American Bankers Association
American Escrow Association
American Financial Services Association
Housing Policy Council
Consumer Mortgage Coalition
Mortgage Bankers Association

October 13, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

The Honorable David Stevens
Assistant Secretary for Housing / FHA Commissioner
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Defects with Changing RESPA Requirements and Need For Alternative Implementation Schedule

Dear Secretary Donovan and Assistant Secretary Stevens:

The undersigned trade associations appreciate the efforts the Department of Housing and Urban Development (HUD) has made, and continues to make, to help the mortgage industry understand and implement the requirements of the new regulations that implements the Real Estate Settlement Procedures Act (RESPA).

Despite the best motivations of HUD, and the sincerest efforts of the industry, we are headed for a mortgage market train wreck on the tracks of RESPA compliance. Unfortunately, the gap between the rule, which was unclear, and practical implementation is not being successfully bridged by the FAQs. In many instances, the FAQs, which HUD just began publishing in mid-August 2009, are further complicating the process of developing systems that will enable lenders and other mortgage service providers to deliver RESPA-compliant loans. Some of the FAQs are inconsistent with the rule while others clearly have unintended consequences to consumers, so further changes will be needed.

Additionally, eleven months of the original fourteen-month transition period have elapsed and all of the outstanding questions from industry are still not answered. The result is that with less than three months remaining until the implementation date of January 1, 2010, HUD has not provided

the clear and needed guidance on a timely basis to enable the industry to be fully RESPA-compliant by the first of the year.

We note that industry participants have made independent judgments on key issues absent the availability of sufficient and timely guidance. In some cases, the independent assumptions are consistent with the still developing FAQs, but in other instances, they differ. As a result, industry participants are at different stages in their implementation of the FAQs, with some still awaiting a conclusion to HUD issuances on the matter, because the FAQs are changing the rule. Since industry participants changed their systems based on assumptions, which may not be consistent with the FAQs, reversing course at this time is not possible. Considering these concerns, lenders and other settlement service providers should be permitted to choose to use the new or old forms without sanction or liability during a reasonable implementation period.

In light of the issues we describe in this letter, the undersigned organizations respectfully request that you postpone the implementation date of the rule and take the following steps to achieve effective implementation of the rule:

- Finish resolving all of the issues we describe in this letter. (We believe many of the issues we discuss require revised FAQs to ensure consumers can receive clear disclosures and other important benefits.)
- *Then* provide the industry with a reasonable implementation period before compliance becomes mandatory.
- Notify the public, pursuant to § 19 of RESPA, that beginning on January 1, 2010 and through the implementation period, use of the new or old forms will not constitute a violation of RESPA in transactions subject to the rule.

Without taking the steps recommended above, widespread consumer confusion, crippling market dysfunction, and a strong possibility of an imminent litigation morass are on the horizon.

I. Overview

The new RESPA rule has far-reaching implications. It not only changes disclosures for virtually all consumer mortgage transactions across the nation, it also makes enormous changes to business practices, systems, processes, and indeed to the very infrastructure of consumer mortgage lending. The breadth of these infrastructure changes has required the mortgage industry to make a very significant financial investment to implement the final rule since it was published in November 2008. Literally, tens of thousands of "man hours" have been devoted to this project

Coming into compliance with a rulemaking this far-reaching entails an extremely complex and demanding set of interconnected actions by institutions that either provide credit or services to credit-providers. Every lender, mortgage broker, settlement services provider, and their third-party vendors must first understand the revised rules, and then identify and measure the new provisions' impact on every aspect of their business lines and overall operations. Then each industry participant must design methods to ensure full compliance while controlling for any

negative consequences, if possible. For example, the new rules govern the timing of the disclosures the industry makes, so creditors need to design lending practices accordingly. Affected entities must determine whether to employ vendors for specified activities and, if so, which one, at what cost, and at what level of service. This is not merely a cost issue – the determination requires a thorough assessment of whether each firm has the capacity to manage the revisions to the rule either in-house or through a service provider.

After having identified the general compliance needs, the actual implementation work begins. The new disclosures require modifications to several data systems so that each and every line and block on the new good faith estimate (GFE) and settlement statement (HUD-1/HUD-1-A) is correctly populated. To assure this outcome, lenders and service providers must identify which data elements must be accessed, when, where the data must be delivered, and in which form.

Lenders in particular must go through extensive implementation processes because RESPA affects lenders during the entire loan origination process, from before a borrower applies for a loan, through underwriting and terms negotiation, approval, preparing for closing, closing, and post-closing checks for RESPA compliance. Also, because data must be communicated between the various industry participants (e.g., lender and broker or title company), communication protocols must be compatible even when the sender and recipient use different data technology. Every data transfer must be complete, accurate, timely, and secure. Every change requires programming redesign and development, validation testing, error correction, and retesting. Information security protections must be expanded to cover changes to data transfers. Staff must be trained in loan production, customer service, compliance, and information technology.

