



RESPA Business Partner Information

Once again, the effective date of a major regulation change that will impact the way all mortgage bankers and brokers do business is quickly approaching.

Effective January 1, 2010, the new Good Faith Estimate (GFE) must be utilized by all loan originators. This revision to the GFE was designed to promote shopping by consumers and to help ensure that the consumer is better equipped to understand their mortgage transaction.

The new GFE must be given to the consumer within three business days of application. Once the GFE is given, the originator and lender are bound by the fees disclosed on the GFE, subject to "fee tolerances" unless there are changed circumstances on the loan.

Fee tolerances can be broken down into three distinct categories:

Charges that cannot increase at closing:

- Origination charges – Origination charges include all lender and broker compensation on the transaction. For example, processing, AUS, underwriting, administration, origination, courier, doc prep, etc paid to either a broker or lender would be considered an origination charge. (Box 1 on page 2 of GFE)
- Discount (charge) or YSP (credit) for a specific interest rate selected (Box 2 on page 2 of GFE)
- Adjusted origination charges (Box A on page 2 of GFE)
- Transfer taxes (Box 8 on page 2 of GFE)

Charges that cannot increase in aggregate by more than 10% at closing:

- Required settlement services that the lender selects such as appraisal, credit report or flood certification services. (Box 3 on page 2 of GFE)
- Settlement/title services and lender's title insurance if the provider is selected by the lender or if the borrower uses a provider identified by the broker/lender on a "settlement services provider list" (Box 4 on page 2 of GFE)
- Owner's title insurance if the provider is selected by the lender or if the borrower uses a provider identified by the broker/lender on a "settlement services provider list" (Box 5 on page 2 of GFE)
- Required settlement services, such as termite/well/septic inspections, that the borrower selects from a broker/lender "settlement services provider list" (Box 6 on page 2 of GFE)
- Government recording charges (Box 7 on page 2 of GFE)

Charges that can increase at settlement with no restriction:

- Required settlement services that the borrower can select, if the borrower selects a service provider not listed on a "settlement services provider list"
- Settlement/title services and lender's title insurance if the borrower selects a service provider not listed on the broker/lender "settlement services provider" list (Box 4 on page 2 of GFE)
- Owner's title insurance, if the borrower selects a service provider not listed on the broker/lender "settlement services providers list" (Box 5 on page 2 of GFE)
- Homeowner's insurance (Box 11 on page 2 of GFE)
- Per diem interest (Box 10 on page 2 of GFE)

A "changed circumstance" is defined as:

- Acts of God, war, disaster or other emergency
- Inaccuracies or changes in information specific to the borrower or transaction that was relied upon in providing the GFE. For example, a change in the estimated value of the property.
- New information particular to the borrower or transaction that was not relied on in providing the GFE. For example, the loan was previously floating and the borrower requests to lock-in a rate.
- Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance or environment problems
- Borrower requested change in the mortgage loan disclosed on the GFE

If there is a changed circumstance, a new GFE must be issued within 3 days of receipt of the information regarding the changed circumstance. Only the items on the GFE directly tied to the changed circumstance may be changed. For example, if a loan previously floating is locked, the interest rate and the charge/credit on the GFE would be the only items allowed to change due to the circumstance for the change.

Additionally, the regulation now limits funds that may be collected from a consumer prior to issuance of the GFE is the fee for obtaining a credit report.

In tandem with the new GFE, the HUD-1 Settlement Statement has been revised to allow a line item by line item comparison between the two documents. A sample of these documents is attached for informational purposes.

During the next few months, it will be extremely important that we work together to implement policies and procedures that allow efficient handling of loans while limiting errors and liability. This will be a work in process and we will be modifying as necessary as we progress.

Initially, Primary Capital will be implementing the following policy/procedures for broker business partners:

- Effective for all loans received on January 1, 2010 and after, the new GFE and Settlement Services Provider (SSP) list will be required regardless of application date.
- Brokers will be responsible for providing the GFE and SSP list within 3 business days of application and prior to the collection of any fees other than the cost of a credit report. Primary Capital will be unable to accept any loan where the GFE and SSP are not provided to the borrower within 3 days of application.
- At time of loan submission, the GFE, SSP, "TILA and RESPA Acknowledgement" and "Broker Fee Agreement" must be included in the loan file. The GFE and Broker Fee Agreement must coincide.
- Primary Capital will no longer require the "Broker Loan Closing Instructions" at time of loan submission as the bulk of information will be included on the "Broker Fee Agreement". A new form, "Business Partner Closing Instructions" has been created and will need to be submitted to the internal team prior to the loan being submitted to closing.
- The GFE received at submission will be considered the binding GFE. This must be the original GFE given to the borrower. The GFE must be accurate as the Broker will be limited to the fees disclosed on the GFE. Primary Capital will not reduce applicable Administrative or Commitment fees as a result of an improperly disclosed GFE. Any errors resulting in a tolerance violation will result in a reduction of broker fees and/or YSP paid at closing.
- Within 24 hours of receipt, Primary Capital will send disclosures to the borrower to include a copy GFE provided by the Broker and a request for the borrower to acknowledge that the enclosed GFE was the initial document received from the broker. (Note: This information will be incorporated into the current packages sent to the borrower for TILA/MDIA purposes)
- Primary Capital will be responsible for re-disclosing the GFE in any instance of "changed circumstances". Brokers should not re-disclose under any circumstances after the issuance of the initial/binding GFE.

To request a re-disclosure due to changed circumstances, the "Changed Circumstance Rediscovery Request" form should be sent via email to complianceunderwriter@primarycapital.com. The form must be complete, executed by the loan officer and if applicable the borrower. The form must be received by Primary Capital within 24 hours of changed circumstance.

Primary Capital will make the determination of an allowable changed circumstance. Applicable revised GFE will be issued by Primary Capital. Broker will be responsible for obtaining a revised Broker Fee Agreement to coincide with revised GFE.

There has been some question as to the continued requirement of the "Broker Fee Agreement" with the new GFE. At this time, Primary Capital will continue to require the "Broker Fee Agreement" due to secondary market restrictions. Also, there are various states which require a written/signed agreement between the broker and borrower in order for the broker to collect any fee. By utilizing this form, Primary Capital can meet secondary marketing conditions and state requirements.

Initially, Primary Capital will be implementing the following policy/procedures for correspondent business partners:

- Effective for all loans received on January 1, 2010 and after, the new GFE will be required regardless of application date.
- Correspondent will be responsible for all aspects of GFE compliance. At time of submission for underwriting, Correspondent should provide the GFE and an acknowledgement of borrower receipt.
- At time of submission for purchase, Correspondent should provide copies of any applicable "changed circumstance" documentation and applicable re-issued GFEs.
- Prior to loan purchase, a compliance review will be performed to ensure that the initial GFE is within allowable tolerance levels of the final HUD - 1. If there are tolerance violations, Primary Capital will require a fully executed revised HUD - 1 and documentation of the refund being received by the borrower prior to loan purchase. Note that if the error is not corrected within 30 days of loan closing, Primary Capital will be unable to purchase the affected loan.

Additional updates and information will be provided in the coming weeks as we finalize our policies/procedures as well as applicable forms and disclosures. Please feel free to forward suggestions and feedback to your Account Executives as we work through the implementation process.

Sincerely,

George S. Phelps

Executive Managing Director