

# Compliance Q&A Webinar

March 18, 2011

Presented by:

Brady W. Meadows



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Mortgage Compliance Advisors

# Instructions

- Because of the large number of registrants, the lines will be muted.
- To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.
- The panelists will address questions at the end of each topic. If your question is not addressed, we will email the answer to you.
- You can find today’s slides on our News & Resources page:
  - <http://www.mortgagecomplianceadvisors.com/index.php/news-resources#resources>



# Our Panelists

*We are fortunate to have with us today a panel of experienced mortgage professionals. They will be taking the time to answer your questions and provide insight from hands-on application.*

- Craig Christensen *MCA COO*
- Trudie Lloyd *MCA Project Manager*
- Jill Wollschleger *MCA Project Manager*

*The information provided by Mortgage Compliance Advisors, LLC has been taken from various public resources and does not constitute legal advice.*



# Agenda

- RESPA
- TILA
- QC Plan
- Other
- LO Compensation
- Resources



# RESPA

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*questions*



# RESPA *question 1*

- **Q:** Does pulling a credit report for pre-qualifying a potential borrower constitute an “application” which triggers the upfront disclosure rules?
- **A:** Generally no, this does not meet the definition of an application as defined by RESPA. However, you must issue disclosures if you have the following six pieces of information about the borrower:
  - Name
  - Income
  - Social Security Number
  - Address
  - Value of Property
  - Loan Amount



# RESPA *question 2*

- **Q:** When a borrower completes a loan application but does not have a property since they are interested in getting prequalified and preapproved: When they sign an agreement of sale, are we required to obtain a new loan application reflecting the property address?
- **A:** We are not aware of any rule requiring you to complete a new loan application. However, I would recommend yes, as you did not have an application until a property address was provided.



# RESPA *question 3*

- **Q:** Does the GFE payment amount in the "Summary of your Loan" always need to agree with the ETIL?

Is there any leeway or tolerance to the per diem calculations or do they need to be 100% accurate? The per diem is a non-tolerance calculation, so do we really need to send updated GFE's for such a minimal difference?

- **A:** Yes, the summary of your loan section on the HUD1 must match the most recently disclosed GFE. RESPA's instructions on how to complete this section on page 3 are as follows:
  - *The comparison chart must be prepared using the exact information and amounts from the GFE and the actual settlement charges shown on the HUD-1 / 1A Settlement Statement.*



# RESPA *question 3 (continued)*

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges	
Charges That Cannot Increase	HUD-1 Line Number
Our origination charge	# 801
Your credit or charge (points) for the specific interest rate chosen	# 802
Your adjusted origination charges	# 803
Transfer taxes	#1203

Good Faith Estimate	HUD-1

Charges That in Total Cannot Increase More Than 10%	
Government recording charges	# 1201
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Good Faith Estimate	HUD-1

<b>Total</b>
<b>Increase between GFE and HUD-1 Charges</b>

	<b>or</b>	
\$		%

Charges That Can Change	
Initial deposit for your escrow account	#1001
Daily interest charges	# 901 \$ /day
Homeowner's insurance	# 903
<input type="text"/>	#
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Good Faith Estimate	HUD-1



# RESPA *question 4*

- **Q:** Are there any circumstances when you would not give a revised GFE if you locked a rate after application?
- **A:** You are not required to issue a new GFE unless the charges to the borrower increase above the allowable tolerances or the loan is locked and the important dates section needs to be updated.



# RESPA *question 5*

## Important dates

1. The interest rate for this GFE is available through . After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through .

- **Q:** It is my understanding that on the GFE, “the estimate for all other settlement charges is available through” date must allow the fees to be available for 10 days from the date of the GFE. Does the interest rate available date have to be at least ten dates in the future also?
- **A:** You are correct in that you must make the settlement charges on the GFE good for a minimum of 10 business days. However, you are not given any minimum time frame for making the rate good for.



