



## **2012 Bulletin 4 Correcting HUD-1 to Cure Tolerance Violations February 10, 2012**

Recently, a number of questions have been raised arising out of lenders conducting internal audits and discovering tolerance violations. Those lenders are refunding any excess paid and then asking the settlement agent to prepare a revised HUD-1 to reflect the refund.

While we have all been trained that the final, signed HUD-1 is your disbursement authorization and should not be modified without all parties re-signing the Closing Statement, there is no requirement in RESPA or the rules implementing the HUD-1 that the parties sign the revised (or any) HUD-1. In fact, issuing a corrected HUD-1 post closing is the mechanism expressly authorized by HUD for this situation.

As we all know, it is the loan originator's responsibility to reimburse the borrower the amount by which the actual settlement charges exceed the permitted tolerances.<sup>1</sup> Although the loan originator is responsible for reimbursement, the loan originator may authorize a third party (including the settlement agent) to send the reimbursement to the borrower.<sup>2</sup> Even if a seller or person other than the borrower pays for a settlement service, the loan originator (or a third party authorized by the loan originator) must reimburse the borrower for any tolerance violation that might have occurred.<sup>3</sup> Under §3500.7(i), a borrower will be deemed to have received timely reimbursement if the payment is delivered or placed in the mail within 30 days after settlement.<sup>4</sup>

Whenever a tolerance violation is cured, an amended HUD-1 must be issued by the settlement agent. It is the loan originator's responsibility to notify the settlement agent of the changes necessary to correct the HUD-1.<sup>5</sup> The amended HUD-1 must state the actual charges paid by the borrower and seller.

HUD specifically authorized two different ways to reflect the correction of the tolerance violation on an amended HUD-1.

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<sup>1</sup> Questions (2) & (5), RESPA FAQs at p. 41 (rev. 4/2/10)

<sup>2</sup> Question (7), RESPA FAQs at p. 41 (rev. 4/2/10)

<sup>3</sup> Question (13), RESPA FAQs at p. 43 (rev. 4/2/10)

<sup>4</sup> There is a question as to whether the lender may be liable for damages or statutory penalties when the refund is made outside the 30 day window for curing tolerance violations – but that does not affect our duties as the settlement agent. See 24 C.F.R. §3500.7(i)

<sup>5</sup> Question (8), RESPA FAQs at p. 42 (rev. 4/2/10)

1. One way to disclose a violation cure is to correct the amounts listed on page two and three of the HUD-1 to reflect the actual amount charged to the borrower (i.e., the amount from the initial HUD-1 less the reimbursement).<sup>6</sup> On a blank line in the applicable section, the settlement agent should make a notation that the loan originator has made a P.O.C. payment of a specified amount to correct a tolerance violation. HUD provided an example of how this might look:

In this example, assume the original HUD-1 showed \$1,000 of transfer taxes on line 1203, but the tolerance should have limited it to \$800.

<b>1200. Government Recording and Transfer Charges</b>				
1201. Government recording charges	(from GFE #7)			
1202. Deed \$	Mortgage \$	Release \$		
1203. Transfer Taxes	(from GFE #8)		\$800.00	
1204. City/County tax/stamps	Deed \$	Mortgage \$		
1205. State tax/stamps	Deed \$	Mortgage \$		
1206. Transfer taxes \$200 P.O.C. (Lender) to meet tolerance				

You would also update the comparison chart on page 3 of the HUD-1 to reflect the credit.

2. The second way to reflect this is to show it as a credit to the borrower on page 1 of the HUD-1, with a description of the service(s) the credit is applied to. If the tolerance cure is applied to the overall tolerance category “Charges That in Total Cannot Increase More Than 10%,” the tolerance cure credit may be listed as a lump sum amount on a blank line in Lines 204 thru 209 with a description of the tolerance category cure.<sup>7</sup>

Again, the comparison chart on page 3 of the HUD-1 should reflect the credit given for that service to cure the potential tolerance violation in the appropriate tolerance category.

Here’s what that type of aggregate adjustment might look like:

<b>200. Amount paid by or on behalf of the Borrower</b>	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loans taken subject to	
204. Cure for “10% tolerance category” P.O.C.	\$200.00

After the necessary changes have been made to the HUD-1, the settlement agent must provide copies of the corrected HUD-1 to the Borrower, Seller, loan originator and other affected parties. But signature is not required.

