

June 27, 2000

**TO OFFICERS AND MANAGERS IN CHARGE OF CONSUMER AFFAIRS SECTIONS:**

The Office of General Counsel at the Department of Housing and Urban Development (HUD) recently responded to a series of questions submitted by the Massachusetts Bankers Association. The February 25, 2000 response from HUD addresses several questions related to completing the HUD-1 settlement statement, including issues such as aggregate accounting adjustments, "P.O.C." and third party settlement service providers, and title charges.

HUD's response is an unofficial staff interpretation and provides no protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA) or section 3500.4 of HUD's Regulation X. It does provide, however, important guidance on compliance with various sections of RESPA and Regulation X.

HUD intends to make these questions and answers available to the public on its website. In the mean time, however, you may wish to consider sending a letter to state member banks you supervise, informing them of this guidance. If you have any questions regarding this information, please contact the review examiner assigned to your district or Tracy Anderson at (202) 736-1921.

Sincerely,

Suzanne G. Killian  
Manager, Oversight

Attachment

## ATTACHMENT I

### HUD's Response to Questions from the Massachusetts Bankers Association

#### HUD-1 Questions

(1) The bank offers several loan programs (rates, term etc.). A GFE is given within three days to match the product chosen by the applicant. If the applicant subsequently changes products (example, midway through the approval process), is a new Good Faith Estimate required?

**Answer:** The RESPA rules do not expressly impose any disclosure requirements beyond the initial Good Faith Estimate of settlement costs that must be provided to mortgage applicants within three days of application. However, where the loan product sought by the borrower is subsequently changed and the change results in different estimates of settlement costs, HUD strongly recommends that a new Good Faith Estimate be provided to the borrower.

(2) Is a person who is cosigning or guaranteeing a note (not the borrower) required to be listed on the HUD-1?

**Answer:** As per the instructions for filling out the settlement statement (24 C.F.R. 3500, Appendix A, Instructions for Completing HUD-1 and HUD-1A Settlement Statements [hereinafter "Instructions"]), where there is more than one borrower, the name and address of each borrower is required to be listed. Where two or more individuals are joint obligors with primary responsibility on an obligation, they must all be listed as borrowers on the settlement statement. Guarantors, on the other hand, are not primary obligors and are not required to be listed on the settlement statement.

(3) The bank has a list of closing attorneys that a borrower may choose from. If one of the attorneys is on the bank's Board of Investment (acts similar to a Board of Directors) (this is a mutual savings bank), does an Affiliated Business Arrangement Disclosure need to be provided if this attorney is chosen by the applicant? What if the attorney is a member of the mutual savings bank Board of Trustees (meets quarterly, primarily to ratify Board of Investment decisions) or the Board of Corporators (meets annually)?

**Answer:** The relationships listed in the question between the bank and the closing attorney would fall within the broad definition of an "affiliated business arrangement" under Section 3 of RESPA (12 U.S.C. 2602). In accordance with the requirements under 24 C.F.R.

3500.15(b), the bank would have to provide an Affiliated Business Arrangement Disclosure (in the format set forth under Appendix D of Regulation X). The disclosure must be provided regardless of whether the affiliated attorney is ultimately selected by the applicant.

(4) Does the fee paid to the borrower's own attorney need to be listed on the HUD-1? The bank does not require (this attorney).

**Answer:** An item should be listed on the HUD-1 if it is required by the lender or if it is to be paid for at closing or settlement. The Instructions provide that the HUD-1 shall itemize all charges imposed upon the borrower and the seller by the lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the borrower or the seller will pay for at settlement. Charges to be paid outside of settlement shall be included on the HUD-1 and HUD-1A but marked "P.O.C." (Paid Outside of Closing) and shall not be included in computing totals. "P.O.C." items should not be placed in the borrower or seller columns, but rather on the appropriate line next to the columns and should not be used in computing totals. For all items except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown. In the case of "no cost" or "no point" loans, the charge to be paid by the lender to an affiliated or independent service provider should be shown as "P.O.C." (See Instructions).

(5) Do items paid by the seller well in advance of the loan closing, which are required by the bank, need to be listed on the HUD-1?

