



## REVISED RESPA REGULATIONS AND THE NEW HUD-1/1A...FOR NOW

CTIC UNDERWRITING TEAM

Disclaimer: Some information included in this article is based on the authors' interpretation of the RESPA Final Rule. Anticipated additional instructions and clarifications from HUD should provide more guidance in proper completion of the HUD-1/1A Settlement Statement and may corroborate or contradict information included in this article. Chicago Title Insurance Company makes no representation as to the correctness and assumes no liability or responsibility for any inaccuracies.

The Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute first enacted in 1974. Significant changes to RESPA were announced by the Department of Housing and Urban Development (HUD) in November of 2008 and are included in HUD's "Final Rule" (24 CFR Part 3500). January 16, 2009, marked the time deadline for implementation of many of the new rule's requirements. Of particular concern to attorneys handling residential real estate closings is the upcoming January 1, 2010, mandatory deadline for use of the new HUD-1/1A (herein collectively referred to as "HUD-1"). January 1, 2010, also marks the mandatory deadline for use of the new Good Faith Estimate (GFE) provided by lenders. During the transition period that will end on January 1, 2010, the current RESPA requirements with respect to the GFE and the HUD-1 remain in effect; and lenders may choose to proceed under either the current GFE requirements or may choose to proceed under the new GFE requirements. Note that if a new GFE form is delivered to the borrower prior to January 1, 2010, a new HUD-1 form must be used in the transaction; and all of the requirements related to the new GFE, including compliance and tolerance provisions, must be met.

On May 7, 2009, the US House of Representatives, in response to a number of questions and concerns regarding the new RESPA regulations, voted in favor of delaying implementation of the new regulations until the Federal Reserve Board (Fed) could be allowed to participate jointly with HUD in examining those questions and concerns. The Fed holds jurisdiction over the Truth in Lending Act (TILA) which provides borrowers with information on costs and terms of the credit transaction. A key concern is that the RESPA Final Rule has not been coordinated or properly coordinated with the Fed and anticipated changes to the TILA. HUD Secretary Donovan subsequently announced that HUD intended to proceed with implementation of the Final Rule as scheduled, with January 1, 2010, remaining as the mandatory date for use of the new GFE and HUD-1.

Legislation to create the Obama administration's proposed Consumer Financial Protection Agency (CFPA) was introduced on July 8, 2009. If this bill is enacted based on the Treasury's proposed language, the CFPA would essentially have sole rule-making and enforcement authority over RESPA and TILA, amongst other consumer protection acts. The impact of this legislation or agency, if created, on implementation of the Final Rule remains to be seen.

While the US House of Representatives, the US Senate, HUD, the Federal Reserve Board and various proponents and opponents of the new RESPA regulations continue their discussions, there is mounting uncertainty as to whether additional revisions will be made and as to whether January 1, 2010, will remain as the mandatory date for required use of the new GFE and HUD-1. Regardless of the eventual outcome of the struggle in Washington, the real estate practitioner in North Carolina must become familiar with the pending significant changes to the HUD-1 that may occur (congressional view) or will occur (HUD view) in the coming months.

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# PRACTICE PITFALLS

*....and how to avoid them*

## HB 1368--FUTURE ADVANCE STATUTE AMENDMENT

Title insurers in North Carolina are accustomed to requests for an ALTA 14 Future Advance Endorsement in a number of loan transactions. For deeds of trust recorded prior to October 1, 2009, the priority of the future advances can be insured if the certifying attorney provides verification that the insured deed of trust (1) contains notice that it will secure future advances, (2) states the maximum principal amount, and, as applicable, (3) states either (a) the current amount advanced at closing, specifying that all advances must be made within 15 years from the date thereof (NCGS 45-76 et seq.) for future advance or construction loan transactions, or (b) that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45 of the North Carolina General Statutes (NCGS 45-81 et seq.).

