

**HOUSING FINANCE AND RESPA SUBCOMMITTEE**



**American Bar Association  
Committee on Consumer Financial Services  
Housing Finance and RESPA Subcommittee  
Winter Meeting – Scottsdale, Arizona  
January 12, 2008**

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**HOUSING FINANCE AND RESPA SUBCOMMITTEE**

Co-Chair: John Kromer, Buckley Kolar, Washington, DC

Vice-Chair: Sandy Shatz, Countrywide Mortgage, Calabasas, CA

**Presentation**: *“The New Frontier of Housing Finance”*

**Speakers**:

Felecia Rotellini, Arizona Department of Financial Institutions, Phoenix, AZ (invited)

Michael Flynn, HUD and Counsel to the H4H Board, Washington, DC



John Kromer is a partner at Buckley Kolar LLP, a financial services law firm with offices in Washington, D.C. and Los Angeles, California. Mr. Kromer regularly advises clients on compliance with state and federal laws applicable to mortgage companies, consumer finance companies, banks, real estate companies and other financial institutions. Mr. Kromer has written numerous articles for consumer financial services industry publications, and is co-author of multiple books on residential mortgage lending, including Residential Mortgage Lending: State Regulation Manual (West), Residential Mortgage Lending: Brokers (West), and Pratt's State Regulation of Second Mortgages and Home Equity Loans.

Mr. Kromer is the Chair of the RESPA and Housing Finance Subcommittee of the American Bar Association Section on Business Law's Consumer Financial Services Committee and is a member of the Advisory Council of the American Association of Residential Mortgage Regulators. Mr. Kromer is the recipient of the Distinguished Service Award from the American Association of Residential Mortgage Regulators. Mr. Kromer is a graduate of the University of Notre Dame and the University of Virginia School of Law.





## ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini  
Superintendent of Financial Institutions

Janet Napolitano  
Governor

**FELECIA ROTELLINI** grew up in Sheridan, Wyoming. In 1981, she graduated *magna cum laude* from Rocky Mountain College, Billings, Montana, with a degree in History/Political Science. She moved to Phoenix in 1986 upon graduation from Notre Dame Law School where she was awarded the Edward F. Barrett Trial Advocacy Award.

From 1986 to 1992, she was in private practice in the areas of tort and commercial litigation. From 1992 to 2005, she was in public service as an assistant attorney general with the Arizona Attorney General's Office. During that period, she was senior counsel to the Arizona State Banking Department (1992-1996); represented the Arizona State Board of Accountancy in cases involving complex audit failures of public and large companies (1996-2004); and prosecuted financial and white collar fraud cases (2002-2004). While representing the Banking Department, she was a member of a multi-state Conference of State Bank Supervisors (CSBS) task force to promote and develop a seamless coordination of state and federal examinations of interstate branch banks.

In January 2005, she joined the Arizona State Banking Department, continuing her public service career as an Assistant Superintendent. In January 2006, Governor Janet Napolitano appointed her to the position of Superintendent of the Department, now known as the Department of Financial Institutions. The Department oversees the regulation and supervision of all state chartered banks and credit unions and 17 other non-depository financial service providers including, mortgage brokers and lenders, consumer lenders, escrow companies, collection agencies, payday lenders and money transmitters. She is a member of the Board of the American Association of Residential Mortgage Regulators (AARMR). She is on the Board of Directors of CSBS, as the chair of CSBS District V, representing the Western states. On November 21, 2008, CSBS announced that she is one of seven state banking commissioners named to a Special Task Force on Regulatory Restructuring to set forth, from the states' perspective, the necessary principles for an effective regulatory system that will foster community and regional banks and relationship lending that fuels local economic development

She is a current member and past chair of the Administrative Law Section of the Arizona State Bar. She is also a member of the Wyoming State Bar. From 1990 to 2002, she was a trustee of the Boys and Girls Clubs of Metropolitan Phoenix Foundation, serving two terms as president.