**Answer:** See answer to Question #4. RESPA and Regulation X require that the settlement statement itemize all charges imposed upon the buyer or seller by the lender, whether to be paid at settlement or outside of settlement. Items paid outside of settlement that are required by the lender should be listed as "P.O.C." and should be placed on the appropriate line next to the columns and should not be used in computing totals. (See Instructions).

(6) Is there an acceptable tolerance level for different amounts between the GFE and HUD-1 if there is no "pattern of differences"?

**Answer:** Neither RESPA nor Regulation X provide tolerances for variations between the figures disclosed on the Good Faith Estimate and the final charges listed on the HUD-1 or HUD-1A. HUD believes that a pattern or practice of quoting Good Faith Estimate amounts that are lower than the corresponding amounts later shown on settlement statements may serve as evidence that the disclosures were not made in good faith.

(7) If the bank accepts a normally required item previously obtained by the borrower (for example an appraisal) using their own funds well in advance of an application being submitted to the bank, does the bank need to list the item on the GFE or HUD-1?

If so, how should the bank show the item on the GFE or HUD-1?

**Answer:** The Good Faith Estimate must estimate, as a dollar amount or range, each charge which will be listed in section L of the HUD-1 or HUD-1A, including the appraisal. (See 24 C.F.R. 3500.7(c)). If an item was previously obtained by the borrower, the item would be listed as "P.O.C." In all instances, the settlement statement must itemize the actual charges for those items required by the lender to close the transaction. For instructions on the proper method of disclosing "P.O.C." items on the HUD-1 or HUD-1A, see answer to Question #4.

(8) If the bank accepts work performed by a friend of the borrower for a required item (for example a plot plan) and the friend does not charge the borrower for this work, should this item be indicated on the HUD-1? If so, how should the zero cost be shown?

**Answer:** See answer to Question #4. When the lender requires that an item or service be purchased as a condition for obtaining a loan, HUD takes the position that the charge for such item or service, even if gratuitous, must be disclosed on the settlement statement. This item should be disclosed as zero (0) in the appropriate line item of the settlement statement. In order to assure clarity, HUD recommends that an asterisk be placed next to the item, along with an explanation, either at the bottom of the HUD-1 form or on a separate page, that the required service was rendered gratuitously on behalf of the consumer.

(9) Is it a violation of RESPA if there are unexpected fees that appear on the HUD-1 that were not indicated on the GFE?

**Answer:** Regulation X provides that the Good Faith Estimate should list those charges that the borrower is likely to incur at settlement, based upon the lender's experience in the locality of the mortgaged property. It is therefore not a violation of RESPA to add fees to the HUD-1 or HUD-1A that were not disclosed on the Good Faith Estimate if such fees were, in good faith, unanticipated and unforeseeable at the time that the Good Faith Estimate was prepared. (See 24 C.F.R. 3500.7(c)). Where there is a pattern or practice of not disclosing fees on the GFE that are collected at settlement, particularly fees imposed by lenders, it may serve as evidence that the exclusion of such fees from the Good Faith Estimate was not in good faith.

(10) If a loan is to be sold by the bank after the closing, are costs associated with this sale but paid by the borrower at closing listed as "P.O.C."? (Services will not be performed until after the closing).

**Answer:** See answer to Question #4. Items that are either required by the lender to close the loan or items that are payable at the closing must be disclosed on the Good Faith Estimate and

HUD-1 or HUD-1A. (See Instructions). Under the situation described above, the item should not be disclosed as a "P.O.C." item since it is a charge that the consumer is paying for at closing. The name of the person or firm ultimately receiving the payment should be disclosed. (Example: "Payment to [lender] for [XYZ] Servicer.") (See Instructions).

(11) A bank pays a mortgage broker \$150 per loan, [and the loan] is consummated by the bank. This flat fee is not paid by the borrower or from any of the loan proceeds. Does this transaction need to be shown on the HUD-1? If so where? Should it also be shown as "P.O.C."?