The seriousness and complexity of this situation is compounded by the need to also come into compliance with three separate major rulemakings at the same time—the Mortgage Disclosure Improvement Act changes to Regulation Z, the amendments to Regulation C under the Home Mortgage Disclosure Act (HMDA), and the changes under the Home Ownership and Equity Protection Act to Regulation Z.

It is within this operational setting that the industry is now required to fully incorporate the massive changes set forth by the new RESPA FAQs. The logistical problems that the industry faces are enormous and are carefully described in the pages that follow.

Some of the requirements need to change to ensure the following:

- Loan originators will provide written lists of settlement service providers to encourage shopping for settlement services without excluding small or regional providers.
- Consumers may still elect to use the services of brokers to shop for loans.

- Consumers may continue to receive loan preapprovals so they may efficiently shop for homes.
- Consumer disclosures about future interest rate adjustments are accurate and not misleading.

- Loan originators and settlement service providers have a reasonable amount of time to implement the several new requirements HUD has announced through FAQs. The new requirements include:
    - Loan originators must revise the HUD-1 to accommodate the tax deduction for points, in a change announced October 7, 2009 that conflicts with the regulation.
    - Prohibited use of HUD-1A on non-sale transactions when lenders cover borrower costs.
    - A new requirement must be met before loan processing may begin.
    - Where forms do not accommodate state law, FAQs require a procedure to preempt state law that is not possible by January 1, 2010.
    - FAQs require disclosure of an unimportant and confusing date on revised GFEs.
    - FAQs are increasing inconsistencies between RESPA and TILA disclosures.
- HUD answers unresolved questions.

For these reasons, it is essential that HUD delay the final implementation date, resolve the issues discussed in this letter, announce all the requirements, and then provide a new and reasonable amount of time in which to implement the final requirements, before holding parties to the regulation or FAQs. Also, for the reasons described earlier in this letter, HUD should permit lenders and other settlement service providers to use the new or old forms without sanction or liability.

Finally, we recommend that during the revised implementation period a number of less critical but useful refinements be made to the RESPA requirements. For example, this would provide a good opportunity to remove some of the inconsistencies with Truth in Lending Act (TILA) disclosures, both the familiar inconsistencies as well as new inconsistencies that the FAQs have created. Improving the disclosures by eliminating the inconsistencies would make the disclosures fully useful to consumers.

II. Written Lists Of Service Providers Should Support Rather Than Stifle Consumer Shopping

Unfortunately, the FAQs will cause lenders to prohibit shopping.

The new regulation requires lenders to include with a GFE a list of providers of settlement services for which a consumer may shop if the lender permits that shopping. The rule provides:

> Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.[1]

[1] Appendix C to Part 3500—Instructions For Completing Good Faith Estimate (GFE) Form, 73 Fed. Reg. 68204, 68254 (November 17, 2008).

The borrower may select a service provider from the list, in which case the loan originator is bound to the charges disclosed in the GFE, within tolerances. If the borrower selects a provider that is not on the written list, the loan originator is not bound by the charges in the GFE for services by a provider from outside the written list. The FAQs, however, present a new interpretation that will stifle shopping by increasing risks and costs to loan originators who permit shopping. The FAQs provide:

> **Q:** The GFE Instructions require that where a loan originator permits a borrower to shop for third party settlement services covered in Blocks 4, 5, or 6, the loan originator must provide the borrower with a separate written list of settlement service providers at the time of the GFE. Is inclusion on the written list of identified providers considered a referral under Section 3500.14?
>
> **A:** Yes, the inclusion of a specifically identified settlement service provider on the "written list" is considered to be a referral under 24 CFR § 3500.14(f).[2]

First, this raises a genuine concern that borrowers will consider loan originators to be responsible for the performance of the providers. By expressly stating that a loan originator refers a borrower to each identified provider, the FAQ makes it more likely that borrowers will view loan originators as being responsible for the performance of any identified provider.

Second, by expressly stating that the mere identification of a provider is a referral to the provider under § 3500.14(f), the FAQ enhances the potential for RESPA § 8 claims. The referenced provision, § 3500.14(f), implements RESPA § 8, which prohibits giving or accepting:

> any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.[3]

Ironically, while one of the purposes for which Congress enacted RESPA was to prohibit referrals in exchange for a thing of value in the real estate settlement business, the FAQs *require* loan originators to make referrals to particular settlement service providers when loan originators permit shopping.

As a result of the FAQs, if loan originators permit shopping, they must make arrangements with settlement service providers, while carefully avoiding making or receiving any "thing of value" in connection with a "written list" of service providers. This is quite difficult because the term "thing of value" is very broad, and is clearly not limited to direct payments. Thus, even a careful assessment does not rule out the potential for claims that impermissible things of value are paid or received in connection with written lists because the FAQ deems the list a referral.

Borrowers and State Attorneys General may bring actions under RESPA § 8. Thus, even if HUD advises it will take a reasonable approach to this issue, others may still bring claims and class action claims, well founded or otherwise.

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[2] FAQs page 10, number 4 (September 18, 2009).
[3] 12 U.S.C. § 2607(a).

