

## Attention: Mortgage Brokers

### RESPA Reform Effective 01/01/2010

HUD's **Real Estate Settlement Procedures Act (RESPA)** helps to protect consumers during the residential real estate purchase and loan process. New RESPA requirements became effective on January 1, 2010. This document outlines the new requirements and how M&I Home Lending Solutions (HLS) has implemented appropriate changes to meet these requirements.

Below is a **high level overview of the RESPA Reform** changes effective 01/01/2010:

- New Good Faith Estimate (GFE) required for applications received on or after 01/01/2010
- New HUD-1 Settlement Statement must be used with every new GFE
- Charges on the new GFE and HUD-1 must match within approved tolerances
- The old GFE used for applications received prior to 01/01/2010 and closing in 2010 are allowed
- Charges are now subtotaled together making it easier for borrowers to compare the costs to originate and close their loans at a glance
- The new GFE is good for 10 business days and must be accepted by the borrower before proceeding with the loan
- Charges disclosed on the initial GFE cannot change, unless within approved tolerances or "changed circumstances"
- This recap is not inclusive of all changes associated with RESPA Reform effective 01/01/2010.
- More information is provided below.

Keep in mind, the TILA changes which were effective in July and October 2009 still apply. The borrower must receive HLS' Early TIL before a fee, other than a credit report, can be collected from the borrower.

#### **M&I Home Lending Solutions (HLS) supports the following:**

- Only the new GFE is accepted by HLS after 01/01/2010, **regardless of when the broker took the application from the borrower.**
- Only old GFE's were accepted by HLS through 12/31/2009
- After 12/31/2009, HLS will support loan closings using both the old and new HUD-1 (the type depends on the **M&I** application date and GFE used)

Please note: For any application taken by a broker prior to 01/01/2010, but submitted to M&I on or after 01/01/2010, and where an old GFE was provided to the borrower, the broker must re-issue the GFE, using the 2010 form, with the same terms and charges as the original GFE. The broker is now bound to the rules of the new GFE, which include:

- The date of the re-issued GFE can be today's date
- Important Dates #1 must be the same as the date of the GFE (we do not accept a locked rate)
- Important Dates #2 must be 10 business days from the date of the GFE
- Broker compensation disclosed in block 1 cannot change, unless the loan amount changes due to a qualified changed circumstance
- Fees are subject to tolerance thresholds

The new GFE and a Settlement Services Provider list must be provided to the borrower and the broker must certify the borrower has given the broker their intent to proceed (page 2 of the M&I Loan Application Submission Sheet)

## Submitting Applications to M&I HLS

Beginning 01/01/2010, the following documentation is required to submit a complete application to M&I:

1. Completed M&I loan application submission sheet (pages 1 & 2 of the 3-page form)<sup>1</sup>
2. Completed 1003<sup>1</sup>
3. Properly completed Good Faith Estimate (GFE) dated within 3 days of application<sup>2/3</sup>
4. Itemized Fees for GFE - Complete page 3 of the 3-page M&I loan application submission sheet or provide an itemized fee list from Calyx or Encompass. (No other forms will be accepted at this time.)<sup>3</sup>
5. Settlement Services Provider (SSP) list (if borrower may "shop" for one or more providers)<sup>3</sup>

<sup>1</sup> When submitting a Portfolio Combo Loan, please send the 1003, GFE, Itemized fees and SSP list for each loan with just one M&I loan application submission sheet for the combo loan.

<sup>2</sup> Refer to the "Rates & Forms" page of [www.mihomelendingsolutions.com](http://www.mihomelendingsolutions.com) for more details about properly completed GFE's.

<sup>3</sup> Excludes HELOC applications

## New Good Faith Estimate

The following updates highlight new requirements for Loan Originators on the Good Faith Estimate. Please note: RESPA considers Mortgage Brokers and Lenders to be "Loan Originators".

