RESPA ROUNDUP

Compliance Guidance for RESPA as it Applies to the Federal Reserve Board's MLO Compensation Rules Published on September 24, 2010

The U.S. Department of Housing and Urban Development's, Office of Housing, Office of RESPA and ILS, issues the following additional guidance on how mortgage loan originators[1] (MLO) comply with the Real Estate Settlement Procedures Act (RESPA), in light of the Federal Reserve Board's (FRB) Loan Originator Compensation rule that is effective April 1, 2011.[2]

This guidance seeks to clarify RESPA requirements related to proper disclosure on the GFE and HUD-1 settlement statement. **This guidance does not address substantive issues related to restrictions on mortgage loan originator compensation that are within the jurisdiction of the FRB.**

In applying this guidance, please also review the RESPA regulations, including the instructions for completing the GFE and HUD-1 forms, found at Appendix C and Appendix A, respectively,[3] and refer to the relevant sections of the FAQs at www.hud.gov/RESPA.

Under the FRB's loan originator compensation rule, "[i]n connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions."[4] The rule further states that:

> [i]f any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling: (i) [n]o loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and (ii) [n]o person who knows or has reason to know of the consumer-paid compensation to the loan originator shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.[5]

---

[1] For purposes of this guidance, "loan originator" means a lender or mortgage broker. 24 C.F.R. § 3500.2(b). For the definition of "loan originator" for the purposes of the FRB's MLO Compensation Rule, see 75 F.R. 58509, 58533-58534, adding 12 C.F.R. § 226.36(a)(1).
[2] 75 F.R. 58509 (September 24, 2010).
[3] 24 C.F.R. Part 3500.
[4] 75 F.R. 58509, 58534 (September 24, 2010), adding 12 C.F.R. § 226.36(d)(1)(i). The amount of credit extended is not deemed to be a transaction term or condition, provided that certain requirements are met. See id., adding 12 C.F.R. § 226.36(d)(1)(ii).
[5] 75 F.R. 58509, 58534 (September 24, 2010), adding 12 C.F.R. § 226.36(d)(2).

The foregoing FRB compensation standards have given rise to questions related to properly filling out a GFE. The following guidance will address:

(1) mortgage broker transactions where the broker is compensated indirectly from the lender by means other than an amount that is computed based on the interest rate, such as by a flat fee or an amount that is based on any other computation;
(2) no cost transactions where the credit for the interest rate chosen covers third party settlement charges;
(3) using a credit/charge calculation prior to completing Block 2 on the GFE; and
(4) payments by lenders to borrowers to correct tolerance violations in transactions involving a mortgage broker.

(1) Mortgage Broker Transactions with Indirect Compensation from the Lender Through Flat Fee or Other Computation

The FRB rules provide substantive restrictions on mortgage loan originator compensation as stated above. Loan originators should both ensure that they are compliant with the FRB rules and look to RESPA in order to accurately disclose these charges on the GFE.

RESPA rules and instructions anticipate various compensation models for mortgage brokers and mortgage lenders. Specifically, RESPA instructions for completing Block 2 state, "[f]or a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (i.e. the sum of all payments to the mortgage broker from the lender, **including payments based on the loan amount, a flat rate, or any other computation**, and in a table funded transaction, the loan amount less the price paid for the loan by the lender)."[6] (Emphasis added.)

Example (1): Flat fee compensation.

In the following example, the mortgage broker compensation is a flat fee of $4,000 (to be paid by the lender). The lender charges $500 for processing and administrative fees. Thus, Block 1 reflects a charge of $4,500.

In this example, Block 2 has a credit of $4,000, resulting in an adjusted origination charge of $500 in Block A.

[6] 24 C.F.R. Part 3500, Appendix C, Instructions for Completing the GFE, referring to "Your Adjusted Origination Charges", Block 2.

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	$4,500.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ 4,000.00 for this interest rate of 5.375 %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$4,000.00
A Your Adjusted Origination Charges	$ 500.00

<u>(2) No Cost Transactions Where Credit for Interest Rate Chosen Covers Loan Originator or Third Party Settlement Charges</u>

Under HUD's RESPA regulations, where "no cost" refers only to the loan originator's fees, Line A would show a zero charge as the adjusted origination charge (see Example 2(a)). In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees must still be itemized and listed in Block 3 through Block 11 on the GFE. "The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees."[7] (See Example 2(b).)

Block 1 of the GFE includes lender and mortgage broker compensation as well as all other charges that the lender and mortgage broker involved in the transaction will receive. The lender and mortgage broker have the discretion to determine the amount of their total compensation, which is disclosed in Block 1.

Block 2 of the GFE reflects the credit or charge for the interest rate chosen. If "no cost" with regard to the loan refers to only the lender and mortgage broker's fees, Block 2 would offset Block 1 resulting in $0 on Line A. If the "no cost" refers to both Block 1 and the third party settlement charges (itemized in Blocks 3-11), the credit in Block 2 would cover Block 1 and Blocks 3 thorough 11, resulting in $0 for the sum of Lines A and B.

---

[7] Id.

<u>Example 2(a)</u>: No cost loan covering only lender and mortgage broker charges (i.e., not third party settlement charges).