The best practice is to mark the corrected HUD-1 as “Amended” to distinguish it from the original HUD-1. This is expressly contemplated in the FAQ’s.<sup>8</sup>

ALTA’s RESPA Implementation Task Force has commented at some length on two ways of disclosing. Their discussion can be found [here](#):

<sup>6</sup> Question (9), RESPA FAQs, p. 42 (rev. 4/2/10)

<sup>7</sup> Question (12), RESPA FAQs, p. 43 (rev. 4/2/10)

<sup>8</sup> Question (11), RESPA FAQs, p. 42 (rev. 4/2/10)

We have attached pertinent parts of the HUD FAQ's on these issues. The full text of the FAQ's can be accessed at <http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf>

While FLTA strives to provide solid information on the thinking of our regulators, information is not the same as legal advice or the application of law to an individual's specific circumstances. Although we go to great lengths to make sure our information is current, accurate and useful, we recommend you consult a lawyer if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation. That having been said, here are what we consider "Best Practices" when amending a HUD-1.

1. Document your file as to everything that the lender has provided, and ask for a copy of the final GFE for your file. Get the amount of the adjustment in writing – or at least confirm it back to them in writing.
2. Label the Amended HUD-1 as "Amended" so that there is no confusion with the original HUD-1.
3. Especially where the refund of a tolerance violation doesn't change the economics to the other parties, it is not necessary to have all parties sign. The lender and the party benefitting from the refund have consented to the change by issuing and accepting the payment. The other parties should be unaffected.
4. You will often lack proof that the refund has actually been made – just as we frequently don't have great proof of all the P.O.C. payments. You can rely on the statement of the lender that the refund has been made, but we suggest phrasing your cover letter in terms that make clear that the lender advised you that the borrower has been paid directly.
5. In your cover letter, explain the situation, the refund and the reason you are providing a corrected HUD-1 in detail.

Some thoughts on a sample cover letter are attached. Obviously, it will need to be customized for the specifics of your transaction.

## Sample Letter Transmitting the Amended HUD-1

Dear \_\_\_\_ [Borrower] \_\_\_\_\_

In a review of your file, your lender determined that the amount you were charged for [describe] inadvertently exceeded their Good Faith Estimate and the allowable deviations by \$\_\_\_\_\_.

They contacted us and indicated that they had already issued a check in that amount to you, and asked that we prepare an Amended Closing Statement so that you and the other parties to the transaction would have an accurate compilation of the economics of your transaction -- taking into account that refund.

We are happy to provide this for you and urge you to add this to your permanent closing file. The information on the enclosed Amended Closing Statement may be needed by your tax preparer at year end and again when you eventually sell the property.

If you have any questions about the Amended Closing Statement, or did not receive the refund from your lender, please do not hesitate to contact me.

Cc:    Seller  
      Lender  
      Others

**Excerpts from  
New RESPA Rule FAQs  
Updated April 2, 2010**

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Section 4 and 5 – Right to cure and tolerance violations

1) Q: If there is an inadvertent or technical error on the HUD-1, is this considered a violation of Section 4 of RESPA?

A: As long as a revised HUD-1 is provided to all parties within 30 calendar days after settlement, it would not be considered a violation of RESPA Section 4.

2) Q: Who is responsible for any tolerance violation?

A: The lender is responsible for curing tolerance violations.

3) Q: Does the settlement agent have to stop the closing if a tolerance would be violated?

A: No, the settlement agent does not need to stop the closing. While HUD recommends that the lender cure the tolerance violation at closing, the lender has 30 calendar days to cure.

4) Q: If a charge on the HUD-1 is less than the charge on the GFE, is this a tolerance violation?

A: No. It is permissible for charges to the borrower to decrease. This is not considered a violation.

5) Q: What happens if the charges are not properly calculated on the GFE and later result in a tolerance violation? Will the settlement agent be responsible for paying the difference to the consumer?

A: The lender is responsible for curing all tolerance violations; not the settlement agent. The lender must cure the violation at closing or within 30 days after settlement.

6) Q: If a loan originator pressures a settlement agent to reduce their charges or to cover the difference to bring the costs into compliance with the tolerances, is that considered a violation of RESPA Section 8(a)?

A: If a loan originator (or other settlement service provider) pressures a settlement agent (or other settlement service provider) to reduce their charges or otherwise cover the difference to bring the costs into compliance with the tolerances as a condition of receiving future referrals of business, it may be considered a potential violation of RESPA Section 8(a). Please contact the Office of RESPA and ILS to file a complaint.

7) Q: If the lender does not cure a tolerance violation at closing but does cure the violation within the 30-day right-to-cure period, who sends the borrower the reimbursement? Who prepares the revised HUD-1?

