the form for borrowers to indicate they acknowledge receipt of the settlement-costs booklet or the Consumer Handbook on Adjustable-Rate Mortgages. These statements often appeared on previous versions of many GFEs. HUD's interpretation is that the new GFE is an official form and no longer a format. Therefore, no additional information may be added.
- **If a loan disclosed** in a GFE is for a construction loan and the closing will take place more than 60 days from GFE issuance, the lender may provide a statement to the borrower that a revised GFE may be issued no more than 60 calendar days before closing. If the lender fails to provide this notice at the time of issuance of the initial GFE, the lender loses the right to revise the GFE without otherwise-recognized changed circumstances. The lender will be held to the tolerances based on the fees provided.

- **Loan originators must provide borrowers** a list of service-providers for any services for which borrowers may shop. This notice also must be issued at GFE disclosure and must provide sufficient information to identify the service-provider company, as well as the fee related to its service.

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Considering the many priorities of lawmakers and rule-makers, change likely represents the only constant on which we can rely.

To remain compliant and to understand the implementation schedules and implications involved with current, pending and unforeseen changes to lending rules, brokers may want to consult with legal experts or compliance professionals.

The final effectiveness of the RESPA rules and their impact on the industry likely won't be felt until well after they take effect. In the meantime, brokers should focus on conforming to the changes and ensuring they maintain appropriate policies and procedures. ●