The result of the FAQs is that loan originators now have a new and very strong incentive not to provide written lists, that is, to *prohibit* borrowers from shopping for settlement services. ***This is directly contrary to the intent of the regulation, which is to encourage shopping.***

The better approach for consumers would be to allow lenders to list settlement service providers without substantial litigation risk.

If HUD's concern is that a loan originator may include its affiliates on its written list, there is a simple approach to address such a concern without taking the position that including any party on the list is a referral. HUD could simply require that if a loan originator includes its affiliate on the loan originator's written list, the consumer must be provided with an Affiliated Business Arrangement Disclosure regarding the affiliate at or before the time the list is provided. It is already common practice for lenders to deliver that disclosure with a GFE, as permitted by § 3500.15(b)(1).

Moreover, the FAQs have created another unexpected implementation project and an ongoing regulatory burden even when loan originators do provide written lists. The FAQs state that loan originators may only include in their written list settlement service providers that are likely to serve the borrower's area.

> **Q:** Must the loan originator provide names only of those settlement service providers known to do business in the locality of the mortgage property or may the loan originator provide a list of national settlement service providers who may or may not do business in the locality of the mortgaged property?
>
> **A:** The requirements for the new GFE form provide that "[w]here the loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers." The list should contain settlement service providers that are likely available to provide the settlement service for the borrower.[4]

From this FAQ, the industry learned for the first time that written lists, which under the regulation were a simple disclosure obligation, now require due diligence concerning whether service providers are "likely available" in every market area in which the lender may make a loan. As a result, national or regional loan originators will try to list only those service providers that they know can handle business nationwide or region wide in every locality where they may originate a loan. It is already readily apparent that for some required settlement services, e.g., pest, septic or well inspection, no nationwide settlement service providers exist. In the alternative, those loan originators will be required to develop methods of identifying service providers in every community in which they may conceivably originate a loan and ensure that the name and settlement service provider appears on the list. This will necessitate the establishment of a methodology to identify providers in such communities and the development of systems to populate both the settlement service provider list with the names of those providers and the GFE with the price of the particular provider's services. Small service providers

[4] FAQs page 11, number 7 (September 18, 2009).

continued likely availability would be uncertain and would require continuous monitoring which will not only be costly but challenging from an operations perspective.

Thus, this new requirement will likely encourage loan originators to decline to provide written lists at all when they can. Some states require borrowers to be able to shop for certain settlement service providers, so in these states lenders will be forced to provide a list. Even if they do offer written lists, loan originators will avoid small settlement service providers because of the new requirement to monitor their likely availability. Rather than encourage shopping, this FAQ will limit it.

To encourage rather than prevent shopping, to avert another implementation hurdle, and to permit small businesses to participate in the market for settlement services, HUD should: (i) remove the FAQs that define a written list as a referral and require monitoring of the likely availability of settlement service providers; and (ii) add a FAQ permitting originators to disclose that inclusion of any settlement service provider in the list is not an endorsement of the provider.

III. Consumers and Lenders Should be Able to Choose to Do Business With Mortgage Brokers

HUD's new FAQs have radically altered the requirements when mortgage brokers provide GFEs. This guidance came as a surprise and creates a significant implementation challenge that, until resolved, will impede consumers' and lenders' ability to use the services of mortgage brokers.

The RESPA regulations have long provided that a mortgage broker may deliver a GFE to a consumer and that a lender also may deliver a GFE. Lenders frequently provide their own GFE after a mortgage broker provides its GFE, to make certain the cost estimates are consistent with the lender's estimates. The new regulation did not change this. The new rule says, "[t]he lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE."[5]

The new rule did raise questions about which GFE binds which party when there are two GFEs on the same loan. It provides, "[t]he loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower[.]"[6] Because the term "loan originator" includes both lenders and brokers, the rule does not resolve the issue of who is bound by which GFE when there are two that differ. To address this ambiguity, a letter from the industry dated February 18, 2009 to HUD[7] asked the following questions:

[5] 24 C.F.R. § 3500.7(b)(1).
[6] 24 C.F.R. § 3500.7(f).
[7] Consumer Mortgage Coalition February 18, 2009 letter to HUD.

- After a broker issues a GFE, "[m]ay the lender provide its own GFE and be bound only by its own GFE?"
- "If so, is the mortgage broker still bound by its GFE absent changed circumstances or borrower-requested changes?"
- "If the lender provides its own GFE … [m]ay the lender rely on more or less application information than the broker did in issuing its GFE?"
- "May the lender have a different list of providers of services for which the borrower may shop?"
- "Must both the lender and the broker comply with redisclosure and recordkeeping requirements?"
- "If not, do both need to keep records of the reason for the redisclosure for three years after settlement?"
- "Information constituting changed circumstances or borrower-requested changes might become available to the broker and lender at different times. Is compliance for each loan originator governed by when it receives the information?"

Although these questions were posed in February 2009, they were not answered until six months later, approximately four months before the regulation was to become fully effective. More importantly, the responses depart considerably from the regulation. The regulation permits both lenders and brokers to deliver GFEs, and it does not prohibit a lender from delivering a different GFE after a broker delivers one on the same loan.