ABA Section of Business Law  
Committee on Consumer Financial Services  
Winter Meeting  
January 10-13, 2009

“The New Frontier of Housing Finance”

Presented by the Subcommittee on  
Housing Finance and RESPA

Chair: John Kromer, Buckley Kolar LLP, Washington, DC  
Vice Chair: Sandy Shatz, Countrywide Home Loans, Calabasas, CA



**Housing and Economic Recovery  
Act of 2008**

**Title V**

**S.A.F.E. Mortgage Licensing Act  
Loan Officer Licensing & Registration**



# Statutory Objectives

- Establish Nationwide Mortgage Licensing System and Registry (NMLSR) – to be comprehensive database - operated by CSBS/AARMR
- Uniform license applications and reporting requirements for State-licensed loan originators, with a streamlined licensing process
- Enhanced information sharing among regulators
- Loan originator tracking—unique identifier
- Provides consumers with information on loan originator employment history and disciplinary actions at no charge
- Comprehensive training and examination requirements related to subprime mortgage lending.
- Establishes means by which loan originators would, “to greatest extent possible, be required to act in best interests of consumers”
  - Nothing in operative language to effect this



# Loan Originator Licensing

- Two types of Loan Originators (LOs)
  - “State-licensed LO” – LOs other than Registered LOs (see below)
    - Must be licensed by state (or HUD, if state fails)
    - Must be registered in database
  - “Registered LO” – employed by depository institution or credit union or federally supervised subsidiary; or Farm Credit Administration regulated institution
    - No licensing requirement
    - Must be registered in database
- Effect on “exclusive agents” of OTS Thrift
  - Rep. Frank - Rep. Marshall Colloquy
    - Not intended to limit OTS preemption



# LO Licensing – Who’s Covered ?

- LO Definition
  - Individual who takes residential mortgage application AND
  - Offers or negotiates terms of mortgage for compensation or gain
  - Model Act changes “and” to “or”
  - “Assisting a consumer in obtaining or applying to obtain loan” also defined
- LO does NOT include
  - Individual performing administrative/clerical tasks for LO - “loan processor or underwriter”
    - UW/Processing
    - Gather borrower info
    - Consumer contact OK if no discussion of rates/terms
    - Independent administrative/clerical contractors must be licensed
  - State-licensed real-estate broker
    - unless compensated by lender, broker, LO
  - Timeshare plan broker



# State LO Licensing – Requirements

- Fingerprints/national and state criminal check
- Report personal disciplinary/criminal histories
- Credit report
- Demonstrated financial responsibility, character, and general fitness
- LO license never revoked
- No felony conviction past 7 yrs
  - Never convicted of felony fraud, money laundering, breach of trust, or dishonesty
- Min. bond or net worth (or recovery fund) based on originations



# State LO Licensing – Testing

- Education
  - 20 hours of pre-licensing including at least:
    - 3 hours of federal law
    - 3 hours of ethics (incl. fraud, fair lending, consumer protection)
    - 2 hours nontraditional mortgage lending standards
- Pass written test
  - Covering federal and state law on origination, ethics, nontraditional mortgages
  - 75% score needed to pass
  - 3 retests permitted 30 days apart
  - 6 month cooling off period before retesting again



# State LO License - Renewal

- License/registration renewed annually
- Continue meeting minimum standards for initial licensure
- Annual continuing education
  - 8 hours including at least:
    - 3 hours federal law
    - 2 hours ethics
    - 2 hours nontraditional mortgages



# Additional State Examination Authority

- State licensing agency may examine any LO licensed or required to be licensed under Act as often as necessary to carry out purposes of Act
- Books and records must be made available upon request
- State licensing agency authorized to interview officers, principals, LOs, employees, independent contractors, agents, and customers of the licensee
- No person subject to investigation or examination may knowingly withhold, remove, or destroy books, records or other information



# Obligation on Company Licensees

- Must submit “call reports” showing financial condition of licensee
  - Keeps state apprised of potential financial difficulties
  - States very concerned about ability to fund applications



# Registration of “Registered LOs”

- Appropriate federal banking agency furnishes or causes to be furnished:
  - Fingerprints for national and state check
  - Personal history and experience
  - Administrative, civil, criminal findings by government jurisdiction
- Coordinate with NMLSR to establish protocols for assigning unique identifier



# LO Licensing - Timing

- States have 1 year (2 if biennial legislature) to implement licensing system
- If not, HUD steps in with back-up regime
- HUD can grant up to 24 mos. extension
- FFIEC banking agencies system for registration of “Registered LOs” – implemented by July 30, 2009