For years, Article 7 of Chapter 45 has created two significant issues:

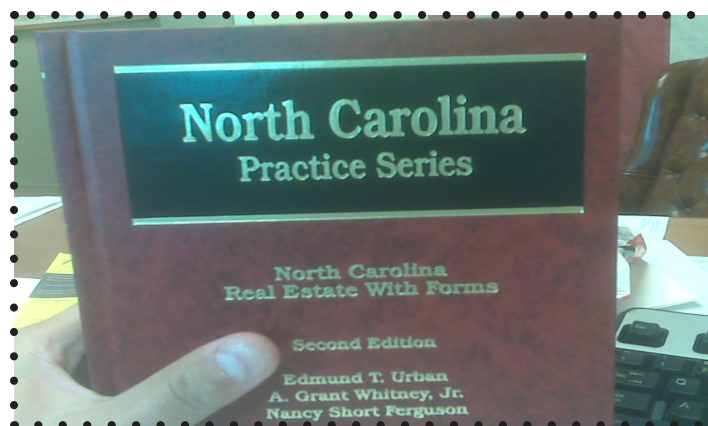
- (1) There is no definition of “future advances” and “future obligations” and no distinction between them, and
- (2) No one knows whether the “amount of present obligation secured” means (a) the face amount of the note secured by the deed of trust or (b) the actual dollar amount advanced at closing.

Effective for transactions recorded on or after October 1, 2009, the NC legislature has now enacted HB 1368 providing clarification on these issues as well as lengthening the time for advances to be made. Significant changes include the following:

1. “Advance” is defined as “A disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money.”
2. A future advance deed of trust can insure not only a note in existence at the time the deed of trust is signed (and future advances made under that note) but also a note to be executed in the future (and advances under that note).
3. The current requirement to state “the amount of present obligation secured” on the face of the deed of trust is eliminated. It is sufficient for the future advance deed of trust to state (a) that it is given wholly or partly to secure future advances and/or future obligations, (b) the maximum principal amount that may be secured at one time, and (c) the period within which future advances may be made and future obligations secured.
4. The maximum period of time for future advances is increased from 15 to 30 years beyond the date of the security instrument, or, if undated, beyond the date of registration of the security instrument.
5. A provision stating that if the aggregate outstanding principal balance of an obligation secured by a future advance deed of trust exceeds the maximum principal amount that may be secured as stated on the face of that deed of trust at any one time, then only the excess is not secured by the deed of trust.
6. Confirms that the lien priority of future advances and future obligations secured by a future advance deed of trust relate back to the date of recording and not the date of execution.
7. Includes a provision rehabilitating a future advance deed of trust filed prior to October 1, 2009, where the amount of the present obligation secured was omitted.

Click [here](#) to view the legislation.

**I got mine!  
Did you get  
yours?**



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## LEGISLATIVE CORNER

The Legislative Session is not over as of this writing, and new bills are becoming law right and left! We owe much thanks to the volunteers who contributed substantial time on advancing the position of real property practitioners in this process including Katherine Wilkerson, Legislative Chair and Treasurer of the Real Property Section, and Tom Steele, past Chair of the Real Property Section. Copies of bills are available on-line at the Governmental Affairs website of the NC Bar Association, [www.ncbar.org](http://www.ncbar.org), and bills and current status are at [www.ncga.state.nc.us](http://www.ncga.state.nc.us) --> Legislation/Bills. Out of a list of 83 bills, the hottest new legislative initiatives of special interest to real property practitioners include:

Future Advances (H1368) 8 years in the making, including mortgage satisfaction act in the process, Chapter 45, Article 2 of the N.C. General Statutes has been revised, hopefully bringing NC law into the mainstream, more consistent with industry standard dragnet clauses. See Practice Pitfall article in this issue of the Chicago Title Examiner.

