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## **“Intent to Proceed” and the New Good Faith Estimate**

**by Jonathan Foxx**

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Our **Regulatory Compliance Outlook** column is published monthly in the [National Mortgage Professional Magazine](#), considered one of the country's premier mortgage industry publications. This post is published in the March 2010 edition.

Since the introduction of the new Good Faith Estimate (GFE), several readers of this monthly column have written to me about their concern regarding HUD's new requirement for a waiting period to elapse before collecting fees from the consumer, other than the credit report fee.

HUD has taken the recently revised Federal Reserve Board Truth-in-Lending (TILA) regulations – which limit fees, charged in connection with early disclosures, and defines the timely provision of the disclosures – and incorporates this rule into a way of permitting the borrower to shop for a mortgage loan without paying upfront fees that, in HUD's view, impede shopping. That TILA rule, simply stated, is that **creditors are not permitted to impose a fee on a consumer in connection with the consumer's application for a mortgage before the consumer has received the TILA disclosure**. The Federal Reserve Board makes an exception that allows imposition of a fee that is *bona fide* and reasonable in amount for obtaining the consumer's credit history. (73 FR 44522, July 30, 2008)

HUD has a public policy goal of creating a “circumstance” where consumers can shop for a mortgage loan without paying significant upfront fees that may impede shopping. Consequently, HUD has in effect adopted the Federal Reserve Board's rule, limiting the charge originators may impose on consumers for delivery of the GFE.

## Intent to Proceed

A loan originator is expressly not permitted to charge, as a condition of providing a GFE, any fee for an appraisal, inspection, or similar settlement service.

To be clear, the loan originator may not accept payment from the consumer – except for the payment of a credit report fee – in any form whatsoever, such as by a post-dated check or an unprocessed credit card impression, or any other kind of payment method which could constitute constructive receipt of payment.

Furthermore, and significantly, **HUD has imposed an additional requirement** that affects the collection of fees from a consumer: the loan originator may collect fees beyond the cost of a credit report for origination-related services only after a loan applicant both receives a GFE and indicates an **intention to proceed** with the loan covered by the GFE.

## Two Requirements

**Note the two requirements:**

- (1) the delivery of the GFE to the loan applicant, and
- (2) the loan applicant's notification of an intention to proceed with the loan covered by the GFE.

It is not until **both conditions** are satisfied that a loan originator may collect fees from a loan applicant for services, other than the cost of obtaining a credit report.

Thus, a loan originator must issue a GFE no later than 3 business days after the loan originator receives an application or information sufficient to complete an application AND must be notified of the loan applicant's intent to proceed before collecting fees, with the exception of the credit report fee.

## Remedy

There is a remedy and we have counseled our clients to implement it for their residential mortgage loan applications.

Either by written or verbal methods, our clients now use a form, entitled **INTENT TO PROCEED WITH MORTGAGE LOAN APPLICATION**.

The written form, subtitled **Applicant(s) Certification**, contains the following written affirmations, is signed by the loan applicant, and returned with the application package (alternatively, the loan applicant may contact the loan officer to offer verbal affirmations):

- The initial Good Faith Estimate has been provided within three business days of the application date (business days, excluding Sundays and specified, legal Holidays).
- The initial Good Faith Estimate was received.
- I/We intend to proceed with the loan application based on the initial Good Faith Estimate.

- Other than a credit report fee, no fees were charged prior to receiving the Good Faith Estimate.

**The third bullet contains the essential words about the applicant's intention to proceed with the loan application based on the initial Good Faith Estimate.**

The verbal form, subtitled **Loan Originator Certification**, is used by loan officers and requires their signed attestation, and contains the following verbal affirmations:

- The initial Good Faith Estimate was provided to the Applicant(s) within three business days of the application date (business days, excluding Sundays and specified, legal Holidays).
- The Applicant(s) received the initial Good Faith Estimate.
- The Applicant(s) intend to proceed with the loan application based on the initial Good Faith Estimate.
- Other than a credit report fee, no fees were charged to the Applicant(s) prior to receiving the Good Faith Estimate.

It is important that a statement on both the **Applicant(s) Certification** and **Loan Originator Certification** forms include, but not be limited to, further indicating that the subject form itself is not a loan commitment; the loan originator cannot guaranty acceptance into any loan program, specific loan terms, or conditions; and the loan application is subject to credit approval, acceptable property appraisal, title report, and satisfactory completion of conditions stated in commitment or approval letter.

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