# HUD Back-Up Regime

- HUD Secretary determines whether State law meets certain SAFE Act requirements. The state law must:
  - Comply with SAFE Act's qualification standards for licensing and renewal
  - Establish State LO supervisory authority to provide effective supervision and enforcement including suspension, termination or nonrenewal of license for violations
  - State LO supervisory authority must:
    - Ensure LOs registered with NMLSR
    - Regularly report violations/enforcement actions under state law to NMLSR
    - Maintain a process for challenges to information in NMLSR
    - Establish mechanism to assess civil money penalties for individuals acting without a valid license
    - Establish minimum net worth or surety bond requirement tied to dollar amount of loans originated, or recovery fund
- If State law inadequate, HUD provides back-up licensing system where LOs apply to HUD for licensing
- Coordinate with NMLSR for unique identifier
- HUD can also step in for NMLSR if NMLSR failing



# HUD System Enforcement

- HUD authorized to:
  - Examine books and records
  - Summon loan originators or custodians of books and records
  - Conduct examinations of LOs and assess LOs for cost
  - Take testimony under oath
  - Issue cease and desist orders after opportunity for hearing
  - Issue temporary orders prior to hearing if in public interest or prior hearing impractical
  - Issue orders barring a person from acting as an LO for any amount of time (permanently)
  - Assess money penalties up to \$25,000 for each act or omission
- Appeals
  - LO can request review of temporary order by Secretary within 10 days
  - Can appeal temporary orders to federal district court



# General Operations

- AG to provide criminal history to states
- CSBS to be agent to channel information between DOJ and states
- Private or privileged material protected under state or federal law continues to be confidential after provided to NMLS or HUD system
- Not employment history or public disciplinary proceedings to be available to public



# Required Studies

- HUD
  - Annual report on effectiveness of Act and legislative recommendations to strengthen consumer protections, enhance examination standards, streamline communications between stakeholders in mortgage origination process and establishing performance based bonding requirements for LOs or their employers
  - RESPA study and legislative recommendations for more transparent disclosures
  - Report on root causes of defaults and foreclosures



# Final RESPA Reform Rule issued by HUD

Overview of Revised Disclosure  
Requirements



# Themes of GFE/HUD-1 Requirements in the Final Rule

- Eliminated GFE Application Proposal
- GFE includes very detailed loan terms and costs
  - No APR, but interest rate and monthly payment required
  - Particular detail on ARM loan adjustments
- Settlement costs are grouped in categories
- New accuracy requirements for GFE
  - “Unforeseeable circumstances” amended to “Changed Circumstances”
- Broker / Lender distinction blurred (YSP not shown)
- Compliance with new GFE/HUD-1 required by January 1, 2010



# Initial Observations

- Greater disclosure means less simplicity
  - Will consumers read 3-page GFE?
  - Still have itemization
- Unclear authority for new tolerances and mandated GFE form
- Elimination of “Required Provider” disclosure
- Lender is responsible for ascertaining that GFE delivered



# Final RESPA Reform Rule

## Highlights—No GFE Application

Proposed Rule: GFE application and mortgage application.  
GFE application had required following 6 items:

- Name and Social Security Number (to order credit)
- Property address
- Gross monthly income
- Borrower's information on the house price or best estimate of the property's value
- The amount of the loan sought

Final Rule: **one mortgage application**, but must include at least the 6 items above



# New GFE Components: Loan terms

The new GFE is a 3-page document that provides a summary of loan terms and total settlement charges. Page 1 discloses:

- Initial interest rate and the specific date it remains available
- The specific date the estimate for settlement charges remains available
- Rate lock period and when must lock prior to settlement
- Initial loan amount
- Loan term
- Initial interest rate
- Initial monthly amount owed for principal, interest and mortgage insurance (but not taxes)
- Whether the interest rate can rise, and the maximum
- Whether the loan balance can rise, and the maximum
- Whether the monthly payment (P, I, MI) can rise, and the maximum
- Whether the loan has a prepayment penalty, and the maximum
- Whether the loan has a balloon payment, and description
- Whether the loan has a monthly escrow payment for taxes and other obligations and how much



# New GFE Components: Settlement Charges

Page 1 of the new GFE also discloses a total amount for each of:

- “A” - Your Adjusted Origination Charges
  - Loan originator fee “no cost” loans – A must be “0”
  - Third party and loan originator fee “no cost” loans – all third party fees listed in block 3 through block 11 (discussed below) to be paid by the loan originator (or borrower) must be itemized and listed on the GFE. A must be a negative number large enough to offset the third party fees.
- “B” - Your Charges for All Other Settlement Services
- “A+B” - Total Estimated Settlement Charges (which is the sum of A and B)

Page 2 of the GFE describes the components of these figures



# New GFE Components: Settlement Charges/Secondary

## Market Disclosure

- “Your Adjusted Origination Charges” comprises:
  - “Our origination charge” (Block 1) and
  - Your “Credit or Charge (points)” for the specific interest rate chosen (Block 2)
- “Our origination charge” appears to mean all direct origination charges by either the broker or the lender. The proposal states that it should include charges “of all originators.”
- There are three choices for the “Credit or Charge” for the specific interest rate chosen:
  - The Credit or Charge is included in “Our origination charge”
  - You receive a credit of \$ XX for this interest rate (this credit reduces your settlement charges)
  - You pay a charge of \$XX for this interest rate (this charge (points) increases your settlement charges)
  - **A credit and a charge cannot occur in the same transaction**
- The GFE includes a fixed “if your loan is sold in the future” disclosure on page 3:
  - “Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.”



# GFE Components: Your Charges For Other Settlement Services

Page 2 of the new GFE also discloses other settlement charges in 9 separate categories, as follows:

- “Required services that we select” (other than title) (Block 3): price for each itemized service, plus total (e.g. appraisal, credit report, mortgage insurance, etc.)
- Title services and lender’s title insurance (Block 4)
- Owner’s title insurance (to protect owner’s interest in property) (Block 5)
- Required services that you can shop for (other than title) (Block 6): estimated price for each itemized service, plus total (e.g. attorney, closing services, notary). If the borrower is permitted to shop for required settlement services, the loan originator must provide a written list of settlement service providers at the time of the GFE on a separate sheet of paper.
- Government Recording (Block 7)
- Transfer taxes (Block 8)
- Initial deposit for your escrow account (categories for taxes and insurance) at settlement (Block 9)
- Daily interest charges (showing # of days until specific closing date) (Block 10)
- Homeowner’s insurance (premium at settlement) (Block 11)



# New GFE Components: Recasting Yield Spread Premiums

- YSPs are not disclosed as “YSPs” on the GFE
- All charges received by the broker and any other originator paid by the borrower or lender are included in “Our Origination Charge” in the “Your Adjusted Origination Charges” section on page 2 of the GFE
- A YSP (the amount paid to the broker by the lender above the amount needed to fund the loan) is shown as a credit for the specific interest rate chosen –which reduces total origination charges
- Discount Points (a “charge”) collected by the broker to be paid to the lender would be netted against any YSP (“credit”) and shown as net “credit” or “charge” depending upon which is larger
- A “Credit” and “Charge” cannot both be shown in the same transaction



# GFE Tolerances

- Page 3 of GFE highlights charges with restricted tolerances – all other settlement charges may change
- Charges with **zero tolerance** (can't increase)
    - the loan originator's origination charge
    - the charge or credit for the specific interest rate chosen (after the rate is locked)
    - the adjusted origination charges (after the rate is locked)
    - government transfer taxes
  - Charges with **10% tolerance** (in aggregate):
    - lender-required and selected services, i.e., "Services we select" (appraisal, credit, etc.), including title services and lender's title insurance as applicable
    - lender-required services (including lender's title insurance and optional owners title insurance), where the borrower selects the provider from a list supplied by the originator
    - government recording charges



# GFE Tolerances-Cont'd

- Opportunity to “cure” exceeded tolerance by reimbursing borrower excessive amount within 30 calendar days after settlement
- If “**changed circumstances**,” permitted to exceed tolerances:
  - Emergencies
  - New information
  - Other circumstances—such as boundary disputes, flood insurance, or environmental problems.
  - Changed or inaccurate information—such as loan product, estimated property value, credit quality, loan amount, income, or charges tied to floating interest rate except loan originator’s origination charge.
  - No market price fluctuations