Renunciation Statute Amendments (H800) This act provides for fiduciary renunciations, as well as clarifying (1) effect of failure to record or timing of recording with register of deeds (G.S. 31B-2), (2) renunciation of a joint tenancy by a surviving joint tenant vesting that percentage interest of the decedent (G.S. 31B-3(h)), and (3) renunciation of a tenancy by entireties interest of surviving spouse vesting a ½ interest of the decedent (G.S. 31B-3(g)), and (4) delivery of notice of renunciation to specified persons (G.S. 31B-2.1) and recordation for priority of waiver or bar of right of renunciation (G.S. 31B-4(f)). The act also modifies the Statutory Short Form Power of Attorney to add provisions (16) and (17) for renunciation, depending on whether the renunciation inures to the benefit of a third party or to the attorney-in fact. The act has been enacted and signed by the Governor and takes effect October 1, 2009.

Theft of Settlement Funds a Felony (S764) N.C. Gen. Stat. 45A-8 may be amended to make theft by any settlement agent a Class C Felony (if \$100,000 or more) or Class H Felony (if less than \$100,000) under N.C. Gen. Stat. 14-90. It specifically requires that "[a] settlement agent in the disbursement of settlement proceeds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction." Effective for transactions on or after December 1, 2009, this version would beef up the state law penalties in addition to the federal penalties already applicable. (As of this writing, different versions of the bill had passed both House and Senate, so it was back in the Senate for concurrence.)

Redacting Personal Information from Register of Deeds Internet Records (S1017, §§ 3 & 4)

After much negotiation, this bill in form still pending would provide that Clerks of Superior Court and Registers of Deeds may redact a person's social security or driver's license number on a document or may apply OCR (optical character recognition) or other reasonably available technology to all documents on their public websites to identify and redact social security or driver's license numbers. They must perform an annual review. Many registers have already redacted this information. (Other consumer protection provisions are also included in the bill.) If passed, as expected, it will be effective as of October 1, 2009.

Deferred Taxes on New Construction Builder Inventory (H852) Under new N.C. Gen. Stat. § 105-277.1D, builders who have unsold residential improved properties for which certificate of occupancy has been issued but unoccupied can apply for deferral of the increase in tax valuation from the improvements, to last until the earlier of the following "disqualifying events" occurs: (1) the property is sold, (2) the property is occupied, (3) 5 years from when the property was first subject to listing by the builder or (4) 3 years from when the property received the deferral. Business personal property taxes still DO apply. The applications must be made for tax years taking effect July 1, 2010, until July 1, 2013, though those properties qualifying by July 1, 2013, maintain their deferral until the disqualifying event.

Substitution of Trustee - Deeds of Trust Missing Trustees (H794) Deeds of trust recorded without a trustee are still deemed deeds of trust and substitution of trustee statute, N.C. Gen. Stat. 45-10 provides for substituting a trustee and the limited authority of the appointment. This is effectively a curative for past instruments and provides rules of construction for future instruments, as it applies retroactively and prospectively.

Joint Tenancy With Right of Survivorship (H799) New N.C. Gen. Stat. 41-2(b) clearly authorizes unequal interests in joint tenancies, overriding yet another common law unity. Unless otherwise stated in the granting instrument, the joint tenancies are equal interests; spouses are presumed to take a single share as tenancy by entireties, and, for more than two unequal shares, the death of one joint tenant shall vest in the survivors based on their pro rata share of the remainder. This is effectively a curative for past instruments and provides rules of construction for future instruments, as it applies retroactively and prospectively.

Business Trusts (H615) This act was amended to clarify authorized representatives, reliance upon (but not requirement for) a recorded declaration of trust, and other provisions more in conformity with changes in corporate execution as well as adoption of the Uniform Trust Code (not applicable to business trusts). It is effective for instruments recorded on or after October 1, 2009.

