



# Ensuring a Solid Foundation For RESPA Compliance In 2010

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**TOTAL Compliance™ Webinar Series**

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# Welcome to Today's Webinar

Moderator:

Michael Chan, Vice President  
ComplianceEase

Speakers:

Laura Gipe, Compliance Specialist &  
Andrew Fay, Team Leader  
U.S. Dept. of Housing and Urban Development

Donald Lampe, Partner  
Womble Carlyle Sandridge & Rice PLLC

Jason Roth  
Senior Vice President  
ComplianceEase

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## RESPA Reform in Context

- ❖ Most sweeping disclosure reform since 1974 enactment, and a long time coming
- ❖ **“HUD NEARS FINAL RESPA RULE TO SAVE CONSUMERS BILLIONS OF DOLLARS”**
  - HUD Release No. 03-024, March 11, 2003
- ❖ **“Consumers have a tougher time comparing alternatives when trade-offs are involved...”**
  - A Study of Closing Costs for FHA Mortgages, Urban Institute, 2008
- ❖ **“Millions of Americans simply don't understand all the fine print of their mortgages and this...is at the heart of today's mortgage crisis.”**
  - Brian Montgomery, HUD Asst. Secretary for Housing

## **Your Institution: RESPA Checkpoints**

- ❖ Hopefully...your internal systems and technology are just about ready to “go live” with new disclosures
- ❖ Do you understand how the new disclosure rules will be enforced?
- ❖ If there are mistakes, do you understand available corrections and cures?
- ❖ Does your institution’s implementation balance RESPA requirements with Truth-in-Lending?
- ❖ Do you know how states will be treating fees under the new disclosures?
- ❖ Review latest and greatest FAQs from HUD



GFE

HUD-1/1A



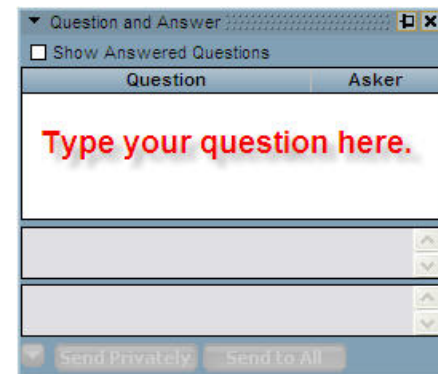
## Upcoming Online RESPA Workshop

- ❖ Tuesday, December 15<sup>th</sup> at 11:00AM Pacific Time (2:00PM Eastern)
- ❖ If you are interested in a “deeper dive” into RESPA and how to complete new GFE and HUD-1/1A forms
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## Discussion Topics

- ❖ Last-minute RESPA checklist and review of the latest frequently discussed topics
- ❖ Understanding liability under RESPA and untangling federal and state laws
- ❖ Getting your technology in order for Jan. 1
- ❖ Q&A - Send questions by entering them on the Question and Answer box on the right panel...



Question	Asker
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## Laura Gipe



- ❖ Actively involved in development of 2008 RESPA rules
- ❖ Joined Department of Housing and Urban Development (HUD) in 2006, investigating potential violations of RESPA
- ❖ Coordinates collaborative enforcement with state regulators
- ❖ Previously worked in private industry for a number of prominent attorneys and title companies in the Washington, D.C. area
- ❖ Extensive experience in all aspects of real estate settlement process
- ❖ Licensed title producer since 1997, personally conducting thousands of settlements





## Donald Lampe



- ❖ Attorney with Womble Carlyle, leading the Regulatory Compliance and Consumer Credit Practice Team
- ❖ Experience with TILA, RESPA, FDCPA, FCRA/FACTA, HERA, ECOA, HMDA and fair lending, GLBA, government lending programs and state consumer credit laws
- ❖ Significant experience serving as counsel to industry respondents in actions brought by state and federal regulators
- ❖ Frequently called on to advise and represent national trade groups and industry organizations in the banking and consumer financial services sector
- ❖ Testified before the U.S. Congress on comprehensive housing finance legislation three times since 2007





## Jason Roth



- ❖ SVP Product Development and co-founder of ComplianceEase
- ❖ Responsible for design of ComplianceAnalyzer, which audits loans for compliance with federal, state and municipal requirements
- ❖ More than 10 years of experience in technology, including expert systems and web services platform technologies
- ❖ Previous work includes software positions at Adobe Systems, Inc. developing Adobe Acrobat and PDF document technology





# **New RESPA Rule Implementation**

**Andrew Fay & Laura Gipe**



## **Background/Purpose**

- ❖ Proposed Rule issued March 2008, final rule issued November 2008
- ❖ Final rule issued after roundtables, stakeholder meetings, congressional meetings and public comment
- ❖ Designed to prevent bait and switch of loan products and undisclosed increases in costs



## **Key Concepts**

- ❖ **Help consumers shop for the best loan**
- ❖ **Shopping leads to greater competition & lower prices**
- ❖ **Key final terms of the loan disclosed to the borrower at closing**
- ❖ **Preserve a competitive market for all settlement service providers**

## **Are You Ready?**

### ❖ **When will you start?**

- If before January 1st, do you know what providers are ready?