The FAQs make clear that it is now HUD's view that a broker's GFE binds the lender that accepts a loan even if the broker delivered the GFE without the lender's prior knowledge or agreement.

> If the lender accepts the GFE issued by the mortgage broker, the lender is subject to the loan terms and settlement charges. Charges for the credit or credit for the interest rate chosen and the adjusted origination charge may not change (zero tolerance). Timely communication between the lender and the mortgage broker is essential to assure compliance.[8]

Moreover, the FAQs also make clear that a lender's acceptance of the loan does not constitute a "changed circumstance" that would permit issuance of a new GFE. Then, the FAQs address what constitutes a changed circumstance:

> **[Q:]** A mortgage broker issues a GFE based on one lender's loan products and origination fees, but places the loan with a different lender.
>
> **A:** No, this would not constitute a changed circumstance.[9]

The FAQs further provide:

[8] FAQs page 7, number 17 (September 18, 2009)
[9] FAQs page 14, number 8(xv) (September 18, 2009). First published in the September 18, 2009 version of the FAQs.

> **[Q:]** A mortgage broker issues a GFE that a lender does not accept and the lender does not receive the application within three days of the date the broker received the application.
>
> **A:** This does not constitute a changed circumstance.[10]

Thus, the FAQs provide that if a lender decides to accept a loan after a broker issues a GFE, the lender is bound by the broker's GFE and its tolerances even if the lender has never seen the GFE, and even if the broker and borrower had intended to go to a different lender when the broker prepared the GFE.

As the FAQs make clear, a lender rejecting a broker's GFE is not a "changed circumstance." In the absence of a changed circumstance, the lender will have no alternative but to decline the application (which perversely inflates the HMDA decline data).

It is possible that a broker will issue a GFE that no lender accepts, for a creditworthy consumer, although the broker remains bound by the GFE. Since, in this case, the creditworthy consumer would not be able to get a loan, we wonder if the developing position behind the FAQs is that brokers are not permitted to deliver GFEs until after clearing them with a lender. If this is HUD's position, we believe HUD should be clear. If it is not, we believe HUD should permit a lender's rejection of a GFE to be a changed circumstance.

Since HUD's position is that the lender is bound by the GFE issued by the broker, the lender will likely be liable for tolerance violations resulting from differences in settlement charges that cannot be addressed as "changed circumstances." In the alternative, lenders may simply refuse brokered loans. Shutting down the broker distribution system for mortgage product at this time will limit consumer choices, and would seem contrary to the intent of the rule to promote consumer shopping. Moreover, given the current state of the industry and the economy, now is not the time to inject this type of disruption into the mortgage system; such result directly conflicts with the Administration's efforts to make mortgage credit readily available to more consumers.

A better outcome for consumers would be to continue to permit lenders to either accept the GFE that is issued by the broker or to issue a corrected version of the GFE that contains accurate information on which the consumer can rely.

The industry began working to implement the regulation in November 2008. From November 2008 until September 2009, the industry understood that both lenders and brokers would be permitted to issue GFEs on one loan. Having just recently learned that brokers and lenders will need to reengineer their origination processes for brokered loans, the practical result will likely be a disruption in consumer's access to loans originated by brokers.

[10] FAQs page 13, number 8(i) (September 18, 2009). First published in the September 4, 2009 version of the FAQs.

The FAQs should not suddenly prevent consumers from using the services of brokers, who may be able to help consumers shop for loans.

Rather, HUD should clarify that the rule permits lenders to issue their own GFEs if the GFE that the broker has issued contains incomplete or inaccurate information.

IV. Consumers Must be Able to Continue to Benefit From Loan Preapprovals Before Shopping for Homes

Consumers find loan preapprovals from lenders useful in shopping for homes. Preapprovals help buyers determine how much home they can afford and enable them to shop for homes in their price range. At the same time, preapprovals help property sellers target their efforts to prospective borrowers who will be able to close a purchase. Loan preapprovals have long been a sound industry practice for good reason.

Preapproval programs, as defined by Regulation C[11], require lenders to base their decisions on a comprehensive credit underwriting, in which the lender collects and reviews the information it typically collects and reviews in making a credit decision. For a preapproval program to be covered, the lender must issue a binding written commitment for approved applicants or deny the request and issue an adverse action notice under Regulation B, based on review of the applicant's credit record. Property addresses are not required.[12]

The RESPA rule provides that loan originators may not charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. They may only charge the cost of a credit report before delivering a GFE.[13] A GFE requires an application, and an application requires a property address.[14] This seems to preclude loan preapprovals unless a lender is willing to underwrite a borrower without charge, which is not feasible. Mortgage loan underwriting is costly.