Appropriations Act of 2009 (the "Budget Bill") (S202) As of this writing the budget is still being heavily negotiated. Key provisions that will affect real property practitioners, include increases in court fees, increase in filing fees for foreclosures (to \$150), increase of filing fee with registers of deeds to \$32 for first page (with \$9 going to the State Emergency Management Fund), and an additional \$5 charge to grantors on deeds (to be remitted to the Department of Cultural Resources to be used to offset the cost of the Archives and Records Management Program. Another controversial provision would permanently expand the corporate franchise tax base to include all limited liability business entities (LLCs, LPs, etc.). This would be effective for deeds, deeds of trust or mortgages (as the case may be) recorded on or after October 1, 2009.



## LEGISLATIVE FROM PAGE 3

*Homeowner and Homebuyer Protection Act (S1015)* This bill would provide for penalties to protect homeowners from foreclosure prevention rescue scams (other than family members or nonprofits providing assistance) including contracts for deed and installment land contracts or options. These provisions may have far-reaching effects outside of the foreclosure context. It has passed the House and is currently in Senate Judiciary II pending for consideration. It would be effective for transactions on or after October 1, 2009.

*Consumer Economic Protection Act of 2009 (S974)* This act would require postponement by the Clerk on owner-occupied residential foreclosures if there is a "reasonable likelihood" of resolution based on additional findings required at the hearing, amending N.C. Gen. Stat. § 45-21.16 and adding new § 45-21.16C, and modified bonds on appeal. This bill has passed the Senate and is currently in House Judiciary I committee. If enacted, the provisions would be effective for notices issued or hearings on or after October 1, 2009.

*Notice to Creditors Without Estate Administration (S606)* A new Article 21 under Chapter 28A would provide for a limited personal representative to publish notice to creditors and administer debts, to be appointed in estates with no probate assets, including where all is held by a trustee. This bill has passed the House and is currently in the Senate at the time of this writing. It would apply to the estates of persons dying on or after October 1, 2009.

*Caveat – Effect on Estate N.C. Gen. Stat. § 31-39* is substantially amended regarding administration of estate pending caveat proceedings, effective for estates of decedents dying on or after October 1, 2009.

*S.A.F.E. Mortgage Licensing Act (H1523)* Entitled "AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW," the bill would add Article 19A to Chapter 53. It provides for licensing of mortgage brokers, mortgage lenders and mortgage servicers, such as tiered bonding requirements, duties and penalties, including suspension of foreclosure proceedings. The version of the Act passed by the Senate differed from those in the House and they failed to concur, so it was referred to a conference committee.

*Real Property Sales Information (S405)* In order to assist the tax department in valuing property, every deed will require a form developed by the Department of Revenue that includes name of grantor, name and address of grantee, brief description of the property, whether the parties are related or affiliated businesses, whether personal property is included in the transfer, and whether the transfer is a foreclosure or auction sale. The bill had passed the Senate and was in the House Finance Committee at press time. It would take effect January 1, 2010.

*Elective Share Revisions (H765)* The version of the Act passed by the Senate differed from those in the House, so it was referred back for concurrence and was in House Judiciary I Committee at time of this writing. Article 1A of Chapter 30 would be substantially amended, affecting the calculation methods for this personal election by the surviving spouse, as well as authority of representatives. It would apply to estates of decedents dying on or after October 1, 2009.

Other important initiatives still under discussion include railroad corridors, partition, personal representative sales, mechanics' lien amendments and homeowner's association foreclosures.

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HUD'S HANDBOOK ON REVERSE MORTGAGES.



## FORMS AND INSTRUCTIONS

The new forms and line by line instructions for completing the HUD-1/1A are available via the links below.

[Good Faith Estimate](#)

[HUD-1](#)

[HUD-1A](#)

[Appendix A to Part 3500 – Instructions for Completing HUD-1 and HUD-1A Settlement Statements](#)

## OVERVIEW OF SIGNIFICANT CHANGES IMPACTING CLOSING ATTORNEYS

The HUD-1 revisions in the November 2008 RESPA Final Rule are designed to facilitate for the borrower a more accurate and meaningful comparison while reviewing the GFE with the HUD-1. The stated goal is to reduce settlement costs for the borrower. Designated lines on the new HUD-1 include a reference to the relevant line on the GFE for comparison of estimated costs with actual costs. Changes to the HUD-1 form that will have the most impact on closing attorneys appear (1) in Section L. Settlement Charges and (2) in the addition of a third page to the HUD-1 and a second page to the HUD-1A that (a) includes a comparison of certain GFE and HUD-1/1A charges, (b) confirms whether tolerances have been met, and (c) sets forth the specific loan and payment terms for the borrower.