### ❖ **When to issue the GFE**

- What are your triggers (all 6 +...?)
- Who will issue? Lender direct, mortgage broker?

### ❖ **Changed Circumstances**

- Notification of changed circumstances.
- Who will issue revised GFE?

## **Are You Ready?**

### ❖ **Shoppable services**

- What services may the borrower shop for?

### ❖ **Prepare your written list**

- If provider is selected, subject to 10% aggregate tolerance
- If no provider is listed, presumed to not be shoppable, subject to 10% aggregate tolerance

### ❖ **Closing Instructions & HUD-1 page 3 information**

- Page 3 may be transmitted “pro-forma” style
- Settlement agent should not have to look through loan docs to complete

## **Are You Ready?**

- ❖ **Tolerance cure: What is your policy?**
  - Before settlement?
  - Within 30 days after settlement?
  - Through settlement agent?
  - Direct to borrower?
- ❖ **Document retention - at least 3 years**

## **Most Frequently Discussed**

### ❖ **What services must be on the GFE?**

- All lender required services typically paid by the borrower
- Exception: must always include Owner's title insurance on all purchase transactions

### ❖ **Initial GFE by any loan originator is the binding GFE**

- Lenders will be accountable for mortgage broker's GFE

## **Most Frequently Discussed**

- ❖ Although listing of service provider is considered a referral, without a “thing of value” and an agreement or understanding, there is no violation of RESPA Section 8
- ❖ Additional disclosure may be added to the written list stating the originator is not endorsing the service provider
- ❖ Lenders may list their affiliate as the only service provider, but must distribute the AfBA disclosure

## **Most Frequently Discussed**

### ❖ **Block 1 “Our origination charge”**

- Contains all lender AND mortgage broker origination points, processing and administration charges (all or some of this line represents the mortgage broker compensation)
- Origination charges may not be itemized on GFE or HUD-1
- Exception: if a state or governmental loan program requires the specific itemization, a lender may itemize on the HUD-1 on blank lines in the 800 series
- May not change unless loan amount or loan product changes



# **Ensuring a Solid Foundation For RESPA Compliance In 2010**

**Donald Lampe**



## **The New Rules and State Laws**

- ❖ State Law considerations not new but amplified by new RESPA Rule
- ❖ New rule may not be in synch with state law disclosure timing and content requirements – will be state-by-state determination
- ❖ As under existing law, state law requirements for/restrictions on title charges, settlement service charges, lender-retained fees and costs must be taken into account

## **The New Rules and State Laws – cont'd**

- ❖ Permitted fees and charges under state law – the “disaggregation” conundrum, particularly for state high-cost laws/predatory lending
- ❖ State law REMEDIES
  - State law statutory remedies for federal disclosure violations
  - UDTPA for “misleading” disclosures, federal law not a “ceiling” but a “floor”
  - HUD’s enforcement posture not binding on states!

## **The New Rules and State Laws – cont'd**

- ❖ Average charges (nothing new, really) may not comply with state laws limiting fees and charges
- ❖ Who is the “settlement agent” (varies by state) and how will lender assure compliance?
- ❖ Don't forget: state examinations, including MMC/MEGs from CSBS/AARMR – defective GFE (delivery, content) shows lack of “good faith”

## **What Does HUD Say?**

- ❖ Not much – generally, no ability to interpret state law or other federal law such as TILA
- ❖ HUD looked at comments from CSBS, AARMR and NACCA, who asked for simplicity, clarity, consistency (TILA, RESPA, state disclosures)
- ❖ GFE: “settlement charges based on common practice and experience in the locality” but form must be used as prescribed and --
- ❖ New GFE form and instructions could negate common local practice and experience