**Answer:** The Instructions specifically indicate that charges to be paid by the lender to an affiliated or independent settlement service provider should be disclosed on the settlement statement and shown as "P.O.C." (See Instructions). The Instructions explicitly state that "[s]uch charges also include indirect payments or back-funded payments to mortgage brokers that arise from the settlement transaction." (See Instructions). The \$150 payment should, therefore, be broken out from any other origination fee and disclosed on any of the blank lines provided in the 800 series of the HUD-1. However, given the nature of the payment described in this question, the lender must carefully review this payment to assure that it does not violate RESPA's anti-kickback or unearned fee provisions (12 U.S.C. 2607) and that it is in full compliance with HUD's Statement of Policy 1999-1, dated March 1, 1999, regarding lender payments to mortgage brokers (64 Fed. Reg. 10,080).

(12) The bank offers the customer a coupon for money towards closing costs. May the amount of the coupon be shown as a credit on the front of the HUD-1? Or must it be applied toward particular closing fees?

**Answer:** This amount must be shown on lines 204-209, which are used to list "items paid by or on behalf of the borrower." (See Instructions).

(13) A bank collects an application fee. These monies are used for the appraisal and credit reports. The GFE shows the fees paid on line #808. The designated providers are given at application. On line #808 of the HUD-1, is the bank also required to enter the names of the providers on line #808 of the Settlement Statement?

**Answer:** The amount of the "application fee" should be disclosed on the Good Faith Estimate and the settlement statement, on line 808 or any other blank line in the 800 series. Since this fee is payable at or near the time of application, it should be marked as "P.O.C." and the charge should not be used in computing totals. The specific charges relating to the appraisal and the credit report must then be broken out on lines 803 and 804. As per the Instructions, these lines must identify the name of the person or firm ultimately receiving the payment, and also be marked as "P.O.C." (See Instructions). To assure that there is no confusion about double charging, fees listed in line numbers 803 or 804 should indicate that those fees are included in the "application fee" amount, or alternatively, the line in the 800 series containing the "application fee" could include an annotation clarifying that the charge includes those fees listed in 803 and 804.

(14) Who is responsible for the GFE and HUD-1 when the bank purchases a loan (table funds) from a correspondent lender?

**Answer:** Regulation X defines two alternatives for the delivery of the Good Faith Estimate. In instances where the correspondent lender is the exclusive agent of the bank, the responsibility for submitting the Good Faith Estimate falls on the correspondent lender or the bank. (24 C.F.R. 3500.7(a)(4)). If the correspondent lender is not the bank's exclusive agent, the correspondent lender must provide the Good Faith Estimate within three days of receiving the loan application, and if this is done, the funding lender is not required to provide an additional Good Faith Estimate. In such cases, the funding lender remains responsible for ascertaining that the form has been delivered. 24 C.F.R. 3500.7(b). RESPA imposes the duty to prepare and deliver the HUD-1 or HUD-1A upon the "person conducting the settlement," which under Regulation X is the settlement agent or the lender if the lender acts as the settlement agent in the transaction. (See 12 U.S.C. 2603(b), 24 C.F.R. 3500.10(a), (b)).

(15) What HUD-1 line number should be used for overnight delivery fees?

**Answer:** Such fees should be listed in any of the blank lines of the series pertaining to the specific settlement service provider that requires the use of the service in question. For example, if a lender requires the use of overnight services, the fees pertaining to this service should be disclosed on one of the blank lines in the 800 series of the HUD-1 or HUD-1A.

(16) What HUD-1 line number should be used for Tax Service and Flood Determination fees?

**Answer:** Since such services are generally required by the lender, tax service and flood determination fees should be listed on any of the blank lines in the 800 series of the HUD-1 or HUD-1A.

(17) A bank charges a fee for document preparation. A portion of the fee goes to the bank and a portion goes to the attorney. Should this fee be split and placed on two separate HUD-1 line numbers? If so, which line numbers should be used?

**Answer:** The regulations specify that “[f]or all items, except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown.” (See Instructions). The correct method of disclosing this item would therefore be to separate that part of the fee that the bank pays the attorney and to list it on line 1105 or 1107. The remaining portion of the fee, which relates to the document preparation work actually performed by the lender, should be separately identified in one of the blank lines of the 800 series. It is important to note that Section 8 of RESPA prohibits anyone from collecting any fee or portion thereof, unless it is for goods delivered or services actually rendered. (12 U.S.C. 2607 (a)-(c)).