A: The lender is responsible for making the reimbursement, but either the lender or a third party authorized by the lender (including the settlement agent) may send the reimbursement to the borrower. RESPA and § 3500.8 of HUD's regulations require the settlement agent (person conducting the settlement) to complete the HUD-1 Settlement Statement. Therefore, a HUD-1 that is revised to adjust charges, such as to cure a tolerance violation, is also completed by the settlement agent.

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8) Q: If the lender refunds money to a borrower to correct a tolerance violation and does not inform the settlement agent, has the settlement agent violated Section 4 of RESPA by not providing a revised HUD-1?

A: If the lender does not inform the settlement agent of the changes, the settlement agent is not in violation of Section 4 of RESPA for not providing an accurate HUD-1. The lender is responsible for informing the settlement agent of any changes that would necessitate a revised HUD-1 because the lender is responsible for transmitting to the settlement agent all information necessary to provide an accurate HUD-1. After the lender informs the settlement agent of changes, the settlement agent must correct the HUD-1 and provide copies of the corrected HUD-1 to the borrower, seller, and lender, as applicable.

9) Q: How is a potential tolerance violation that is corrected by the lender shown on the HUD-1?

A: The settlement agent must prepare a revised HUD-1 that states the actual charges paid by the borrower and seller. If the lender pays for a portion of a charge to cure a potential tolerance violation, the amounts for the charge shown on page 2 of the HUD-1 must be corrected to show the actual amount charged to the borrower. The settlement agent should include on a blank line in the applicable series a notation that the lender has made a P.O.C. payment of a specified amount to correct a potential tolerance violation. After the revised HUD-1 has been prepared by the settlement agent, the settlement agent must provide the revised HUD-1 to the borrower, the lender, and the seller as appropriate.

The example below illustrates how a cure for \$200.00 of transfer tax charges should be listed:

1200. Government Recording and Transfer Charges				
1201. Government recording charges		(from GFE #7)		
1202. Deed \$	Mortgage \$	Release \$		
1203. Transfer taxes		(from GFE #8)	\$800.00	
1204. City/County tax/stamps	Deed \$ 1000.00	Mortgage \$		
1205. State tax/stamps	Deed \$	Mortgage \$		
1206. Transfer taxes	\$200 P.O.C (lender) to meet tolerance			

10) Q: Is the tolerance threshold for HUD-1 Lines 801, 802 and 803 separate or is the tolerance threshold the aggregate of the three lines?

A: HUD-1 Lines 801, 802 and 803 each have a separate tolerance threshold.

11) Q: If a settlement agent revises a HUD-1 to cure a technical error or to reflect a tolerance cure, may the settlement agent mark the HUD-1 as .Amended. to distinguish from the original HUD-1?

A: Yes. If a settlement agent revises a HUD-1 to cure a technical error or to reflect a tolerance cure, the settlement agent may mark the HUD-1 as .Amended. to distinguish it from the original HUD-1.

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12) Q: May a credit for a tolerance cure be listed on page 1 of the HUD-1?

A: The cure for a potential tolerance violation may be listed as a credit to the borrower on page 1 of the HUD-1 with a description of the service(s) the credit is applied to. If the tolerance cure is applied to the overall tolerance category “Charges That in Total Cannot Increase More Than 10%”, the tolerance cure credit may be listed as a “lump sum” amount on a blank line in Lines 204 thru 209 with a description of the tolerance category cure.

This example illustrates a \$180 tolerance cure for the 10% tolerance category:

<b>200. Amount Paid by or in Behalf of Borrower</b>	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204. Cure for "10% Tolerance Category"	\$180.00

13) Q: If a seller or person other than the borrower pays for a settlement service (through a credit on page 1 of the HUD-1) and the lender corrects a potential tolerance violation for that service, may the seller or other person receive the tolerance correction or must it always go to the borrower?

A: The borrower must receive the tolerance correction in accordance with 24 C.F.R. §3500.7(i).

14) Q: In some areas the deed and deed of trust are recorded after a transaction closes and funds. If the actual amount of transfer taxes increases and the settlement agent later collects the increase from the borrower, would this be a tolerance violation even if it occurred after settlement?

A: Yes. Whether settlement charges are collected before, during or after settlement, if the charge exceeds the tolerance threshold, there is a tolerance violation.

15) Q: In some areas the deed and deed of trust are recorded after a transaction closes and funds. If the settlement agent pays the difference to get on record and intends to collect the increase from the borrower, may the lender reimburse the settlement agent directly to cure the potential tolerance violation?

A: If the settlement agent pays the difference in transfer tax on behalf of the borrower, the lender may reimburse the settlement agent. The settlement agent must prepare a revised HUD-1 showing the cure of the potential tolerance violation and send the revised HUD-1 to the parties in the transaction, as appropriate.