Critical to proper completion of the HUD-1 is knowing which, if any, of the three categories (also referred to as “tolerances”) applies to a settlement charge:

- (1) Charges that cannot increase (“cannot increase”)
- (2) Charges that in total cannot increase more than 10% (“10% tolerance” or “10% max increase for total of charges”)
- (3) Charges that can change (“can change”)

Estimates for these charges will first be provided to the borrower on the GFE. The closing attorney must be furnished with the GFE estimates; and in order to know whether some charges fall into the 10%-tolerance or can-change category, the attorney must know who selected the settlement service provider:

- (i) Did the loan originator select the provider or did the borrower select a provider identified by the loan originator?  
(10% tolerance--category 2 above)
- (ii) Did the borrower select a provider other than one identified by the loan originator? (can change--category 3 above)

Note that for charges falling into the 10%-tolerance classification, the 10% applies to the total of all items in this category, not to each individual item.

Another key to proper completion of the HUD-1 is knowing which charges are to appear “inside the column” (a reference to the column under the captions “Paid From Borrower’s Funds at Settlement” or “Paid from Seller’s Funds at Settlement”) and which charges are to appear “outside the column” and roll-up to an amount that appears “inside the column”. In most instances, the presence of a \$ symbol on a line outside the column is a clue that no amount should be shown inside the column.

The closing attorney/settlement agent must itemize all settlement service charges due to third-party providers including the name of the person ultimately receiving the payment together with the total amount paid to such person. Third party means a settlement service provider other than a loan originator.

The loan originator must transmit to the settlement agent/closing attorney all information necessary to complete the HUD-1. The prudent closing attorney will submit the HUD-1 to the lender for pre-approval, even if not required by the lender in that particular transaction.

### Section L. Settlement Charges

Significant line item changes in Section L. Settlement Charges are reviewed in the following sections. Charts illustrating each section on the new HUD-1 form depict any tolerance guidelines applicable to borrower charges included on the GFE.



HUD-1 FROM PAGE 5

**Section 700. Total Real Estate Broker Fees**

- Removal of the percentage amount from the real estate broker fee is the key change in this section.
- The amount of the total commission should be shown inside the column on Line 703. In transactions where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers, that split should be shown outside the column on Lines 701 and 702.

L. Settlement Charges			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Real Estate Broker Fees				
Division of commission (line 700) as follows:				
701. \$	to			
702. \$	to			
703. Commission paid at settlement				
704.				

**Section 800. Items Payable in Connection with Loan**

- Each item (origination fee, points, appraisal, credit report, etc.) shown in this section has a corresponding line number for the GFE (#1, #2, A, #3).
- The lender will no longer itemize its charges but will lump each charge together outside the column on Line 801 with the exception of loan discount points placed outside the column on Line 802.
- The borrower's adjusted origination charge, which is the sum of Lines 801 and 802, appears inside the borrower's column on Line 803.
- Required services selected by the lender and payable to third parties are broken out on Lines 804 through 808, and those amounts are shown inside the column.
- Additional sequentially numbered lines may be added if needed.

800. Items Payable In Connection with Loan				
801. Our origination charge	[cannot increase]	\$	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen		\$	(from GFE #2)	
803. Your adjusted origination charges			(from GFE A)	cannot increase
804. Appraisal fee to			(from GFE #3)	10% max increase for total of charges
805. Credit report to			(from GFE #3)	10% max increase for total of charges
806. Tax service to			(from GFE #3)	10% max increase for total of charges
807. Flood certification			(from GFE #3)	10% max increase for total of charges
808.				