- All loan applications taken on or after January 1, 2010, must use the new GFE form and HUD-1.
- Loan Originators are responsible for providing the initial GFE and Settlement Service Provider (SSP) list to the borrower within three business days of completing their application. (M&I requires the Mortgage Broker to complete the initial GFE and SSP.)
- The GFE must be accurate as the Loan Originator will be held to the fees disclosed on the initial GFE. (M&I reserves the right to not accept an application if the GFE is not properly completed.)
- The initial GFE is a binding GFE, subject to any changed circumstances. Please refer to the next section for additional information on "changed circumstances." (M&I will provide the revised GFE(s) and SSP(s) to Borrowers when a changed circumstance occurs. Brokers will receive a copy of revised GFE(s).)
- After the borrower has received the initial GFE, the Loan Originator is responsible for obtaining and documenting the borrower's expressed intent to proceed with the transaction. (Mortgage Brokers will certify on the M&I Loan Submission Sheet that the Borrower has expressed their intent to proceed when they submit the application to M&I.)

## Properly Completed GFE

Please refer to a copy of the New Good Faith Estimate (GFE):

On Page 1:

- Date of GFE - Must be within 3 business days of when the Broker accepted an application from the Borrower
- Important Dates:
  - #1 Must be the same date as the Date of GFE - adding the time is optional, but the rate must be expired when the application is received at M&I. M&I will not accept a GFE with an existing rate lock.
  - #2 Must be at least 10 business days from the Date of GFE
  - #3 Must be N/A for Portfolio loans. RESPA requires a rate lock period for loans that require a lock (FHA and VA), even when the loan is not yet locked when the GFE is created.
  - #4 Must be N/A for Portfolio loans. RESPA requires a number of days be disclosed for loans that require a lock (FHA and VA), even when the loan is not yet locked when the GFE is created.
- Summary of your loan - Complete with terms appropriate to the product being requested. HLS will update these terms to match the loan in our loan origination system.
- Escrow account information - Complete with figures from the Broker's loan origination system. HLS will update these terms to match the loan in our loan origination system.
- Summary of your settlement charges - Must match A, B, and A+B from page 2 of the GFE

#### On Page 2:

- Fully itemize all fees using page 3 of the M&I Loan Application Submission Sheet, or the list of itemized fees from Calyx or Encompass. Itemized fees must roll-up and match each block on page 2 of the GFE. If itemized fees are higher than disclosed on the GFE, itemized fees will be lowered by M&I to match the GFE. Itemized fees are also used to calculate the initial APR, required for the early Truth-in-Lending Disclosure.
- Block 1 must include both M&I's and the Broker's fees (including yield spread premium). M&I fees are clearly identified on page 3 of the M&I loan application submission sheet.
- Blocks 4, 5, and 6 - The Broker must include a list of Settlement Services Providers with the loan submission if the Borrower is allowed to shop for providers.
- Block 5 - Owner's Title Insurance must be disclosed on all purchase transactions. The Broker may enter "N/A" for non-purchase transactions.
- Block 8 - Transfer Taxes must be disclosed if required for the transaction. This category of charges has 0% tolerance for error so mortgage brokers must ensure they know the requirements for the subject property location, including city, county, and state fees.
- Failure to disclose any required fees on the initial GFE that result in a tolerance violation will be cured from the broker's origination fees.

#### On Page 3:

- Using the tradeoff table - The first column labeled "The loan in this GFE" must be completed. Columns 2 and 3 are optional.

Refer to the "Rates & Forms" page of [www.mihomelendingsolutions.com](http://www.mihomelendingsolutions.com) for a flyer with the properly completed GFE recap.

#### **Changed Circumstances**

The Loan Originator must issue a revised GFE and SSP list to the borrower within the required time frame of three business days of receiving the changed circumstance information. (Again, M&I will provide all required revised GFE(s) and SSP(s) to the Borrowers.)

- If a changed circumstance occurs, only those fees affected by the changed circumstance may change.
- If the estimates within the GFE are inaccurate and a valid changed circumstance does not occur, the loan originator is bound to the amounts shown on the last disclosed GFE.
- If a changed circumstance occurs, the Loan Originator (in this case M&I) must re-disclose within three business days after receipt of the information regarding the changed circumstance or the ability to re-disclose (and increase a fee) is lost.
- Loan Originators (in this case Brokers and M&I) must retain documentation relating to the changed circumstance and fee change, if re-disclosed, for three years.

