

RD AN No. 4585 (1980-D)
July 11, 2011

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Loan Coordinators,
Area Directors and Specialists

FROM: Tammye Treviño *(Signed by Tammye Treviño)*
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
RD Instruction 1980-D, Section 1980.324
Lender Charges and Fees

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify and expand upon Agency requirements under RD Instruction 1980-D, Section 1980.324(a), for routine charges and fees that a lender may charge borrowers. The Agency wishes to prevent lenders from charging excessive fees for guaranteed loans and protect low and moderate income borrowers from paying excessive loan fees, or borrowing funds for fees that are not reasonable and customary.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4510 (1980-D), dated April 27, 2010, which expired on May 31, 2011.

EXPIRATION DATE:
July 31, 2012

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

IMPLEMENTATION RESPONSIBILITIES:

RD Instruction 1980-D, Section 1980.324(a), states that lenders “may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.” Rural Housing Service considers loans guaranteed under the Single Family Housing Guaranteed Loan Program (SFHGLP) to be similar to loans insured or guaranteed by the Federal Housing Administration (FHA) or by the Department of Veterans Affairs (VA). Fees charged by a lender to borrowers for loans guaranteed under the SFHGLP should not exceed fees charged by the same lender for loans insured or guaranteed by the FHA or VA.

Discount points representing a reduction to the note interest rate from the rate authorized in Section 1980.320, of RD Instruction 1980-D, may be included in the loan guaranteed by the SFHGLP for low-income applicants only in accordance with Section 1980.310(d) of RD Instruction 1980-D. Discount points representing other fees and charges (i.e., loan size adjustments, credit score adjustments, origination or processing charges as part of the production of the loan application, or any other charge not relating to an interest rate reduction) may be charged by the lender, but may not be included in the loan guaranteed by the SFHGLP for purchase transactions. Discount points for refinance transactions may be included in the loan guaranteed by the SFHGLP subject to the requirements and restrictions applied to refinance transactions.

The Agency reviews loan applications for completeness and to determine whether the proposed loan is to an eligible applicant for an eligible loan purpose. If when reviewing a loan application the Agency determines that a lender proposes to charge fees, or use loan funds to pay for fees that appear questionable or too high, the Agency should ask the lender to justify the fees prior to issuing the conditional commitment. A lender should be able to document that the charges or fees assessed against borrowers whose loans are guaranteed under the SFHGLP do not exceed charges or fees routinely made by the lender for similar transactions such as FHA or VA loans. Lender justification should only be required when the Agency is reasonably certain that the fees being charged are not reasonable and customary and, therefore, ineligible for SFHGLP loan purposes.

Under the new RESPA rules that lenders have had to comply with since January 1, 2010, lenders are no longer required to itemize loan origination fees on the Settlement Statement (HUD-1). The sum of loan origination fees is now disclosed as “our origination charge” on line 801 of the HUD-1. In accordance with HUD Mortgagee Letter 2009-53, if a government program or state law requires that lenders provide more detailed information to specify distinct origination fees and charges, lenders may itemize these charges in the empty 800 lines of the HUD-1. The Agency has a responsibility to ensure that lenders are not charging excessive fees; therefore, lenders should utilize line 808 of the HUD-1 (left of the column) and additional sequentially numbered lines, as needed, to itemize the origination fees and charges.

The Agency should review the HUD-1 upon receipt of the loan closing package from the lender, or when conducting lender compliance reviews. The Agency review ensures that SFHGLP borrowers are being charged fees that are reasonable and customary, including fees that may not have been included in the SFHGLP loan. Lenders that are determined to be out of compliance should be counseled on the provisions of the regulation and be monitored closely for future compliance. Failure to resolve the noncompliance may result in termination of lender eligibility under Section 1980.309, of RD Instruction 1980-D.

Should there be any comments or questions concerning this AN, please contact the Single Family Housing Guaranteed Loan Division at 202-720-1452.