In this example, the total compensation for both the lender and mortgage broker is $4,500, as reflected in Block 1. To secure a no cost loan covering the lender and mortgage broker charges, the borrower has locked in an interest rate of 6.375% such that the credit for the interest rate chosen results in a credit of $4,500. Block A results in $0.

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	$4,500.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ 4,500.00 for this interest rate of 6.375 %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$4,500.00
A Your Adjusted Origination Charges	$ 0.00

*   *   *

B	Your Charges for All Other Settlement Services	$ 3,000.00
A + B	Total Estimated Settlement Charges	$ 3,000.00

Example 2(b): No cost loan covering lender, mortgage broker and third party settlement charges.

In this example, the total compensation for both the lender and mortgage broker is $4,500, as reflected in Block 1. To secure a no cost loan, the borrower has locked in an interest rate of 7.375% such that the credit for the interest rate chosen results in a credit of $7,500. Block A results in a credit of $3,000 to offset the total of all third party charges in Block 3 through Block 11.

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	$4,500.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ 7,500.00 for this interest rate of 7.375 %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$7,500.00
A Your Adjusted Origination Charges	$ -3,000.00

* * *

B Your Charges for All Other Settlement Services	$ 3,000.00
A + B Total Estimated Settlement Charges	$ 0.00

(3) Using a Credit/Charge Calculation Prior to Completing Block 2 of the GFE

Under RESPA, "[w]hen the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE."[8] Note however that the FRB rules prohibit a loan originator (as defined by the FRB) from receiving compensation directly from the consumer when it has received compensation from any person other than the consumer in connection with the transaction.[9]

---

[8] 24 C.F.R. Part 3500, Appendix C, Instructions for Completing GFE, description under "Your Adjusted Origination Charges" for completing Block 2.
[9] 75 F.R. 58509, 58534 (September 24, 2010), adding 12 C.F.R. § 226.36(d)(2).

Example 3(a): Charge in Block 2.

Assume a loan with a principal balance of $250,000. The lender charges $1,000 for processing and administrative fees. The mortgage broker's compensation will be $2,000 which will be fully paid by the lender. Thus, the total origination charge disclosed in Block 1 is $3,000.

The interest rate chosen for the loan has a $2,000 credit. Loan level pricing adjustments related to the loan result in a $2,500 charge. The resulting $500 charge would be placed in Block 2 and box three would be checked.

The sum of Block 1 and Block 2 results in an adjusted origination charge in Line A of $3,500.

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	$3,000.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of ____ % is included in "Our origination charge." (See item 1 above.) ☐ You receive a credit of $ ____ for this interest rate of ____ %. This credit **reduces** your settlement charges. ☒ You pay a charge of $ 500.00 for this interest rate of 5.375 %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	$500.00
A Your Adjusted Origination Charges	$ 3,500.00

Example 3(b): Credit in Block 2.

Assume a loan with a principal balance of $250,000. The lender charges $1,000 for an origination fee. The mortgage broker will receive $2,000 in indirect compensation from the lender. Thus, the total origination charge disclosed in Block 1 is $3,000.

The interest rate chosen for the loan has a $2,000 credit. Loan level pricing adjustments related to the loan result in a $1,500 charge. The resulting $500 credit would be placed in Block two and box two would be checked.

The sum of Block 1 and Block 2 results in an adjusted origination charge in Line A of $2,500.

Your Adjusted Origination Charges	
1. **Our origination charge** This charge is for getting this loan for you.	$3,000.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of ____ % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ 500.00 for this interest rate of 5.5 %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ ____ for this interest rate of ____ %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$500.00
A Your Adjusted Origination Charges	$ 2,500.00

(4) Payments by Lenders to Borrowers for Tolerance Violations in Wholesale Transactions

RESPA regulations impose tolerance levels on charges disclosed on the GFE.[10] Where actual charges to the borrower exceed these thresholds, mortgage brokers and lenders may cure to avoid a tolerance violation.[11]

The Department urges timely and effective communication among the lender, its loan officers, and mortgage brokers to establish policies and procedures to ensure accurate calculation of compensation and credits in compliance with RESPA, as well as under the FRB compensation rule and any other applicable federal or state statute.

ADDITIONAL COMMENTS

- **Volume Based Compensation.**

If a lender is basing its compensation to mortgage brokers on loan volume, as described in the new FRB compensation rule, please note that RESPA Section 8 (12 U.S.C. 2607) prohibits the payment of things of value or kickbacks in exchange for the referral of business to settlement service providers, including creditors.

- **Company Name Disclosed in Section F of the HUD-1.**

The name of the company originating the loan should be disclosed in Section F of the HUD-1. The name of any individual loan officer or mortgage broker is not disclosed.

[10] 24 C.F.R. § 3500.7(e).
[11] 24 C.F.R. § 3500.7(i).

- **<u>Not a Changed Circumstance.</u>**

The FRB's compensation rule will go into effect on April 1, 2011 and absent other factors cannot be considered a basis for a changed circumstance to revise the GFE pursuant to 24 C.F.R. §3500.7(f).

Contact Us

To contact us with RESPA questions, send an email to hsg-respa@hud.gov or call us at 202.708.0502.

Barton Shapiro
Director

Mary Jo Sullivan
Deputy Director

Vol. 4, March 2011