# RESPA *question 5 (continued)*

## RESPA FAQs Page 22 #1

- *Q: In the “Important dates” section of the GFE, where it states “The interest rate for this GFE is available through \_\_\_\_\_”, does the loan originator have to leave the interest rate open for a specific amount of time, like 10 days?*
- *A: There are no restrictions on the amount of time the interest rate must remain available. The interest rate can be available for any period of time that the loan originator chooses, including for example, a period of time within one day or for several days.*



# RESPA *question 6*

- **Q:** If fees go down due to a counter offer or lower loan amount, is it allowable to issue a new GFE?
- **A:** It is our understanding that a GFE only needs to be re-disclosed if fees increase above allowable tolerances. I did not find that RESPA gave any guidance on re-disclosure if fees go down. However, our opinion is that the borrower is better served with the most current and accurate information available. If you choose to issue a new GFE when fees decrease, I would recommend documenting why the new GFE was issued.



# RESPA *question 7*

- **Q:** When we send out our initial disclosure packet, it includes a coversheet with all disclosures listed that are being provided. Is this sufficient to prove we disclosed within the required 3 day timeframe, or must we receive a signed disclosure statement from the borrowers?
- **A:** Borrowers are not required to sign the initial disclosures. It's the responsibility of the lender/broker to prove they issued the disclosure in the allowable timeframe. Lenders/brokers are also responsible for proving they sent the most current disclosure and that they were completed correctly. Issuing a cover letter stating what disclosures were sent and what date they were sent is an acceptable way of documenting when they were issued. However, it does not prove you completed the disclosures correctly and used the current forms.



# RESPA *question 8*

- **Q:** Does the "lock" GFE have to precisely match the final loan amount, assuming rate is the same and tolerances met?
- **A:** It is our opinion that a GFE only needs to be re-disclosed if fees increase above allowable tolerances. If fees decrease, then a new GFE would not be required to be re-issued. Therefore, we would say no, the loan amount on the most recently issued GFE does not need to match the HUD1.



# RESPA *question 9*

- **Q:** If an error is discovered on a final settlement statement over a month and a half after the loan closed, can this be corrected? Or is it too late to make any corrections?
- **A:** RESPA does state you have 30 days after closing to reimburse the borrower for any tolerance violations. Since you have gone past the 30 days, you have violated REPSA.



# RESPA *question 10*

- **Q:** In your opinion, are the servicing agents modifying loans (1-4) required to redisclose under RESPA and TILA? I think they do.
- **A:** Loan Modifications are not subject to RESPA. One of the exemptions to RESPA is:

*(6) Loan conversions. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.*

Since TILA has adopted the “mortgage transaction subject to RESPA”, I would argue that Loan Modifications are not subject to TILA either.



# RESPA *question 11*

- **Q:** If we expect the rate to be higher at closing than originally disclosed and we'd like to issue a new TIL to begin the waiting period, is there any need to send a new GFE at that time?
- **A:** If the rate is going to be re-locked, you may be required to redisclose the GFE to reflect the new important dates.



# RESPA *question 12*

- **Q:** Is a borrower requested change the same as a changed circumstance or is there some difference between the two as to how they are treated?
- **A:** They are different; however, it is our opinion that they are treated the same.



# RESPA *question 13*

- **Q:** Whenever you redisclose the GFE, do you need to change the dates section of the GFE?
- **A:** You would only need to change the dates in the important dates section of the GFE if you are going from float to lock.



# RESPA *question 14*

- **Q:** On a 0 cost loan, if the HUD fees are over the 10% tolerance, do you really need to refund to the borrower since it's zero cost?
- **A:** Yes. If you exceed any of the allowable tolerances, then you will need to refund the difference to the borrower. However, if you are issuing a lender credit on the HUDs, you can list the portion of the credit is to be paid for a tolerance violation.



# Additional RESPA Questions

(To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.)



# TILA

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## *questions*



# TILA *question 1*

- **Q:** It is my understanding that the new TIL's must be used for applications that are received on or after January 30, 2011. My question is this – if we received an application before Jan. 30 and did early disclosures using the old TIL, when we close after Jan 30, do we still use the old TIL or can we use the new TIL?
- **A:** This is a great question, and unfortunately, there is not clear guidance on this. I have heard from some colleagues that the Fed has stated the bulletin does not specifically state the rules regarding re-disclosure. Therefore, the Fed cannot enforce any actions regarding re-disclosure. However, we have seen some large investors not allow the use of both TIL disclosures in a loan file. I would recommend checking with your investors, as they each may have different interpretations of this rule.



