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12 CFR Ch. X (1–12 Edition)

to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section shall be submitted in writing to the address indicated in §1024.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(ii)(A) In the Complaints section of the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for “HUD’s Office of RESPA” and “the RESPA office.”

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at <http://www.consumerfinance.gov>. The deletion of the reference to the HUD Web page, <http://www.hud.gov/foreclosure/>, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the appendix to the booklet, it is a permissible change to substitute “the Bureau of Consumer Financial Protection” for the reference to the “Board of Governors of the Federal Reserve System” in the No Discrimination section of the appendix to the booklet. In the Contact Information section of the appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: “Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; www.consumerfinance.gov/learnmore”. It is also a permissible change to remove the contact information for HUD’s Office of RESPA and Interstate Land Sales from the Contact Information section of the appendix to the booklet.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words “settlement costs” are used in the title. Names, addresses and telephone numbers of the lender or oth-

ers and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

(3) The special information booklet may be translated into languages other than English.

§ 1024.7 Good faith estimate.

(a) *Lender to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a

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GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) *Mortgage broker to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) *Availability of GFE terms.* Except as provided in this paragraph, the esti-

mate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest.

(d) *Content and form of GFE.* The GFE form is set out in appendix C to this part. The loan originator must prepare the GFE in accordance with the requirements of this section and the instructions in appendix C to this part. The instructions in appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) *Tolerances for amounts included on GFE.* (1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:

(i) The origination charge;

(ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;

(iii) While the borrower's interest rate is locked, the adjusted origination charge; and

(iv) Transfer taxes.

(2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

(i) Lender-required settlement services, where the lender selects the third party settlement service provider;

(ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and

(iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) *Binding GFE.* The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms

listed on the GFE provided to the borrower, unless a revised GFE is provided prior to settlement consistent with this paragraph (f) or the GFE expires in accordance with paragraph (f)(4) of this section. If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a revised GFE was provided. Loan originators must retain documentation of any reason for providing a revised GFE for no less than 3 years after settlement.

(1) *Changed circumstances affecting settlement costs.* If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

(2) *Changed circumstances affecting loan.* If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances affecting the loan actually resulted in higher charges.

(3) *Borrower-requested changes.* If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request. The revised GFE may increase charges for services listed on the GFE only to the extent that the borrower-requested changes to the

mortgage loan identified on the GFE actually resulted in higher charges.

(4) *Expiration of GFE.* If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) of this section, the loan originator is no longer bound by the GFE.

(5) *Interest rate-dependent charges and terms.* If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

(6) *New construction home purchases.* In transactions involving new construction 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 cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

(g) *GFE is not a loan commitment.* Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

(h) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage

broker that provides the borrower with the disclosures required by 12 CFR 1026.40 of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(i) *Violations of section 5 of RESPA (12 U.S.C. 2604).* A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

§ 1024.8 Use of HUD-1 or HUD-1A settlement statements.

(a) *Use by settlement agent.* The settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the HUD-1 statement. Alternatively, the form HUD-1A may be used for these transactions. The HUD-1 or HUD-1A may be modified as permitted under this part. Either the HUD-1 or the HUD-1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* The settlement agent shall complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in Appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.

(1) *In general.* The settlement agent shall state the actual charges paid by

the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) *Use of average charge.* (i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.