A "changed circumstance" is defined as follows:

- Acts of God, war or disaster
- Changes or inaccuracies in information relating to the borrower or the transaction that was relied upon in providing the GFE
- Changes to the loan amount or estimated value of the property
- New information regarding the borrower or transaction not relied upon when the initial disclosure was provided

A revised GFE must be issued upon a lock event (locking, extending, or re-locking the rate) and may be issued in the event the borrower requests a change in the mortgage loan that was identified in the GFE and that changes the settlement charges or terms of the loan.

#### **M&I Changed Circumstance Notification Form**

Mortgage Brokers must notify M&I Home Lending Solutions within one business day of receiving information relating to a changed circumstance by completing and submitting an M&I Changed Circumstance Notification Form.

The M&I Changed Circumstance Notification Form is to be used only to identify a changed circumstance. One form is required for each changed circumstance. Brokers may provide only the documentation pertaining to the changed circumstance outlined on the notification. Additional conditions are not allowed to be submitted with a Changed Circumstance Notification.

Brokers will send the completed notification form to one of the following:

- Email: [mihls.BrokerSupport@micorp.com](mailto:mihls.BrokerSupport@micorp.com)  
Email Requirement: Subject Line: Changed Circumstance Notification for M&I Loan # \_\_\_\_\_
- Fax: (800) 277-2569  
Fax Requirement: Use the notification form as the fax cover sheet.

Mortgage Brokers cannot provide a re-disclosed GFE (and Settlement Service Provider List) to their Borrower once the loan is submitted to M&I. M&I Home Lending Solutions will, in its sole discretion, determine whether a re-disclosed GFE will be issued to the Borrower(s).

Refer to the Rates & Forms page of [www.mihomelendingsolutions.com](http://www.mihomelendingsolutions.com) for the M&I Changed Circumstance Notification Form.

### **Fees**

The initial GFE must be accurate.

- All Broker origination fees, including broker compensation, disclosed on the GFE should match those fees listed on the Mortgage Broker Fee Agreement (MBFA) form.
- Broker compensation can never increase from the amount disclosed on the initial GFE unless there is a valid change to the loan amount, and part of the origination charge disclosed is based on a percentage of the loan amount (such as lender paid broker premium).
- The MBFA is critical as the new GFE does not provide a breakdown of broker fees and compensation for the Borrower. The MBFA supplements the GFE – and it will help ensure the borrower can clearly determine broker fees and compensation. It is essential that the MBFA and the GFE align throughout the loan process and at loan closing. Brokers are responsible for ensuring that the MBFA is kept current with the GFE should any changed circumstance occur that impacts the fees on the MBFA.
- An updated MBFA must be sent by the broker to M&I each time fees from the MBFA are changed due to a qualifying changed circumstance and a revised GFE is provided by M&I to the borrower.
- Brokers must include M&I's origination fees in the origination charge in Block 1 of the GFE and M&I's flood fee in Block 3 of the GFE.
- Page 3 of the revised M&I Loan Application Submission Sheet (dated 01/01/2010) includes M&I Fees.
- Mortgage Brokers must submit an itemization of fees with each loan application. Brokers may use page 3 of the M&I Loan Application Submission Sheet or utilize an itemized fee list from Calyx or Encompass. No other fee itemization forms will be accepted at this time.
- Fees must reconcile to the charges listed on page 2 of the new GFE. M&I will use the fee itemization to produce the initial TIL.

Refer to the Rates & Forms page of [www.mihomelendingsolutions.com](http://www.mihomelendingsolutions.com) for the revised M&I Loan Application Submission Sheets.

### **Settlement Service Providers (SSP)**

For all services where the borrower may select the provider, Loan Originators (in this case the Mortgage Brokers) must provide borrowers with a list of Settlement Service Providers (SSP) in the Borrowers' geographic area. The costs for those services must be disclosed on the initial GFE and itemized on page 3 of the revised M&I Loan Application Submission Sheet (dated 01/01/2010) or an itemized fee list from Calyx or Encompass.