The industry sought clarification on whether this was HUD's intent. In a FAQ about preapprovals, HUD said:

> **Q:** How may applications under a preapproval program as defined by Section 203.2(b)(2) of Regulation C be treated?
>
> **A:** For the purposes of RESPA, "application" is defined at 24 CFR § 3500.2(b). The RESPA rule does not address preapprovals or the information required in relation to

[11] 12 C.F.R. Part 203 ("Regulation C").
[12] 67 Fed. Reg. 7222, 7224 (February 15, 2002)
[13] 24 C.F.R. § 3500.7(a)(4) and (b)(4).
[14] 24 C.F.R. §§ 3500.7(a)(1); 3500.2(b).

preapprovals. The Federal Reserve is responsible for promulgating, interpreting and enforcing Regulation C."[15]

This does not answer whether RESPA rules permit preapprovals before a lender may deliver a GFE and charge an application fee. Moreover, another FAQ implies, but does not make clear, that HUD intends to prohibit preapprovals before a lender delivers a GFE and may assess a fee for the cost of the approval.

> **Q:** Are loan originators permitted to process a loan without all six pieces of information included in the definition of an application?
>
> **A:** Yes. Loan originators may process a loan after they have issued a GFE and the borrower has received the GFE and has decided to proceed with the loan. It is presumed that, prior to issuing a GFE, a loan originator has received all six pieces of information.[16]

In the absence of clear guidance, it is not likely that lenders will process preapprovals. The FAQs to date have not been clear on this question.

Consumers need to be able to get a preapproval before they select a property address. The rule or the FAQs should not eliminate a valuable consumer service that helps consumers shop for a home, especially in difficult markets. Loan originators should be permitted to deliver a GFE, charge an application fee, and process an application before there is an address, and when the consumer gives the address to the loan originator, revise the GFE.

HUD needs to provide clear guidance that preapprovals can continue to be available to consumers and that lenders may charge a reasonable fee for them.

V. Consumers Should Obtain, and Lenders Should Be Permitted to Make, Accurate, Non-misleading Disclosures About Rate Adjustments on ARM Loans

Government, consumers, and the industry all agree that borrowers need clear and accurate information on potential adjustments to interest rates on adjustable rate mortgage (ARM) loans. For this reason, the new RESPA forms will provide this information. The HUD-1 requires lenders to complete the following:

> *Every change date, your interest rate can increase or decrease by ___%.*

[15] FAQs page 4, number 10 (September 18, 2009). We respectfully submit that when HUD promulgates a rule with implications that as are far-reaching on the consumer mortgage industry as those of Regulation X, HUD should consider and take into account the existence of and purposes behind other federal regulations affecting the industry that HUD's rule will directly implicate.

[16] FAQs page 8, number 24 (September 18, 2009).

However, the FAQs would require misleading disclosures. The FAQ requires lenders to fill in the blank with "the amount, stated as a percentage[.]"[17] An example in the FAQ shows the blank being completed to provide that the "interest rate can increase or decrease by 1%".

A typical ARM may have an initial rate, for example, of 6%, and the rate may increase annually on the "change date" by one percentage point. That means the rate can go up to 7% on the first change date and to 8% on the second change date, and so on, until it hits a rate cap.

But the FAQ *requires* lenders to complete the quoted language with a percentage, not a number of percentage points. Using the example from the FAQs, the lender puts "1" in the blank, so the consumer would be told:

*Your initial interest rate is **6** % . . .*
*Every change date, your interest rate can increase or decrease by **1** %.*

But one percent of 6 is 0.06. That is, while the rate can increase to 7% at the first change date, the lender is required to tell the consumer that the rate will increase to no more than 6.06%.

If required to use the FAQs, to make the HUD-1 statement accurate, the lender could put 16.7 in the blank, telling consumers that on the first change date the rate can increase by 16.7%, to 7%. This is accurate, but only for the first year, and it would likely be very confusing to consumers. At the second change date, the rate might increase from 7% to 8%, which is a 14.3% increase, not the 16.7% the HUD-1 would have disclosed to the consumer.

Also, at the second change date, the rate might not go up to 8%, if the rate increase was under the rate cap on the first change date. Suppose, for example, the loan had an initial rate of 6%, but at the first change date the rate increased only to 6.5%. On the second change date, the rate could increase up to 7.5%. Because the lender cannot know, when completing the HUD-1, what the future rates will be, it is not possible for lenders to complete the HUD-1 accurately as to ARMs.

The better approach would be to provide:

*Your initial interest rate is **6** % . . .*
*Every change date, your interest rate can increase or decrease by **1 ~~%~~ percentage point**.*

Notably, another FAQ relating to the same disclosure in the HUD-1 addresses rate changes for ARM loans that have lifetime but not periodic caps, or caps but not floors on rate changes. The FAQs instruct lenders to enter into the blank the difference between the floor and ceiling.

> **Q:** How should the loan originator complete the answer to the question, "Every change date your interest can increase or decrease by ____%", on the HUD-1, if the loan does not contain a cap of periodic interest changes other than by setting the overall floor and ceiling?

[17] FAQs page 42, number 10 (September 18, 2009).

A: If the loan offered does not contain a cap of periodic interest change other than by setting the overall floor and ceiling, the loan originator should complete the answer to the question, "Every change date your interest can increase or decrease by ____%" with the difference between the floor and the ceiling.