# TILA *question 2*

- **Q:** If our initial TIL provided at application states an incorrect late charge and we correct this on the final TIL sent with loan docs, do we have to go back and correct the initial TIL?
- **A:** I believe this would be acceptable. I do not recall TILA stating any timing of re-disclosures for information other than APR.



# TILA *question 3*

- **Q:** Is it a violation if the payment schedule is not listed on the initial TIL? The amounts of the payments are listed, but not the dates?
- **A:** Possibly. However, as of January 30, 2011, the payment schedule is no longer on the TIL statement. So this should not be an issue moving forward.



# TILA *question 4*

- **Q:** When a potential borrower calls a loan officer and provides sufficient information for a credit report to be pulled, but does not provide the 6 elements required for a GFE, is it required that a TIL be sent within 3 business days?
- **A:** No, TILA has adopted the same application definition as RESPA.



# TILA *question 4 (continued)*

## § 226.19 Certain mortgage and variable-rate transactions.

*(a) Mortgage transactions subject to RESPA—(1)(i) Time of disclosures. In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) that is secured by the consumer's dwelling, other than a home equity line of credit subject to §226.5b or mortgage transaction subject to paragraph (a)(5) of this section, the creditor shall make good faith estimates of the disclosures required by §226.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.*



# Additional TILA Questions

(To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.)



# QC Plan

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*questions*



# QC Plan *question 1*

- **Q:** How much detail is required in the Quality Control Plan?
- **A:** Our experience lately is that you need to be very detailed. We are seeing the agencies get very particular about what needs to be included.



# QC Plan *question 2*

- **Q:** Is there a list of specific documents and/or disclosures standard for a full QC audit per Fannie Mae/Freddie Mac Guidelines (conventional) and HUD/VA (Government)?
- **A:** Each agency has specific guidance on what needs to be reviewed.



# QC Plan *question 3*

- **Q:** Are there any re-verification limitations?
- **A:** I'm not aware of any limitations on re-verifications. All employment, income, and asset documentation should be re-verified. All attempts should be made to re-verify this information and each attempt must be documented.



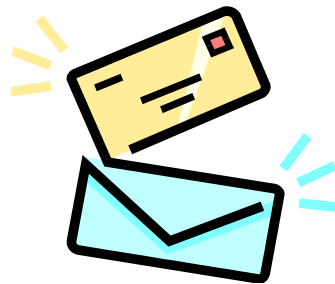
# QC Plan *question 4*

- **Q:** How many attempts are required to receive a re-verification?
- **A:** FHA says you must send a written re-verification letter and if nothing is received, you must make a phone call to follow up on the letter. Fannie and Freddie don't specify how many attempt must be made--only that all attempts to re-verify must be documented.



# QC Plan *question 5*

- **Q:** Do all re-verifications need to be mailed out or can they be faxed and emailed?
- **A:** FHA does not specifically indicate a required method-- only that it must be written. Fannie and Freddie also do not indicate a required method. Fannie and Freddie also allow you to re-verify information verbally.



# QC Plan *question 6*

- **Q:** What is a good average turn time that can be expected for a full QC audit?
- **A:** I would say 45 days is a good turn time. Anything longer is too slow. You need your QC results fast so you can implement changes to correct any negative trends.



# QC Plan *question 7*

- **Q:** What responsibility does the third party QC auditor have to inform Fannie Mae and/or Freddie Mac of the findings of the audit?
- **A:** Third party QC vendors have zero responsibility to report anything to anyone other than the lender. Third Party QC vendors should not report any of your findings to anyone but you. You are not required to respond to the third party vendor about your findings.



# Additional QC Plan Questions

(To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.)



# Other

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*questions*



# Other *question 1*

- **Q:** Fannie states: The lender must re-verify the borrower's credit history by obtaining a new in-file credit report for loans underwritten manually and through DU or other automated underwriting systems. The credit report must be from a source other than the original credit reporting agency.

