

Client Bulletin

2010 RESPA/Regulation X and HVCC for FHA

Effective Date

- Effective with submissions 01/01/2010 and after

Bulletin Highlights

- 2010 RESPA/Regulation X
- HVCC for FHA is delayed until 2/15/2010

RESPA/Regulation X Overview

The following provides an important update on the revisions to the lending requirements under **RESPA/Regulation X** as announced by the U.S. Department of Housing and Urban Development (HUD).

As a reminder, these changes impact the Good Faith Estimate (GFE) and HUD Settlement Statements (HUD-1 and HUD-1A) and will be effective with new mortgage files **submitted to NDM** on or after **January 1, 2010**. These important regulatory changes will place new requirements on lenders and brokers to ensure that borrowers are better positioned to understand their mortgage transaction.

Important Updates on the Good Faith Estimate

Beginning with all loans submitted to NDM on or after January 1, 2010, the new GFE and HUD form must be used. The accuracy of initial GFE is critical. Accuracy of the mortgage broker fee agreement, throughout the entire loan process, will also become more critical.

“General” Overview of wholesale transactions under the new regulations:

- All broker origination fees, including broker compensation, disclosed on the GFE should match those fees listed on the **Mortgage Broker Fee Agreement (MBFA)** form.
- **Under no circumstances can the broker compensation shown on page 2, block 1 increase from the amount disclosed on the initial GFE.** This block includes all broker origination charges, all lender charges and the YSP to be paid by lender to broker.
- Since the loan originator will not be able to lock the loan the day the initial GFE is sent, page one under “Important Dates” the GFE may show boxes 1, 3 and 4 as “N/A”. **A new GFE will be sent by NDM when the rate is locked. Page 2, block 2 will be solidified at the time the rate is locked however, remember that at no time can the amount shown on page 2 block 1 be increased.**
- It is essential that the MBFA and the GFE align throughout the loan process and at loan closing.
 - The MBFA must be kept current with the GFE should any changed circumstance occur that impacts the fees on the MBFA. The MBFA is required with the loan submission and is required to be revised and re-executed by all parties throughout the transaction as necessary.
 - Maximum Broker Compensation on the MBFA can “**only**” increase if the Loan Program (e.g. Fixed to ARM or from an ARM to Fixed) changes; the Rate changes as the result of a lock or re-lock; or if the

borrower requests changes to the loan amount or terms. Total “direct” broker fees (e.g. loan origination charges) may never increase.

- With the RESPA amendments, the MBFA (and an itemization of all fees that go into the GFE) is critical as the new GFE does not provide a breakdown of broker fees and compensation. The MBFA supplements the GFE – and it will help ensure the borrower can clearly determine broker fees and compensation.

Fee Tolerances

1. Charges that cannot increase at settlement:

- Origination charges
- Discount or premium points for a specific interest rate selected (after the interest rate is locked)
NOTE: Maximum YSP should be estimated and calculated within the initial GFE, page 2 block 1 even though block 2 will be finalized upon lock. Block 1 may never go up from the initial GFE.
- Adjusted origination charges (after the interest rate is locked)
- Transfer taxes

2. Charges that cannot increase in aggregate by more than 10% at settlement:

- Title services and lender’s title insurance (if selected by broker or if the borrower uses a company identified on the Settlement Services Provider List)
- Owner’s and lenders title insurance
- Government recording charges
- Required settlement services (such as escrow, home inspection, pest inspection and appraisal services) <NOTES>:
 - Nations Direct recognizes that regulations allow for more tolerance if the borrower selects a different provider (e.g. is allowed to shop) however, on a brokered transaction NDM must assume the broker has selected the provider or assisted the borrower(s) in selecting the provider.
 - Brokers should always show the dollar amount for owners title insurance on the GFE, even if the broker thinks the borrower will not choose to have it at final settlement. If it is not on the initial GFE and is chosen later, it cannot be charged (even if paid by seller, it will have to be paid by the broker).

3. Charges that can increase at settlement:

- Initial deposit for borrower escrow account
- Daily interest charges
- Homeowner’s and flood insurance premiums

Please note: For 1 and 2 above, should a changed circumstance occur that directly impacts the fee affected by the change circumstance, a revised GFE must be provided within three-business days after receipt of the information regarding the changed circumstance, the tolerance is determined by comparing the fees disclosed on the most recent GFE as compared to the fees at closing. **Only fees directly impacted by the change circumstance can be added and/or increased and re-disclosed. This excludes broker compensation which can never increase.**

Changed Circumstances

A re-disclosure of GFE and SSP list must be immediately provided to the borrower within three-business days of receiving the changed circumstance information. **CAUTION:** The three-business day clock starts from the time knowledge of the changed circumstance occurs (broker, lender or both). The mere fact that the broker or lender has not looked at documentation yet, does not provide any safe harbor, the clock starts immediately.

- If a changed circumstance occurs, only those fees affected by the changed circumstance may change.
- If the estimates within the GFE are inaccurate and a valid changed circumstance does not occur, we are bound to the amounts shown on the last disclosed GFE.
- If a changed circumstance occurs, NDM must re-disclose within three-business days after receipt of the information regarding the changed circumstance, or the ability to re-disclose (and increase a fee) is lost. This must be done within three-business days of knowledge of that circumstance whether it be known to broker, lender or both.
- NDM must retain documentation relating to the changed circumstance and fee change, if re-disclosed, for three years.