Q: How should the loan originator complete the answer on the HUD-1 to the question, "Every change date your interest can increase or decrease by ____%", if there is a cap on periodic increases, but not on periodic decreases?

A: If the loan offered does not contain a cap on decrease of periodic interest, the loan originator should complete the answer to the question, "Every change date your interest can increase or decrease by ____%" with the difference between the floor and the ceiling.[18]

Suppose an ARM loan has a 6% initial rate, a 1 percentage point cap on annual rate increases, and a 2 percentage point lifetime cap on rate increases, but no floor on rate decreases. The FAQs appear to require lenders to put "8" in the disclosure, because the loan rate can float between zero and 8%.

If this is the intent, the disclosure in this example would tell the consumer that the rate can increase or decrease by 8% on every change date. That, however, would be inaccurate. The fact is that the rate can increase by no more than 1 percentage point on any change date, while it can decrease by well more than 1 percentage point.

Or perhaps the FAQs require the lender to disclose that the rate can increase or decrease by 1%. While the rate cannot increase by more than 1 percentage point, the rate can decrease by much more than what the disclosure would reveal.

In addition, some loans have different rate caps at different change dates. The mandated disclosure language relating to interest rate changes does not contemplate programs in which the permissible change on the first change date is different than for the remaining change dates. The choice is to insert the higher or lower amount of the change, implying that will be the amount of the change for all interest rate changes. It is misleading to tell a consumer that the rate may change by a certain percentage at each change date if, in fact, that is not the case.

Even if the HUD-1 were modified to provide for disclosure of potential rate changes as a change in percentage points, the form still would not accurately address many ARM loans. The HUD-1 does not allow for a loan that has a lifetime cap without a periodic cap, a loan with a cap but not a floor, or a loan with different caps at different change dates. HUD should permit changes to the mandated language of the HUD-1 to ensure that consumers are not provided with inaccurate and misleading disclosures.

The Federal Reserve Board has recently proposed extensive changes to TILA disclosure rules concerning ARM loans.[19] RESPA and TILA rules should not require different disclosures about

[18] FAQs page 42, numbers 11 and 12 (September 18, 2009).
[19] 74 Fed. Reg. 43232 and 43428 (August 26, 2009).

the same facts. Since the industry will need time to implement the changes that the FAQs are making to the RESPA disclosure requirements, we urge HUD use the available time to revise the disclosures requirements to permit lenders to make accurate ARM disclosures on a standard form, consistent with TILA disclosures, and then permit the industry a reasonable implementation period before compliance becomes mandatory.

Lenders should be permitted to make accurate disclosures on a standard form.

Loan originators should have a reasonable amount of time to comply with the changes necessary to make accurate ARM disclosures on a standard form.

VI. A New FAQ Amends the HUD-1 to Conform to the IRS Requirements on the Tax Deductibility of Points, But the FAQ Conflicts With the Final Rule, and HUD-1 Amendments Require Time To Implement

The tax-deductibility of mortgage points, under IRS rules, depends of the disclosures on HUD-1 forms. As finalized in November 2008, the HUD-1 did not accommodate the IRS requirements concerning this tax deduction. We are pleased that HUD has published a new FAQ to remedy this matter. The new FAQ, published on October 7, provides:

> A loan originator may designate any origination point paid on page 2 of the HUD-1 in Line 801. The designation should follow 'Our Origination Charge' either by adding the language 'Includes Origination Point' (_% or $__) or by placing an asterisk (*) and adding the language at the bottom of the page.[20]

This FAQ directly conflicts with the final rule.

The instructions for Line 801 of the HUD-1A in the final rule provide that

> Line 801 is used to record ''Our origination charge,'' which includes all charges received by the loan originator, **except any charge for the specific interest rate chosen (points)**.[21]

The "our origination charge" disclosures on Line 801 of the HUD-1 appear in Block 1 of the GFE. The instructions for Block 1 of the GFE provide that:

> The loan originator must state here all charges that all loan originators involved in this transaction will receive, **except for any charge for the specific interest rate chosen (points).**[22]

[20] FAQs page 33, number 10 (October 7, 2009).

[21] Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements, 73 Fed. Reg. 68204, 68244 (November 17, 2008) (emphasis added).

[22] Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, 73 Fed. Reg. 68201,

First, HUD needs to provide for consumer's continued ability to deduct points in a manner that is consistent with the final rule.

Second, once HUD determines how to permit consumers to deduct points consistently with the final rule, a reasonable amount of time will be necessary to come into compliance. It appears that a change to the HUD-1 will be necessary. Loan origination documents today are maintained, used, and retrieved electronically. There are a number of different loan origination technology systems across the industry, as well as within individual companies. Implementing a change to a settlement statement will require revisions to be designed, programmed, tested, and implemented separately into each of these systems. Because the industry's systems retrieve data to populate HUD-1 lines from a number of databases, changing a line requires coordination with each of the affected databases. Changes to loan origination systems must be made in a coordinated fashion because each change can impact other changes that are being designed and made simultaneously.