(18) Are fees that are collected after closing, such as inspection fees on a construction loan (where the fee is deducted from each advance) required to be on the GFE or HUD-1?

**Answer:** Generally, construction loans are only covered where the lender has issued a commitment for permanent financing. (24 C.F.R. 3500.5(b)(3)). In instances where RESPA does cover transactions involving construction loans, inspection fees required to be paid as a condition for settlement must be disclosed on the settlement statement. (See Instructions). The fact that these inspection fees are collected after closing through a deduction from periodic advances does not alter this result; these fees are essentially equivalent to fees collected at closing from loan proceeds.

(19) If an error is discovered on the HUD-1 at closing, may a written correction be made at that time? And, should any or all parties, including the closing agent initial the correction? Since the HUD-1 does not need to be signed, how should an institution correct any error discovered after the settlement has occurred? Would the institution be required to get an acknowledgment from the borrower that they have received the corrected copy?

**Answer:** The Instructions make clear that the settlement statement must list “actual charges and adjustments” in connection with the settlement. Pursuant to this requirement, any mistake discovered at settlement should be corrected at the time of settlement. Corrections may be handwritten, provided that they are appropriately initialed by the affected party or parties and the settlement agent. Moreover, servicers should act with due diligence in correcting any errors or omissions on any completed settlement statement forms as quickly as possible, and must use all reasonable means to inform borrowers of any such changes or corrections. Although HUD does not require that an institution attain a borrower’s acknowledgment on any post-closing corrections to the settlement statement, HUD believes that obtaining consumers’ signatures to demonstrate acknowledgment of any changes would constitute a prudent business practice.

#### Aggregate Accounting Adjustment Questions

(1) Is an institution required to enter a zero (“0”) in the borrower’s column on the last line of the 1000 series if the aggregate accounting adjustment equals zero?

**Answer:** Yes. The aggregate accounting adjustment is the difference between the required balance using aggregate analysis and the required balance using single item analysis. Since every escrow account can be analyzed using single item and aggregate analysis, the aggregate accounting adjustment can always be calculated. Absent a rounding error, the aggregate accounting adjustment is either a negative number or a zero (0). Whatever the

aggregate accounting adjustment is, even if zero (0), that number must be entered on the final line of the 1000 series of the settlement statement. (See 24 C.F.R. 3500.8(c)).

(2) Experience has shown that there is occasionally a positive number that results when calculating the aggregate accounting adjustment when there is only one escrow item. In these instances, should this positive number be omitted when completing the HUD-1, or should the institution enter this positive number on line 1008?

**Answer:** The computation steps set forth under 24 C.F.R. 3500.17(d) should always yield a zero when there is only one escrow item.

(3) Is the aggregate adjustment calculation required to be reported if there is only one escrow item?

**Answer:** Yes.

#### “P.O.C.” and Third Party Settlement Service Providers

(1) Does the bank need to indicate on the HUD-1 the different entities making the “P.O.C.” payments? (Bank pays for some, borrower pays for some).

**Answer:** For all items, except for those paid to and retained by the lender, the name of the person or firm ultimately receiving the payment should be shown. (See Instructions). Making additional notations on the HUD-1 to identify the payment source of a particular fee serves to clarify the transaction. In HUD’s Statement of Policy 1999-1, dated March 1, 1999, regarding lender payments to mortgage brokers (64 Fed. Reg. 10,080), the Department clarified that in the interest of clarity, any payment from a lender to a mortgage broker is to be clearly identified and labeled as a fee paid by the lender (Example: “Mortgage Broker Fee from lender to XYZ Corp. (P.O.C.)”). (64 F.R. 10087).

(2) If the answer to question #1 is yes, may the bank use symbols to indicate the entity making the payment (placing the symbol next to the “P.O.C.”) and explaining the symbol at the bottom of the page?

**Answer:** If the lender determines it appropriate to disclose the name of the payee, this approach is acceptable.

(3) How should the bank complete a line item on the HUD-1 correctly if there is not enough room on the line item to indicate the name of the entity receiving the payment and/or listing “P.O.C.” and the name of the entity?