## **What Does HUD Say? – cont'd**

- ❖ FAQ's, "GFE – Important dates," #9), response – hard to understand, says RESPA does not "exempt compliance with consistent state laws," but Q: does state law banning a particular practice (broker can't quote rate) prevent a particular GFE-mandated disclosure from being provided?
- ❖ Still need to look at Sec. 3500.13, the preemption rule- "inconsistent" state laws preempted, to extent of inconsistency – more guidance needed

## **Specific Considerations**

- ❖ “Title services” (GFE Block 4) is by reference to state law (title insurance regulation and practice (UPL; typical charges)
- ❖ Likewise for GFE Block 7 (Gov’t recording charges) and Block 8 (Transfer taxes)
- ❖ “Required services you can shop for” may be inconsistent with state anti-coercion laws
- ❖ Required list of SSP’s from lender – how do nat’l lenders know who’s who in Podunk USA?

## **GFE Disclosure**

- ❖ Aggregation of fees into “blocks” – but lender often must “disaggregate” into fees and charges that may be restricted or limited by state law
- ❖ Zero tolerances difficult, if not unworkable, for Transfer taxes (Block 8) – who will “pay the bill” when documents recorded?
- ❖ Lenders should review state rate lock disclosure forms and procedures, for consistency with new GFE

## **GFE Disclosure – cont’d**

- ❖ Lenders should consider filling out all 3 columns “Tradeoff table” on page 3 -
  - Some state laws may require different offers to be presented
  - State regulators may well expect it, for consumer protection
- ❖ In effect, “safe harbors” for potential state law violations tied to federal disclosures:  
**TOLERANCES; re-disclosure based on “changed circumstances”**

## **HUD-1 Disclosure**

- ❖ Remedies revisited: lenders should consider post-close diligence and cure as means of mitigating state law statutory remedies tied to federal disclosures
- ❖ BUT cure may not be as easy as it looks – must go back through settlement agent, who must re-issue and re-deliver HUD-1 (with lenders' check)
  - Difficult if settlement agent is “mom and pop” – communication, cost ,cooperation
  - Lenders should establish procedures in advance

## **Points and Fees**

- ❖ **Some states: particular lists or descriptions and amounts of permitted lender-retained fees - for GFE these go into Block 1, Your origination charges**
  - In GFE, Block 1 includes application, commitment, origination, underwriting, handling, processing, wire & other fees and do not itemize separately in GFE
  - State laws typically don't require itemization, but a matter of proof of compliance by lender (to borrower's attorney and state regulator)

## **Points and Fees – cont'd**

- ❖ HUD says if state law requires further itemization of loan originator fees (Line 801), then may be done is Line 808 and additional lines – but if state law doesn't, HUD says not to
- ❖ Variety of approaches by states as 1 January 2010 approaches
  - State regulators may assume that Line 801 represents “points and fees” or that Line 801 is an “origination fee”
  - State regulators may look to other “itemization” provided by creditor
  - In some states, not clear – need to monitor

## **Points and Fees – cont'd**

- ❖ Under state high-cost home loan laws, detailed inclusionary and exclusionary rules for “points and fees” threshold
  - Not only lender and broker fees, but host of settlement service charges (e.g., Reg Z “(c)(7)” fees, as per HOEPA)
- ❖ For title charges, consider adding lines after Line 1106, to “disaggregate” Line 1101 into component parts per HOEPA/high cost home loan laws
- ❖ HUD says: may attach schedule to HUD-1, disaggregating relevant fees

## **Points and Fees – cont'd**

- ❖ Consider separate state disclosure with itemization of relevant fees and charges – state regulators may (soon) require this, anyway
- ❖ At least, carefully document components of each Block and Line & retain in records, if not in loan files, to demonstrate state law compliance
- ❖ Bugaboos will include items such as attorneys' fees (different functions – doc prep, abstracting, closing/settlement fee), seller paid items or charges not required by the lender

## “State” Regulation

- ❖ New Rule in effect prohibits YSP’s and discount points in same transaction – really a state law issue, but something state regulators have criticized for quite some time
- ❖ State regulators concerned whether “discount points” are “bona fide”, but new Rule seems to treat YSP’s and DP’s as interchangeable
- ❖ HUD says and otherwise it’s obvious that wholesale lenders must be “in charge” of brokers – perhaps changing relationship that is governed by state law

## “State” Regulation – cont’d

- ❖ Allocation of liability – higher compliance risk on lender under new Rule, with renewed importance on indemnities
- ❖ States say mortgage brokers have “fiduciary duty” to borrowers, but brokers may have hard time performing to the standard, if brokers get discouraged from dealing with multiple lenders
- ❖ Need to pay attention to new laws/rules that would limit broker comp/YSP’s