**Section 900. Items Required by Lender to be Paid in Advance**

- Daily interest, mortgage insurance and homeowner's insurance shown in this section have a corresponding line number for the GFE (#10, #3, #11).
- Line 904 and additional sequentially numbered lines as needed are used to list additional items required by lender, such as flood insurance. These lines can also be used to list amounts paid at settlement for insurance not required by lender.

900. Items Required by Lender to Be Paid In Advance				
901. Daily interest charges from	to	@ \$	/day	(from GFE #10)
902. Mortgage Insurance Premium	for	months to		(from GFE #3)
903. Homeowner's insurance	for	years to		(from GFE #11)
904.				

**Section 1000. Reserves Deposited with Lender**

- A new HUD line item (1001) appears in this section reflecting the total initial deposit into the escrow account along with a corresponding line number for the GFE (#9). This total initial deposit amount is placed inside the borrower's column on Line 1001.
- The amounts which comprise the total shown on Line 1001 are shown outside the borrower's column on Lines 1002 through 1007.

1000. Reserves Deposited with Lender				
1001. Initial deposit for your escrow account			(from GFE #9)	can change
1002. Homeowner's insurance	months @ \$	per month	\$	}
1003. Mortgage insurance	months @ \$	per month	\$	
1004. Property taxes	months @ \$	per month	\$	
1005.	months @ \$	per month	\$	
1006.	months @ \$	per month	\$	
1007. Aggregate Adjustment			- \$	



HUD-1 FROM PAGE 6

Section 1100. Title Charges

- Title charges to be shown in the 1100 section are defined in the Final Rule to “. . . include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series.”
- Title service is a subset of Title charges. Title service is defined in the Final Rule as “any service involved in the provision of title insurance (lender’s or owner’s policy), including but not limited to: title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.”
- Line 1101 corresponds to GFE #4 and lumps together charges for (1) title services, and (2) required lender title insurance including charges for premium, closing protection and endorsements.
- Proper completion of Lines 1101, 1102, 1103 and 1104 present the most challenge for North Carolina closing attorneys. The majority opinion is that the in-column amount on Line 1101 includes the out-of-column amounts paid by borrower on Lines 1102 for the attorney’s fee for title examination and closing/settlement and on Line 1104 for the charge for the lender’s title insurance policy. That links each of these items to line #4 of the GFE. Suppose the invoice for title insurance shows all the charges attributed to the owner’s policy and no charge for the loan policy. How do you handle this on the HUD-1 when the lender has shown an amount on the GFE specific to the loan policy? Are overnight delivery charges that an attorney incurs on behalf of the borrower to be included in Settlement or closing fee charges shown outside the column on Line 1102, or should they be shown on an added line in Section 1100 inside the column? Questions on these very issues, and many others, have been posed to HUD; and hopefully more specific instructions will be forthcoming soon.
- The dollar amount of the title insurance premium retained by a title agency issuing the policy should be placed outside the column on Line 1107 and the dollar amount remitted to the underwriting title company should be placed outside the column on Line 1108. The total of these amounts should equal any charges for title insurance shown on Lines 1103 and 1104, Owner’s and Loan charges respectively. If the policy is being issued by a title agency, that agency will be the source of specific information as to the amount of premium retained by the agency and the amount retained by the underwriter.
- Additional sequentially numbered lines can be added to this section for third party charges such as deed preparation paid by the seller.

1100. Title Charges			
1101. Title services and lender’s title insurance	(from GFE #4)	See Note 1	
1102. Settlement or closing fee	\$		
1103. Owner’s title insurance	(from GFE #5)	See Note 1	
1104. Lender’s title insurance	\$ See Note 1		
1105. Lender’s title policy limit	\$		
1106. Owner’s title policy limit	\$		
1107. Agent’s portion of the total title insurance premium	\$		
1108. Underwriter’s portion of the total title insurance premium	\$		
1109.	<b>[CAN ADD ADDITIONAL SEQUENTIALLY NUMBERED LINES TO ITEMIZE CHARGES PAID TO</b>		
1110.	<b>OTHER THIRD PARTIES AS IDENTIFIED BY NAME AND TYPE OF SERVICE PROVIDED</b>		
<b>Note 1:</b> ▶ 10% max increase for total of charges if provider selected by loan originator or borrower selected provider identified by loan originator. ▶ Can change if borrower selected provider other than one identified by loan originator.			