If necessary, Mortgage Brokers will need to provide additional settlement service provider information to M&I upon an approved changed circumstance. M&I will provide an updated SSP list with each revised GFE.

## Fee Tolerances

As a reminder, tolerances (allowable increases between disclosed and actual fees at closing) on changes to settlement charges between the final GFE and HUD-1 will be defined in three categories beginning January 1, 2010:

### 0% Tolerance\* – Charges that cannot increase, but may decrease at settlement:

- Origination charges – Origination charges include the loan originator's origination fees and broker compensation (if applicable).
- Discount or premium points for a specific interest rate selected
- Adjusted origination charges (after the interest rate is locked)
- Transfer taxes

### 10% Tolerance\* – Charges that cannot increase in the aggregate (cumulative total) by more than 10% at settlement:

- Required settlement services that the lender selects, such as appraisal services
- Title services and lender's title insurance (if selected by lender or if the borrower uses a company identified on the Settlement Services Provider List)
- Owner's title insurance (if the borrower uses a company identified on the Settlement Services Provider List identified).
- Required settlement services (such as Pest Inspections) that the borrower selects from the Settlement Services Provider List
- Government recording charges

### N/A Tolerances – Charges that have no restrictions for increases or decreases at settlement:

- Required settlement services that the borrower can select, if the borrower selects a service provider not listed on the Settlement Services Provider List
- Title services and lender's title insurance, if the borrower selects a service provider not listed on the Settlement Services Provider List
- Owner's title insurance, if the borrower selects a service provider not listed on the Settlement Services Provider List
- Initial deposit for borrower escrow account
- Daily interest charges
- Homeowner's insurance

\*For 0% and 10% Tolerances: When a changed circumstance occurs that directly impacts the fee effected by the change circumstance and a revised GFE is provided within three business days after receipt of the information regarding the changed circumstance, the tolerance is determined by reference to the fees disclosed on the most recent GFE as compared to the fees at closing. Only fees directly impacted by the change circumstance can be added and/or increased and re-disclosed.

Mortgage Brokers will be held liable for tolerance violations due to the broker's error and M&I will withhold the amount needed to cure a violation from the broker's compensation at settlement. Mortgage brokers should ensure they properly follow M&I's procedures for notification of changed circumstances.

## Rate Locks and Extensions

Rate Lock Requests cannot be processed until a complete application package has been submitted to and entered on M&I's loan origination system and the "Application Update" is sent to the Broker.

The rate sheet code used for the rate lock will be based on the rate sheet in effect the latter of the:

- Distribution of M&I's "Application Update" to the Broker (indicating a completed application) or
- Receipt of the Rate Lock Request Form

The date and time of distribution of M&I's "Application Update" is based on the date and time stamp on M&I's fax machine. The date and time of receipt of the Rate Lock Request Form will be determined by the date and time stamp indicated by M&I Home Lending Solutions' Rate Desk fax machine.

The Rate Lock Request Form is used to lock a Rate Sheet Code to the loan. Once the loan is locked, the rate can only change due to a qualified Changed Circumstance, i.e. borrower request. Mortgage Brokers must properly submit a Changed Circumstance Notification Form. Do not use the Rate Lock Request Form to change a borrower's rate and corresponding price. Remember, the broker's compensation cannot increase unless the loan amount changes and part of the broker's compensation is related to a percentage of loan amount, i.e. lender paid broker premium.

The M&I Rate Desk will confirm a completed rate lock by faxing a Rate Lock Confirmation to the broker. Please note: The price listed on the Rate Lock Confirmation may be adjusted to comply with the disclosed YSP on the initial GFE.

Rate Locks may be extended no more than three times with a corresponding price adjustment.

Refer to the Rates & Forms page of [www.mihomelendingsolutions.com](http://www.mihomelendingsolutions.com) for the current rate lock / extension forms and policy.

**Please contact your M&I Home Lending Solutions Account Executive or Broker Support with your questions.**

Phone: **(800) 827-2654 Option 4 (Broker Support)**

Website: [www.miHomeLendingSolutions.com](http://www.miHomeLendingSolutions.com)



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