**Answer:** Such problems may be resolved by filling out the necessary disclosures by hand or by placing an asterisk or other clear symbol or indication on the appropriate line and clearly explaining the asterisk or symbol at the bottom of the HUD-1 or HUD-1A or on a separate page attached to the HUD-1 or HUD-1A.

(4) The bank requires a Title V (Massachusetts Septic Compliance Certificate) to be presented at the closing. This is a cost paid for by the seller in advance of the closing when the inspection is performed. Does this cost need to be reflected on the HUD-1? If so, what is the location and proper format for this fee?

**Answer:** This item should be listed on one of the blank lines provided in the 1300 series of the HUD-1 or HUD-1A, which are used to list additional settlement charges relating to inspections. This item should be listed as “P.O.C.” and identified as paid by the seller.

(5) Is the bank required to list all items paid to other parties in connection with the HUD-1 for a “no closing costs” loan product? If so, should all of these items be listed as “P.O.C.”?

**Answer:** Yes. HUD’s regulations at 24 C.F.R. 3500.7(a)(2) and the Instructions are very clear that for so-called “no cost” or “no point” loans, “the charge to be paid by the lender to an affiliated or independent settlement service provider should be shown as “P.O.C.” (Paid Outside of Closing) and should not be used in computing totals.” (See Instructions).

(6) If an applicant pays any fees at the time of application, is the bank required to list these fees as “P.O.C.” on the GFE? If so, should these items be included or excluded in the “Total Estimated Closing Costs” amount shown on the GFE?

**Answer:** Regulation X at 24 C.F.R. 3500.7(c) requires that the Good Faith Estimate list an estimate of each charge “that the borrower will normally pay or incur at or before settlement.” Items paid for by applicants in advance of closing, such as application fees, must therefore be listed on the Good Faith Estimate and identified as “P.O.C.” The Good Faith Estimate does not, however, require that there be a total estimated closing cost disclosure; this is only required on the settlement statement. (See Appendix C).

#### Questions Relating to Title Charges

(1) Is it required to indicate anywhere on the HUD-1 the actual dollar amount of the commission earned by the settlement agent (closing attorney) for issuing a title insurance policy?

**Answer:** Yes. The Instructions specifically state that the HUD-1 must “itemize all charges imposed upon the borrower and the seller by the lender *and all sales commissions*, whether to be paid at settlement or outside of settlement.” (See Instructions)(Italics added).

(2) Is it a requirement that line 1113 be completed indicating what services the closing agent did to earn his/her commission for the title insurance policy?

**Answer:** The Instructions clarify that payments to settlement agents are to be detailed on lines 1101 through 1106 in accordance with the services performed by the agent in the transaction. If an attorney acts as the agent, the total amount of the payment should be listed on line 1107, along with entries on the blank line immediately below to identify item numbers of the services listed which are covered by that overall fee. If line 1107 is already being used to disclose the fees and services of the attorney in representing any of the parties to the transaction, then line 1113 should be used to disclose the commission (and those services covered by the commission) that the attorney is earning in his or her role as title agent in the transaction. (See Instructions).

(3) If a closing agent bundles services under line 1107, must they indicate under line 1107 the items 1101-1106 that were included in the fee shown in 1107?

**Answer:** Yes, the HUD-1 form is clear in this regard. (See Instructions).

(4) If the fee listed on 1108 is for the cost of the title insurance policy, does the closing agent need to list any other numbers (1101-1106) beneath line 1108?

**Answer:** Yes, the HUD-1 form is clear in this regard. As per the Instructions, line 1108 should list the overall fee for the policy and the blank line beneath it should disclose the item numbers of the services which are covered in the overall fee. (See Instructions).

(5) Is it a true statement that there may be no duplicate numbers or services listed when describing the fees earned in 1107, 1108 and 1113? (For example, 1103 may not be listed in more than one of the three line numbers described above?).

**Answer:** This statement is correct. Section 8 of RESPA forbids duplicative fees. (See 24 C.F.R. 3500.14(g)(3)).

