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Adjusting to GFE Changes

Originators still have time to make sure they are doing everything possible to **ensure compliance** with the new GFE-related requirements.

RECENTLY, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT released its final rule to the regulatory requirements of the Real Estate Settlement Procedures Act. One of the most notable changes is the requirement that mortgage originators provide potential borrower applicants with a standardized good-faith estimate. The intent of the standardized GFE is to better enable potential borrowers to understand the loan terms and closing costs that are being offered.

While the needs of the potential borrower were the primary driving factor, HUD also took originator concerns into consideration when updating the GFE-related requirements. Even so, the new GFE-related requirements pose increased risks to originators – especially those that do not fully understand the changes and fail to take the necessary measures to avoid those potential risks.

Currently scheduled to go into effect at the beginning of 2010, the GFE changes will require originators to provide mortgage loan applicants with the new revised

GFE within three days of receiving the needed information. However, as not to impede an applicant's ability to explore other loan options, originators will not be able to require verification of the provided information until the potential borrower has decided to move forward.

If the originator receives new information that would effect the GFE calculations, it can make changes as long as the new information falls within the "changed circumstances" that have been pre-defined by HUD. Those changed circumstances must be in one of the following categories: act of God, war, disaster or other emergency; borrower or transaction information change (but not miscalculations); or new borrower information not previously known; and unusual property issues (such as property line and flood zone changes). If these criteria are met, the updated GFE must be issued within three days of receiving the new information. Otherwise, the original stands.

The new GFE-related requirements have been set up in this manner to strongly encourage originators to make sure the GFE calculations are accurate as early on in the process as possible. If those calculations are not correct, originators face risks associated with both overestimation and underestimation.

The risk of overestimation has always been around. Originators that overestimate run the risk of not appearing as competitive as other originators, possibly resulting in the loss of potential loans. To avoid appearing to be overpriced and without the ability to calculate closing cost in a highly accurate manner, the tendency has been to estimate the calculations on the lower end. Since originators have been able to make changes at closing, such underestimating has not posed a big risk to origina-



tors up to this point. However, the new GFE-related requirements state that some closing costs can be changed at closing while others cannot. Even for some of the closing costs that can be changed during the closing, HUD has set tolerance levels dictating the maximum increases allowed.

Charges that cannot be increased at all during the closing include the origination charge and transfer taxes. Those that can increase, but have a preset maximum tolerance level of 10%, include required services selected by the originator, owner's title insurance and government recording charges. Charges such as required services selected by the borrower, title services and initial escrow deposit amounts can change and do not have preset tolerance levels under the updated GFE-related requirements.

Of the charges that have a maximum of zero or 10% tolerance level for increases at closing, originators should be most concerned with transfer taxes and government recording fees. The reason for concern is that these fees are the only ones with new preset tolerance levels that are outside of the originator's direct control. They can also be the most difficult to accurately calculate.

While the new zero-tolerance guideline for changes to transfer tax fees at closing implies that transfer tax fees should be known when the GFE is prepared, obtaining that information and ensuring its accuracy can be challenging. To further complicate matters, originators often have to calculate transfer taxes at multiple levels, including state, county and local. With approximately 3,800 tax jurisdictions nationwide, originators must have quick access to the latest transfer tax information for every jurisdiction where they may conduct business.

Originators also have to ensure they are factoring in additional information that may impact transfer tax fees. For example, originators must gather information on any possible scenarios

that would qualify the borrower for transfer tax discounts, including borrower handicaps, new loans with the same lender and credit union loans.

For recording fees, a 10% threshold does not provide much room for error. While these fees are typically smaller than many other fees, they are comprised of many components, making miscalculation more likely. Any change to these fees could easily exceed the 10% allowable threshold, making it tremendously important for originators to properly calculate these fees.

Once the new GFE-related requirements are in place, any transfer tax and government recording fees on the HUD-1 form that are above the amounts listed on the most recent GFE by their respective threshold levels will be the responsibility of the originator. Since these fees are payable to a third party, the originator must make sure that it tracks any overages and makes the required payments out-of-pocket. If for some reason, the borrower pays any overages, the originator must reimburse him/her within 30 days of the closing or face the additional risks associated with noncompliance.

The good news is that originators still have time to make sure they are doing everything possible to ensure compliance with the new GFE-related requirements. To most effectively prepare for these changes, there are several action items they should consider.

First, originators would be well served by identifying a reputable source that maintains recording fee and transfer tax databases and offers fee calculators and other tools to ensure accuracy. Next, they should establish internal procedures and allocate employee resources to conduct research on jurisdictions and main-

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tain an internal database of the findings. Finally, they should implement a due diligence process that consists of checking for any fee increases that warrant the issuance of a revised GFE prior to closing.

Since originators have not had to contend with this level of closing fee oversight before, it will certainly be an adjustment. Some institutions may be surprised to see just how many of their recent loans would not have been in compliance had the new GFE-related requirements

been in place sooner.

Still, like so much of the change that is running through the industry, the new RESPA requirements can be effectively managed by planning ahead, establishing solid procedures and gaining immediate access to the information and tools financial institutions need.

By ensuring closing fee accuracy out of the gate, originators will be able to avoid losses and other noncompliance consequences associated with the GFE-related requirements. The cost of doing otherwise could be much, much higher than implementing this effective compliance strategy. **MT**

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