An example of what amending a HUD-1 requires is the attached Draft Uniform Specific Closing Instructions. This is a data transfer protocol the industry is developing to assist lenders transfer data to title companies to close mortgage loans. Months in the making, this helps ensure that each line of a HUD-1 contains the correct information for a closing. An amendment to Line 801 of the settlement statement must be coordinated with the data transfer systems that every consumer mortgage lender and every title company uses.

HUD finalized a rule in November 2008, required changes in August and September 2009, and then published another change to the HUD-1 on October 7, 2009 that conflicts with the final rule. HUD needs to address the conflict with the final rule, and the industry needs time to implement the method HUD will develop, so consumers will continue to be able to deduct their points consistently with the final rule.

HUD needs to provide for consumers' continued ability to deduct points in a manner that is consistent with the final rule and the IRS requirements, and provide a reasonable amount of time to implement the method HUD will develop.

VII. FAQs Prohibit the Use of the Shorter HUD-1A on Non-sale Transactions When Lenders Reduce Loan Costs

The revised Regulation X incorporates two revised settlement statements, the HUD-1 and the abbreviated HUD-1A. As under past RESPA regulations, the difference between the two forms is that the HUD-1 is designed for mortgage transactions that involve a buyer and seller, while the HUD-1A is designed for mortgage transactions that have no seller, such as loans that tap equity unrelated to a sale of property. Lenders have understood this distinction since the final rule was

68253 (November 17, 2008) (emphasis added)

issued last November, and have been going through the lengthy process of incorporating the two new forms into their business operations.

The HUD-1A does not contain a line to disclose the case where a lender covers some borrower costs. Lenders very commonly cover borrower costs on second or home equity loans. The instructions for completing settlement statements provide:

> Additional lines may be added if necessary.[23]

Lenders had relied on the instructions and had planned to add a line to be able to use the HUD-1 as necessary. In a surprise change, however, the FAQs prohibit the use of the HUD-1A if the lender covers some or all of the settlement costs that were disclosed as payable by the borrower on the GFE.

> **Q:** The General Instructions indicate that if a charge has been shown on the GFE as payable by the borrower but at closing it is paid by another person, including by the loan originator in a loan other than a no-cost loan, the fee should be shown in the borrower's column on the HUD-1 and be offset by listing a credit to the borrower on lines 204-209 of the HUD-1. If a HUD-1A form is being used, lines 204-209 do not exist. How should the credit be shown on a HUD-1A form?
>
> **A:** Use of the HUD-1A form is an optional form to be used by the settlement agent in a transaction in which there is not a seller and as otherwise appropriate. If the use of a HUD-1A form is not appropriate, such as if there is a credit given by a loan originator or other party, the settlement agent must use the HUD-1 form.[24]

This FAQ now requires lenders to start the implementation process anew to remove the HUD-1A from the lines of business that had been incorporating it into their systems, and start to incorporate the HUD-1. Another option would be for lenders to cease covering borrower costs on home equity loans or refinances, which was not the intent of the rule or of the FAQ.

In a separate FAQ, HUD allows flexibility in settlement statements:

> **Q:** On some loans a borrower will make a full regular payment within less than a month and receive an interest credit at closing. May the interest credit, instead of the collection of interim interest, be listed in Line 901 on the HUD-1?
>
> **A:** Yes, an interest credit may be listed (as a negative number) in Line 901 on the HUD-1.[25]

[23] Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements, 73 Fed. Reg. 68204, 68246 (November 17, 2008).
[24] FAQs page 29, number 11 (September 18, 2009). This FAQ was first published in the September 4, 2009 version of the FAQs.
[25] FAQs page 33, number 2 (September 18, 2009).

There does not appear to be a reason to permit flexibility in some cases and to prohibit it others. The better approach would be to permit loan originators to add a line to the HUD-1A as the instructions permit.

HUD should permit use of the shorter HUD-1A statements on non-sale transactions even if a lender or third party covers borrower costs.

VIII. FAQs Require New Showing of Intent Before Loan Processing May Begin

While industry had been planning to comply with the final regulation, the FAQs create a new required step in the loan process.

The final regulation permits loan originators to charge only a credit report fee before delivery of a GFE. Other fees are prohibited until after delivery of the GFE.

> The lender may not charge additional fees until after the applicant has received the GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).[26]

When this rule was finalized last November, loan originators began the process of establishing compliance measures to ensure they did not charge any fee beyond a credit report fee until after delivering a GFE. Some months later, the industry was surprised to discover that the FAQs add a new requirement before fees in addition to a credit report fee may be charged.

> **Q:** At what point can a loan originator charge a loan applicant fees for services other than the cost of obtaining a credit report?
>
> **A:** After a loan applicant both receives a GFE and indicates an intention to proceed with the loan covered by the GFE, the loan originator may collect fees beyond the cost of a credit report for origination-related services.[27]

Now, in addition to delivering a GFE, loan originators must ascertain "intention to proceed" following delivery of a GFE to the borrower. Lenders now have to consider whether to require consumers to sign a written affirmation of intent after receipt of a GFE. This is yet another new implementation hurdle that lenders were not expecting.