Section 1200. Government Recording and Transfer Charges

- Line 1201 has a corresponding GFE #7 for borrower charges. Total recording charges due from borrower and total recording charges due from seller must be listed inside the appropriate buyer or seller column on Line 1201. An itemization of the Line 1201 recording charges for borrower and seller must be shown outside the column on Line 1202.
- Line 1203 corresponds to GFE #8 for borrower charges. Total transfer taxes due from borrower and total transfer taxes due from seller must be listed inside the appropriate buyer or seller column on Line 1203. Transfer tax includes all state and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. An itemization of the Line 1203 transfer taxes must be shown outside the column on Lines 1204 and 1205.
- Note that in North Carolina there is no mortgage tax and the seller is generally responsible for the transfer (excise) tax, so the GFE would not show a borrower charge for transfer taxes. Likewise, the HUD-1 would not show a charge to the purchaser/borrower inside the column on Line 1203 for transfer taxes. That charge will customarily appear inside the seller’s column on Line 1203 with that amount appearing again on Line 1205 (State tax/stamps) outside the column adjacent to “Deed \$” as the sole itemization of transfer taxes in North Carolina.



HUD-1 FROM PAGE 7

- Line 1206 and additional sequentially numbered lines as needed may be used to show specific itemized thirty-party charges for government recording and transfer taxes, but the amounts must be shown outside the columns. This would mean that these itemized charges should be included in the totals on Line 1201 or Line 1203, as applicable, appearing inside the borrower's or seller's column.

1200. Government Recording and Transfer Charges			
1201. Government recording charges		(from GFE #7)	10% max increase for total of charges
1202. Deed \$	Mortgage \$	Releases \$	
1203. Transfer taxes		(from GFE #8)	cannot increase
1204. City/County tax/stamps	Deed \$	Mortgage \$	
1205. State tax/stamps	Deed \$	Mortgage \$	
1206.			

**Section 1300. Additional Settlement Charges**

- This section contains charges for additional settlement services required to complete the transaction including items such as survey, pest inspection, home warranty, and HOA dues.
- The total of services required by the loan originator should appear inside the borrower's column on Line 1301. An itemization of the charges included in the Line 1301 total should appear on Lines 1302, etc., outside the borrower's column.
- If an additional settlement charge included on a line in this section was not required by the loan originator, that charge should be shown inside the borrower's or seller's column.
- In a typical North Carolina closing, items in Section 1300 will fall into the can-change category as they will be selected independently by the borrower--the loan originator not furnishing a list of service providers.

1300. Additional Settlement Charges			
1301. Required services that you can shop for		(from GFE #6)	See Note 1
1302.	\$		
1303.	\$		
1304.			
1305.			
<b>Note 1:</b>			
▶ 10% max increase for total of charges if provider selected by loan originator or borrower selected provider identified by loan originator.			
▶ Can change if borrower selected provider other than one identified by loan originator.			

**Paid Outside Closing (POC) Items**

Below is an excerpt from Appendix A to Part 3500 – Instructions for Completing HUD-1 and HUD-1A Settlement Statements which provides specific instructions for handling items paid outside closing (POC):

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the HUD-1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1, with an offsetting credit reported on page 1 of the HUD-1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as "P.O.C." with the party making the payment identified in parentheses, such as "P.O.C. (borrower)" or "P.O.C. (seller)".