# New GFE Loan Comparison Chart

- Page 3 of the new GFE provides a rate/cost “tradeoff table” showing the subject loan amount and rate requested compared with alternative loans with the same loan amount and terms, but showing (i) a loan with a lower interest rate; and (ii) a loan with lower settlement charges
- This chart must also show changes in the monthly payments for the loans. For ARM loans, the initial rate only may be shown.
- Completing columns two and three of the tradeoff table is optional



# Fee Limit– Providing GFE

- HUD is concerned that under RESPA's current rules borrowers may pay significant fees before receiving a GFE, inhibiting shopping
- No fee may be charged as a condition of receiving the GFE except for the cost of an initial credit report
- May collect fees for final underwriting
- Loan originators are prohibited from conditioning the GFE on applicants providing supplemental information to verify initial information
  - Information can be requested from the applicant to complete final underwriting after the GFE has been provided



# Timing for Delivery/GFE Terms Available

- Lender or mortgage broker must provide GFE to applicant within 3 business days (lender responsible for delivery but not required to provide additional GFE if mortgage broker provided)
- Under the proposal, GFE terms must be available for at least 10 business days from GFE delivery, except for:
  - interest rate (determined by loan originator)
  - loan terms tied to the interest rate
  - charge or credit for the specific rate chosen
  - adjusted origination charges
  - per diem interest
- For new home purchases where settlement anticipated more than 60 days from the time a GFE is provided:
  - a revised GFE may be issued at any time up until 60 days prior to closing (unless “changed circumstances”)
  - must separately disclose this possibility



# Underwriting and GFE Revisions

- The GFE is not a commitment to make a loan to a particular borrower
- The lender or mortgage broker is not required to provide the GFE if, before the end of 3 business days:
  - Application is denied
  - Application is withdrawn by applicant
- Revised GFE may be provided to the borrower if information received indicating “changed circumstances” that changes settlement costs or loan terms. If revised GFE is to be provided, must be provided within 3 days after receiving information
- Revised GFE may be provided based on “borrower-requested changes” to the loan resulting in changes to settlement costs or loan terms. If revised GFE is to be provided, must be provided within 3 days of request
- If a revised GFE is issued based on “changed circumstances” or “borrower-requested changes,” the basis for the revised GFE must be documented and retained for at least 3 years after settlement



# HUD – 1/1A Itemization

- Modifies the HUD-1/1A slightly to allow comparison of charges on the GFE
- Basically, the HUD-1/1A lines in Section L reference corresponding “Block” numbers on the GFE
- Terminology in the HUD-1/1A has been modified to be more consistent with GFE terminology
- Opportunity to “cure” an inadvertent or technical error within 30 calendar days after settlement



# HUD – 1/1A Itemization

## Highlights

- Seller paid charges originally included in buyer's GFE:
  - Charge should be listed in the borrower's column on page 2
  - Offset charge by listing a credit in that amount to the borrower on lines 204-209 and by a charge to the seller in lines 506-509
- Other party paid charges originally included in buyer's GFE:
  - Charge should be listed in the borrower's column on page 2 with an offsetting credit on page 1 identifying the party paying the charge
- "Our Origination Charge" – line 801
- "Your credit or charge (points) for the specific interest rate chosen" – line 802
- Indirect payments from a lender to a mortgage broker (F.K.A. YSP's) may not be disclosed as P.O.C. – must be included as a credit on line 802
- "Your adjusted origination charges" – line 803



# HUD – 1/1A Itemization

## Highlights – Cont'd

- Where “no cost” encompasses third party fees as well as the up-front payment to the loan originator (presumably by the lender) (see also GFE discussion):
  - the third party services covered by the “no cost” provision must be itemized and listed in the borrower’s column with the charge for the third party service
  - Itemized charges must be offset with a negative adjusted origination charge on line 803 and recorded in the columns
- The amount of title insurance premiums, including endorsements retained by the title agent must be separately disclosed outside of the columns in line 1107
- If party other than title company listed on line 1101 of the HUD-1 provides services that are separate from providing title insurance (i.e., attorney and settlement or escrow agent services) the title company should separately itemize those services with the total amount paid, outside of the columns



# Hud – 1/1A Chart

- The proposed closing script has been replaced by a chart on page 3 of the HUD-1
  - Compares amounts listed for settlement services on the GFE versus actual total costs listed for such services on HUD-1
  - GFE tolerance performance highlighted.
  - Summarizes final loan terms