# **RESPA 2010 – Getting your Technology in Order**

**Jason Roth**



## **Getting your technology in order**

- ❖ Checklist of key RESPA issues
- ❖ Technology to be aware of
- ❖ How to prepare your systems



## ➔ Making technology preparations

1. Follow a checklist of key issues
2. Understand the systems you rely on
3. Make changes or get help from vendors





## **Follow a checklist of key issues**

- ❖ You need to generate the new disclosures
- ❖ “Aggregate” fees (Our Origination Charge, etc.)
- ❖ Broker fees are broker fees, even if they are lumped in with “origination charges”
- ❖ Discount Fees and Yield Spread Premiums
- ❖ APR still needs to be correct, even if charges are added up in an “aggregate” fee



## **Understand the systems you rely on**

- ❖ Loan Origination System
- ❖ Document Preparation System
- ❖ Automated Compliance System



## **Loan Origination System**

- ❖ May produce initial disclosures (GFE, HUD-1/1a)
- ❖ Store and/or calculate the new “aggregate fees”
- ❖ Product / Pricing modules – Discount points and Yield Spread Premiums now credit or charge
- ❖ Services it connects to may have changed
- ❖ Can it keep track of redisclosure requirements



## Document Preparation System

- ❖ Absolutely must generate the new forms
- ❖ May require you to provide the new “aggregate fees” or may calculate them for you
- ❖ If initial and final disclosures are separate – be careful about mismatches
- ❖ How do you specify what we used to call “Discount Points” and “Yield Spread Premiums”
- ❖ Will information from LOS transfer over correctly



## **Automated Compliance System**

- ❖ Needs to sort out whether each state requires you to itemize components of “aggregate fees”
- ❖ Should check your math when you do itemize
- ❖ If you need to audit older loans, it needs to still handle legacy GFE, HUD-1/1a data
- ❖ What if an LOS has not updated all of its vendor connections – can compliance system handle it
- ❖ We estimate more than 100 state laws are affected by the new fees and disclosures

## **Make changes or get help from vendors**

- ❖ Target your identified key systems
- ❖ Contact vendors, go over your checklist
- ❖ Make IT aware of expected changes
- ❖ How about some real world examples?



## **Sample changes - ComplianceAnalyzer<sup>®</sup>**

- ❖ Add new “aggregate” fees, allow itemization via “component” fees, check math
- ❖ Ensure new “aggregate” fees are correctly included or excluded according to high-cost laws
- ❖ Automatically audit using aggregate or component fees, depending on state law
- ❖ Ensure correct APR calculation, based on how fees were disclosed
- ❖ “Translate” Yield Spread Premium and Discount Points to credit or charge

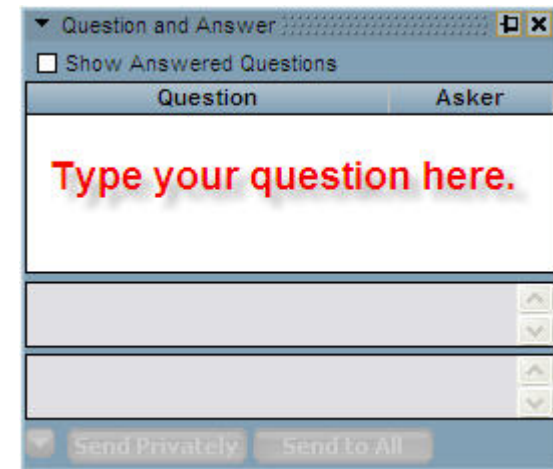
## **Final thoughts**

- ❖ Don't be afraid to ask HUD for help
- ❖ Don't be afraid to ask vendors for help
- ❖ Don't be afraid to ask legal counsel
- ❖ Best of luck in 2010!



## Q & A

- ❖ Send your questions to the Speakers by entering them on the Question and Answer box on the right panel...



Question	Asker
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# Speaker Contacts

❖ **Donald Lampe**

Womble Carlyle Sandridge and Rice PLLC

1.336.574.8057

[dlampe@wcsr.com](mailto:dlampe@wcsr.com)

❖ **Laura Gipe**

Dept. of Housing and Urban Development

1.202.708.0502 x3569

[Laura.T.Gipe@hud.gov](mailto:Laura.T.Gipe@hud.gov)

❖ **Jason Roth**

ComplianceEase

1.650.373.1111 x1107

[j.roth@complianeease.com](mailto:j.roth@complianeease.com)





GFE

HUD-1/1A



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