**Average Charge**

Although not specifically included as a line item on the HUD-1 or GFE, the Final Rule allows a settlement service provider to show the cost of certain services provided by a third party as an average charge rather than as an exact amount. The service must be documented as to class and a formula established to determine the average charge. Overnight delivery charges and recording fees are examples. Charges that cannot be shown as average charges are those based on the loan amount or those based on the value of the land.

Amounts collected using an average charge cannot exceed the amounts paid to the third-party provider during that same period, and records showing amounts collected and actual amounts paid must be kept for three years after any settlement in which the average charge was used.





HUD-1 FROM PAGE 8

### New Page on HUD-1/1A

The new page 3 addition to the HUD-1/1A Settlement Statement contains (1) a line by line comparison between the settlement charges estimated on the GFE for each of the three tolerance categories and the actual charges for those items as shown on the HUD-1; and (2) an itemization of loan and payment terms, consistent with the promissory note, for the specific loan transaction being closed.

The GFE does not clearly indicate in all cases who selected the provider of certain services which is key to completion of the Comparison of Good Faith Estimates (GFE) and HUD-1 Charges charts on the page 3 addition. The lender will need to convey this information in some format to the closing attorney. Additionally, the lender must provide information to complete the Loan Terms section of the HUD-1 in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

### Signature Lines

Signature lines are not included on the HUD-1 or HUD-1A, but the addition of signature lines is an acceptable change.

### Changed Circumstances

The Final Rule allows amendment of the GFE if there are changed circumstances. What constitutes a changed circumstance is another area HUD has promised to clarify. If a loan originator receives information indicating that there are changed circumstances which necessitate the issuance of a new GFE, the amended GFE must be provided to the borrower within three (3) business days of receipt of the information.

### Curing Tolerances/Correcting Inadvertent or Technical Errors

A lender can cure tolerance violations at closing (as a credit on the HUD-1) or within 30 calendar days after settlement by refunding overpayments to the borrower. The burden is on the lender to find and cure tolerances. The settlement agent/closing attorney is free to proceed with the closing in spite of variances; however, explaining how the lender will cure the variances is a question that will be posed by most borrowers. Anticipate the need for communication between the lender, borrower, and closing attorney when these situations arise.

The settlement agent/closing attorney preparing the HUD-1 has thirty (30) calendar days after settlement to revise a HUD-1 to correct inadvertent or technical errors he or she may have made in preparation of the HUD-1.

### HUD-1 or HUD-1A—Which Should Be Used?

The HUD-1A is an optional form that may be used for refinancing and subordinate lien mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions.

### Answers to the Questions?

HUD has been inundated with requests for clarification or more specific instructions on a multitude of topics. In January of 2009, the American Land Title Association (ALTA) formed the RESPA Implementation Taskforce for the purposes of identifying ambiguities in the new RESPA rules and seeking guidance from HUD on those issues. Questions regarding average charges, disclosure of attorney fees, proper handling of yield spread premiums, shared charges, multiple loans, government fees—the list goes on—and the correct method for showing those on the HUD-1 continue to be discussed between the taskforce and HUD representatives. Those impacted hope HUD's responses will arrive before the first closing requiring use of the new HUD-1.

## MORE PRACTICE PITFALLS

*....and how to avoid them*

### BEWARE SHORT SALES!

When handling the closing of a transaction in which an existing lender has agreed to cancel or release land from a deed of trust for less than the current balance owed on the debt or attributed to the land to be released ("short sale" or "short pay"), make sure the lender's payoff letter does not contain conditions which would allow the lender at any time to refuse to release a mortgage after it has received pay-off funds pursuant to that letter.

Some examples of this type language in short-pay approval letters:

- "[Lender] has the unlimited right to revoke this short payoff approval within 30 days of receiving purchase documents"
- "If the property was acquired by means of fraud, [Lender] reserves the right to pursue any and all actions available to it to offset its losses. If it is determined that Seller(s) and /or Buyer(s) participated in any way to the fraud, this short sale will be void, and the Note and Security Instrument will remain in full force and effect"