Yet, FHA and Freddie do not require a new in-file credit report. So, my question is: Is Fannie requiring a new credit report on all loans...even on FHA and Freddie Loans when they don't require one?

- **A:** I cannot speak for Fannie Mae, but my experience is that if you are Fannie Mae approved, they will want you to use their requirements on your entire pipeline of loans.



# Other *question 3*

- **Q:** Does a loan originator still have to be paid as a W-2 employee considering that we are now 3rd party originators and not directly being approved by FHA?
- **A:** I believe FHA has given the guidance they will not enforce or legislate the employment status of TPO employees. However, you will want to check with your investors' requirements to ensure you comply.



# Other *question 4*

- **Q:** We do not do risk based pricing. Although we do obtain credit scores on all borrowers, the scores do not factor into our loan pricing at all. We provided our clients with the standard credit score disclosure notice up until March 1<sup>st</sup> where we made the decision to begin providing the Risk Based Pricing Credit Score Disclosure to alleviate any issues down the road and because we know it will soon be required. Do we need to go back to all loans originated since January 1<sup>st</sup> and re-disclose with the Risk Based Pricing notice, or can we update our internal policies and procedures to indicate we now provide this notice on all loan applications?
- **A:** You are technically out of compliance on the all application you took between January 1 and March 1. You will need to make a company decision on how to proceed with this.



# Other *question 5*

- **Q:** Is it true that Fannie Mae now requires you to run borrowers against the LDP and GSA lists?
- **A:** Yes. This was part of Fannie Mae's LQI initiative that went into effect on June 1, 2010:

*Fannie Mae is implementing a new policy that requires lenders to confirm that companies or individuals involved in the origination, underwriting, or servicing of the mortgage transaction are not on the General Services Administration (GSA) Excluded Party List or the HUD Limited Denial of Participation List ("LDP List") prior to delivery of the loan. Regardless of the reason for the party being excluded, any party to the transaction included on either list will result in the loan being ineligible for delivery.*



# Additional Other Questions

(To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.)



# LO Compensation

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*questions*



# LO Compensation *question 1*

- **Q:** Please discuss the rumors I'm hearing about how a loan officer is required to be paid a salary or hourly wage if a Borrower Paid Scenario is originated by that LO.
- **A:** The guidance I have been given says if a broker received compensation from the borrower, then your employees must be paid a salary or hourly wage.



# LO Compensation *question 2*

- **Q:** Does the LO Comp rule mean no more service release premiums or premium yield on interest level?
- **A:** No. We will still have YSP and SRP. YSP will not only be used as a credit to the borrower to pay for closing costs. It cannot be used in any form for compensation to the lender/broker. SRP will remain as it is today.



# LO Compensation *question 3*

- **Q:** Are third party fees such as processing and lender fees excluded from the amount charge, even if they are paid by the borrower?
- **A:** Third party fees passed through to a non-affiliated third party are not considered loan officer origination.



# LO Compensation *question 4*

- **Q:** Will these new regulations require new disclosures?
- **A:** My understanding is that there are no new disclosures that need to be provided to the borrower to comply with this rule. However, several investors are requiring an anti-steering disclosure to be provided.



# LO Compensation *question 5*

- **Q:** Can you compensate differently for Bank Portfolio loans vs. loans sold in the secondary market? Can you compensate differently for construction loans?
- **A:** My understanding is yes. However, you have to justify why one loan is being compensated more than the other. It will generally need to be justified by the higher costs associated with originating that particular loan. You cannot arbitrarily just compensate more for one loan over another.



# LO Compensation *questions 6 & 7*

- **Q:** With the upcoming Dodd-Frank Broker Compensation changes, I would like to know what happens if a broker has a RESPA issue with the GFE and there needs to be a Broker cure. Dodd-Frank says the broker will always make their predetermined income amount based on the agreement with the lender, regardless of whether this is calculated as a percentage, or a flat fee due to a minimum or maximum amount.
- **Q:** If the broker makes a mistake, or does not disclose a fee within 3 days of incurring the fee, can the broker pay the cure and still close the loan with less income than the contract? Dodd-Frank says the broker cannot reduce their fee to be competitive to get the loan.



