

## New Final RESPA Rule Significant Victory For Title Industry

The Department of Housing and Urban Development (HUD) released its final rule on the Real Estate Settlement Procedures Act (RESPA) yesterday. The final rule and accompanying commentary is 341 pages long. HUD accepted many of the recommendations made by ALTA in its comments, testimony before Congress, and many meetings with the agency. Significantly, HUD has shortened the GFE and HUD 1/1A; dropped the closing script, volume discounts, and the “optional” reference to owners’ title insurance; extended average cost pricing to all settlement service providers; and provided a right to cure for amounts in excess of tolerances and for HUD 1/1A errors.

On the negative side, the rule retains disclosure of the agent/underwriter premium split on the HUD 1/1A. ALTA made strong arguments that this is a private contractual agreement between commercial entities that should remain private, and that disclosure will have anti-competitive repercussions that could result in higher prices for consumers. But HUD determined that consumer disclosure of this split is more important. It is interesting to note that these disclosures have been required in Massachusetts for several years now. Also, historically, real estate practitioners have had to disclose their commission splits. House Financial Services Committee Chairman Barney Frank also strongly favors this disclosure. This requirement will give agents the opportunity to explain all the services performed to complete the closing and issue the title policy. ALTA is working on messaging documents that will help its members with this explanation to help distinguish the significant efforts expended by title agents versus the straight “commission” other insurance agents receive for the sale of their insurance products.

Most of the new rule’s requirements will become effective immediately. But the new GFE and HUD 1/1A won’t be required until January 1, 2010, although they may be used anytime before then. If the new forms are used, all requirements of the rule must also be followed, such as tolerances and the agent/underwriter split disclosure.

This document will summarize how HUD finalized the rule in areas of concern to the title industry. More detailed analysis and informational material will be made available as completed. References to appropriate pages in the rule explanation are contained in parentheses.

- The **Closing Script** has been dropped from the final rule. The HUD 1/1A will contain a new third page that contains much of the comparison chart that the closing script contained. Originators are required to provide all information needed to complete the comparison chart and loan terms disclosure. It is expected that lenders will provide a copy of the GFE with the closing instructions. Although this will result in some increased preparation time for closing agents, there will be no reading and explanation of a closing script. (106)
- The explicit **volume or negotiated discount** language has been removed from the final rule. HUD explained that although they believe these discounts are not currently a violation of RESPA as long as they are passed on to the consumer, they will continue to explore methods to lower consumer costs outside of this rulemaking. (117)

- The term “**optional**” has been removed from the description of owners’ title insurance on both the GFE and HUD 1/1A. It explains that “You may purchase an owner’s title insurance policy to protect your interest in the property.” (24 and 104)
- The final rule will allow *all* settlement service providers to utilize **average costs** for services excluding any service that is based on the value of the property or loan. This includes any type of insurance. But fees for services such as credit reports, courier fees, etc. can be average priced. There is a three year recordkeeping requirement and the total average costs over the utilized time period must not exceed the total paid for those services. (125)
- **Tolerances** remain in the final rule. Origination and lender costs are subject to a zero tolerance. They may not increase. Settlement services recommended by the lender are subjected to a ten percent tolerance between the GFE and closing. Title charges are subject to this tolerance if the lender recommended title company is chosen by the borrower. The tolerance applies to the sum of all the included settlement services. Individual services may exceed the tolerance as long as the total remains under ten percent. Recording fees are now part of the ten percent category while transfer taxes remain in the zero tolerance category. (63)
- **Right to cure** is available to lenders if they repay the consumer any charges that exceed tolerances on settlement services estimates on the GFE. Otherwise, the overages will be considered a violation of RESPA. The onus is on the lender for repayment and they have 30 days after closing to discover and repay the overages. Closing agents also have 30 days to cure any errors or omissions on the HUD 1/1A. (75)
- The **GFE and HUD 1/1A** have been amended. The GFE has been shortened to three pages from four. The HUD 1/1A now has references on each line to the corresponding area of the GFE for easier consumer comparison. The HUD 1/1A has a new third page that includes a chart comparing the amounts listed for particular settlement costs on the GFE with the total costs listed for those charges on the HUD-1. (104)
- The HUD 1/1A continues to require disclosure of the **agent/underwriter split**, even after strong arguments made by ALTA and others against it. HUD determined “that this breakdown will help consumers better understand their title charges. (104)
- Instructions for completing the HUD 1/1A and GFE begin on page 163.

The new rule will result in additional burdens on the title insurance industry and its real impact will need to be judged as it is put into practical use by the industry. But it is significantly improved over the original proposed rule. ALTA will continue to work with other industry and consumer representatives to ensure that the transition to this new rule is fair and as cost efficient as possible for our members and consumers. To review the rule, new forms and economic analysis please follow this link: [http://www.hud.gov/offices/hsg/sfh/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm)