A "changed circumstance" is defined as follows:

- Acts of God, war or disaster
- Changes or inaccuracies in information relating to the borrower or the transaction that was relied upon in providing the GFE
- Changes to the loan amount or estimated value of the property
- New information regarding the borrower or transaction not relied upon when the initial disclosure was provided

A revised NDM GFE must be issued upon a lock event (locking the rate or expiration of the lock) and may be issued in the event the borrower requests a change in the mortgage loan that was identified in the latest GFE and/or that changes the settlement charges or terms of the loan. NDM will manage the generation and delivery of re-disclosures and provide the applicable final disclosures.

NOTE: If pricing changed due to going from a float to a lock, only the interest rate dependent charges and terms may change (block 2 and the impacted adjusted charges). Block 1 fees CANNOT increase even with a changed circumstance (Exception: If the loan amount changes and a portion of the "origination charge" is a percentage of the loan amount – keeping the MBFA current is **crucial!**)

2010 RESPA – How Brokers Will Work With Nations Direct

All loan submissions received in our wholesale center on or after January 1, 2010, regardless of the broker's application date must contain the new GFE form.

- Brokers are responsible for providing the initial GFE and Settlement Service Provider List (SSP) along with the Good Faith Estimate within three-business days of receiving their application. Nations Direct Mortgage will ensure compliance with this requirement by comparing the GFE print date to the latter of the interviewer date on the 1003 or the credit report date. The borrower's signature on the 1003, as required for FHA loans will not be considered unless the application was taken face-to-face.
 - **IMPORTANT NOTE:** *If the GFE is not provided to the borrower within 3 business days and/or the SSP list is not provided to the borrower, Nations Direct will not accept the submission. These errors cannot be cured. **The submission (e.g., borrower's credit package) cannot be resubmitted.***
- The GFE must be accurate as the broker will be held to the fees disclosed on the initial broker-issued GFE. Any errors in the broker-issued GFE will result in a broker RESPA credit at closing.
 - **IMPORTANT NOTE:** *Brokers are also responsible for accurately disclosing NDM Underwriting and Funding fee as well as the NDM FHA appraisal fee.*
 1. NDM UW Fee \$699
 2. NDM Funding Fee \$299
 3. NDM (HVCC) Appraisal Fee – See state schedule (**submissions 2/15 and after**)
- The broker-issued GFE will be considered the binding GFE, subject to any changed circumstances.
 - **IMPORTANT NOTE:** *Brokers must also provide an itemization of fees so that NDM can see what went into each block. NDM has provided a model form.*
- After the borrower has received the broker's initial GFE, brokers are responsible for confirming that the borrower has received the initial GFE and for obtaining the borrower(s) expressed intent to proceed with the transaction.
 - **IMPORTANT NOTE:** *Submission packages must include the NDM form "Certification of Receipt of GFE and Intent to Proceed".*

- On January 4, 2010 NDM Account Executives will no longer pull credit and pre-qualify loans for brokers. Direct Score will be available on that date to our approved broker community. Our brokers will now be able to pre-qualify their own loans and run NDM's Total Scorecard Certificate. With NDM, you will not be charged for the Total Certificate and it will replace the need for DU.
 - **IMPORTANT NOTE:** *Account Executives are available for questions and support however, our clients will now pre-qualify and submit full packages to NDM.*
- Upon loan submission, NDM will issue additional federal (TILA, RESPA, GLBA, etc.) and state specific disclosures as required by applicable law, but will take and utilize the brokers GFE and SSP.
- If the loan submission is accepted by NDM, brokers are not to send any additional GFE's. NDM will manage the re-disclosure process based on any changed circumstance or locking event.
 - **IMPORTANT NOTE:** *If a valid changed circumstance occurs, brokers must submit the NDM form "Request for Issuance of Revised GFE" immediately (within a maximum of 24 hours) to the NDM Account Manger.*

Fee disclosure and accuracy of the initial broker-issued GFE are critical. Please note the following:

- All broker fees, including broker compensation, disclosed on the GFE must match these fees listed on the Mortgage Broker Fee Agreement (MBFA) form.
- Under no circumstances can the broker compensation increase from the amount disclosed on the initial GFE. It is essential that the MBFA and the GFE align throughout the loan process.
 - Brokers are responsible for ensuring the MBFA is kept current with the GFE.
 - Maximum broker compensation on the MBFA may only increase if the loan program or product changes; the rate changes as the result of a lock or re-lock; or if the borrower requests changes to the loan amount or terms. The broker compensation can never increase from the amount disclosed on the initial GFE.
 - With RESPA amendments, the MBFA is critical as the new GFE does not provide a breakdown of broker fees and compensation. The MBFA supplements the GFE and will ensure the borrower can clearly determine broker compensation.
- In addition, for all services where the borrower may select the provider, brokers must provide the borrowers with a list of Settlement Service Providers in the borrower(s) geographic area along with costs for those services.

Attached Resource Documents can be found on our web site at www.brokerfha.com):

HVCC for FHA Loans (Delayed until 2/15/2010)

All loan submissions received in our wholesale center on or after February 15, 2010, regardless of the broker's application date must utilize the new procedures for HVCC as described in the paragraph's to follow.

- Brokers will be able to launch to our new appraisal ordering site from Direct Score or from our website.
- Brokers will enter all appraisal order information.
- Upon receipt of the loan submission, NDM will re-disclose appropriate TILA documents (described in detail under "2010 RESPA – How Brokers Will Work With NDM").
- NDM's loan set up staff will also accept the appraisal order as entered by the broker and ensure it is not invoiced until the appropriate day based on TILA requirements (see example calendar).