# LO Compensation *question 6 & 7*

- **A:** Brokers are not allowed to change any of the fees on the loan. They are also not allowed to issue any broker credits. Any changes or shortages will need to be paid by the lender or the borrowers. Loan originator income cannot increase or decrease based on loan terms.



# LO Compensation *question 8*

- **Q:** Will the changes in the originator comp plans affect how we prepare the 2010 GFE? Will Lender Paid comp still be disclosed in box 1 and box 2?
- **A:** At this point, there has not been any clear guidance on how to complete the GFE after the rule takes effect. However, RESPA and its guidelines have not changed.



# Additional LO Compensation Questions

(To ask a question, click the plus sign next to “Questions” on the GoToWebinar box and type your question.)

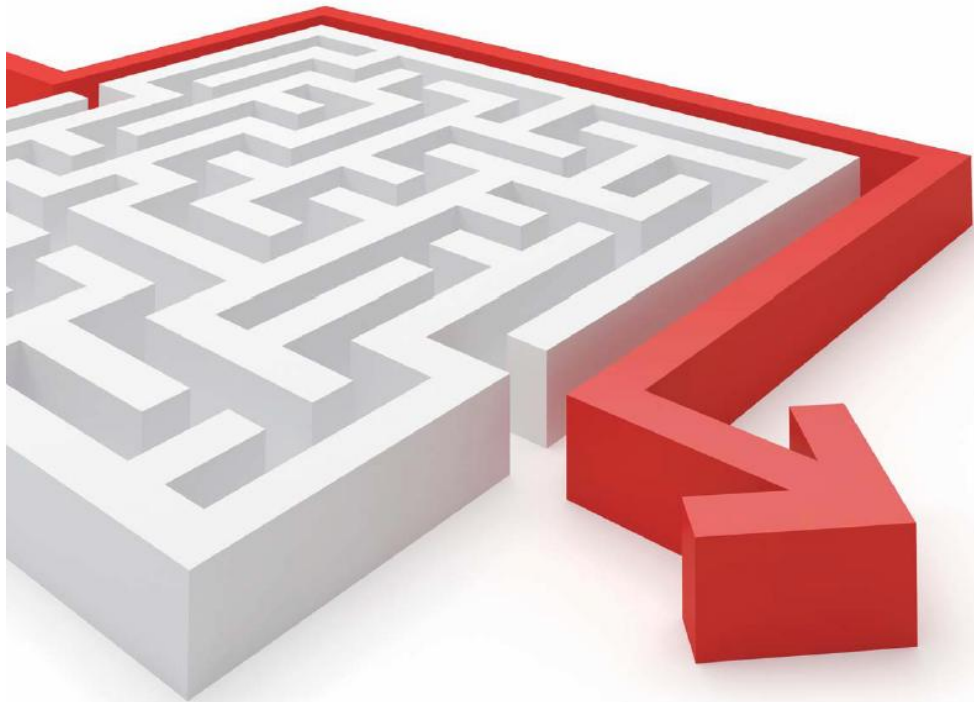
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- Post-Closing QC Audits
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- Red Flag Policies
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- Agency Approval
- Etc.

# Contact Information

- We will be answering a few of your questions in just a moment. Questions not addressed at this time will be emailed directly to you, as well as answered in our next newsletter. You are also welcome to contact us at any time:

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# Resources

- Fannie Mae
  - <https://www.efanniemae.com>
- Fannie Mae's LQI Resources
  - <https://www.efanniemae.com/sf/lqi/index.jsp>
- Freddie Mac
  - <http://www.freddie.mac.com>
- RESPA FAQ
  - <http://www.hud.gov/offices/hsg/rmra/res/respahm.cfm>
- TILA
  - <http://www.fdic.gov/regulations/laws/rules/6500-1400.html>
- HUD/FHA
  - <http://www.hud.gov>
- HUD's Neighborhood Watch
  - <https://entp.hud.gov/sfnw/public/>
- Federal Reserve
  - <http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/index.cfm>



# Thank You!

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