

THE DAILY RECORD

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New rules for real estate closings

Recent changes by the U.S. Department of Housing and Urban Development to the Real Estate Settlement Procedures Act have brought speculation concerning whether the changes truly will benefit consumers.

RESPA, a consumer protection statute originally passed in 1974, benefits mortgage consumers by requiring lenders to disclose certain loan terms and fees to borrowers. The original RESPA required lenders and mortgage brokers to provide consumers with good faith estimates of fees incurred at the time of a real estate closing. In the past, many lenders and brokers stressed the word "estimate" in a GFE. It caused delays in closing, last minute negotiation of closing costs and borrowers who felt pressure to close their loans despite costs or interest rates that were greater than those initially disclosed.

HUD began implementation and enforcement of the revised RESPA rules on Jan. 1. The main purpose of the new rules is to eliminate surprises at the closing table and force lenders to provide a binding interest rate and calculation of expected closing costs. HUD officials also believe the new rules allow consumers to compare mortgage offers, which reduces closing costs and creates transparency in the mortgage process.

While an educated consumer may be able to take advantage of the new rules by shopping around for a loan, many will be caught in the same trap or may pay higher closing costs.

Revisions to both the GFE and the HUD-1 Settlement Statement claim to be "user-friendly." The new GFE requires disclosure of all closing fees and summarizes them in three general categories. The lump sum numbers from the GFE corresponds to sections of the final settlement statement, which allows consumers to compare the fees disclosed on the GFE to those charged at the time of closing. Most final closing costs cannot increase more than 10 percent over the disclosed fees or deviate from the GFE.

HUD estimates the revised rules will save the average consumer \$600 to \$700 in closing fees by easing the shopping process; however, many industry professionals question whether consumers actually will take the time to find multiple mortgage offers and take advantage of the new disclosures.

While the new rules are intended to benefit consumers, they may do nothing more than create more confusion and raise costs for borrowers negotiating the mortgage process. Lenders, mortgage brokers and settlement companies incur additional costs and time demands in updating their software, training staff and preparing disclosures and settlement statements compliant with the new guidelines. That in turn may cause some companies to pass their increased costs along to consumers.

The new rules also limit the ability to charge additional fees during the application process, forcing some companies to cushion the initially disclosed fees.

Most see the new rules as friendly only to large, national lenders, which benefit most because they can negotiate with service providers to obtain reduced or flat rate fees. That forces smaller companies out of the market and, ultimately, could reduce competition. Once competitors disappear from the market, larger lenders could increase loan charges resulting in higher closing costs.

While there are benefits and drawbacks to the new GFE and settlement statement, HUD might have considered changes that would have had greater impacts on consumers. A less costly rule could have required, for instance, that fees disclosed on the original GFE cannot be changed by more than 10 percent, or that interest rates must be guaranteed through a certain timeframe. Another possibility would be requiring lenders to provide borrowers with bi-monthly payment options, which would reduce the amount of interest paid over the life of a loan. HUD also could have required lenders to provide borrowers with a final settlement statement several days prior to closing, providing more time to review the closing figures and to compare them to the GFE. In most cases, settlement agents still receive closing packages on the day before or the day of closing. Borrowers also could be required to attend third-party counseling — similar to that offered in conjunction with reverse mortgage programs — prior to obtaining an adjustable rate or negative amortization loan.



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The mortgage industry has not been receptive to the recent changes. In a joint letter to HUD, industry groups including the Mortgage Bankers Association state, "We are headed for a mortgage market train wreck on the tracks of RESPA compliance."

As with most newly imposed regulations, we will have to wait to see whether the new RESPA rules really will provide useful benefits to consumers, and whether consumers actually will

take advantage of the tools available to them.

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