It is not apparent that the new FAQ requirement has any consumer benefit. Consumers cannot receive a GFE until after they have provided a loan originator their income information and social security numbers. Consumers will not divulge information that sensitive without strong

[26] 24 C.F.R. § 3500.7(a)(4).
[27] FAQs page 6, number 10 (September 18, 2009). This FAQ was first published in the August 13, 2009 version of the FAQs.

reason to do so. Requiring them to sign a piece of paper that they intend to proceed appears without purpose, and will slow the loan origination process.

We note that the regulation provides that a GFE expires if a consumer "does not express an intention to continue" within a period of time.[28] We believe the "intention to proceed" or "intention to continue" is relevant to the question of when a GFE expires but is irrelevant to when a lender may assess a fee.

HUD should remove the requirement that consumers express an additional intent to proceed before a loan originator may charge an application fee and process a loan.

IX. Forms Do Not Accommodate State Law

Some state laws require disclosures that the new GFEs and HUD-1s do not accommodate. For example the HUD-1 must list "our origination charge" on line 801. In some cases the form also will list the appraisal fee, credit report, tax service, and flood certification fees on lines 804 – 807, respectively. However, if the lender rather than a third-party vendor performs these services, these costs must be listed as loan originator charges on the HUD-1. A FAQ provides:

> **Q:** If the loan originator performs loan origination services typically performed by a third-party for the appraisal, credit report and/or flood certificate, are the charges for these services listed in Lines 804 thru 807 or are the charges included in the loan originator's charge in Line 801 on the HUD-1?
>
> **A:** Charges for the appraisal, credit report and/or flood certificate performed by the loan originator in a transaction must be included in the loan originator's charge listed in Line 801 on the HUD-1.[29]

Some states, however, require that charges for these items be disclosed separately. The guidance provided in the FAQ, therefore, does not accommodate differing state law requirements.

Another example is New Jersey law, which does not permit residential mortgage lenders or brokers to charge an "origination charge."[30] The GFE and HUD-1, even in New Jersey, will require a loan originator to disclose its "origination charge" although the state law does not permit the charge.

State law compliance issues were noted by the industry during the comment period on the proposed version of the RESPA rule, but not addressed in the final rule.

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[28] 24 C.F.R. § 3500.7(f)(4).
[29] FAQs page 33, number 8 (September 18, 2009).
[30] Available here: http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=3394002&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={5930}&softpage=Doc_Frame_PG42

HUD addressed the issue of state laws that differ from RESPA rules in an FAQ concerning states that prohibit mortgage brokers from offering consumers a rate lock. The new GFE requires a loan originator to disclose the date through which the interest rate is available. In response to industry questions, the FAQs provide as follows:

> **Q:** If state law does not permit a mortgage broker to provide an interest rate, how should the mortgage broker complete the "Important dates" section on the GFE?
>
> **A:** RESPA and HUD's regulations do not exempt any person from complying with consistent laws of any state. HUD's regulations provide a process for addressing questions of consistency between state laws and RESPA. See 24 C.F.R. § 3500.13.[31]

The FAQ refers to a regulatory process by which HUD determines whether RESPA preempts a state law.

In this FAQ, HUD seems to be taking the position that GFE and HUD-1 forms may not be amended to accommodate state law, and that the industry must go through the preemption process as to each instance where state or local law requires disclosures that differ from the RESPA forms. This FAQ seems to put the industry in the position of using RESPA forms that do not accommodate state and local law and that will be confusing to consumers, or going through process of identifying each state and local law that might raise an issue and seek a HUD preemption determination.

The industry is very willing to create a working group to identify each state or local law at issue and then provide HUD with that list. HUD, however, will then need to review and make determinations on the industry's recommendations. If the industry's recommendations are not in accordance with HUD's determinations, then an alternative solution will need to be put in place for those issues. We believe HUD would agree that this project is not likely to be completed by January 1, 2010.

We urge HUD to require the use of the new forms only after they can be interpreted or amended to accommodate state and local laws, or until HUD preempts the various laws. HUD should permit a reasonable amount of time to implement the necessary changes.

X. FAQs Require Disclosure of an Irrelevant and Confusing Date In Revised GFEs

The GFE includes a blank space to be filled in with the date through which the disclosed settlement charges are available. That date must be at least 10 days after the date of the GFE, and at the option of the originator may be longer. This time period is intended to give consumers an opportunity to shop for a loan originator and possibly settlement service providers. The

[31] FAQs page 17, number 9 (September 18, 2009).

instructions for completing the GFE state:

> In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE.[32]

GFEs bind loan originators. A loan originator may revise a GFE only under narrow circumstances, such as a borrower requesting revised loan terms, or changed circumstances affecting settlement costs. Even then, the GFE may be revised only as to the item or items that changed, and the loan originator is still bound by all the other disclosures in the original GFE. Because GFEs are binding, the final rule does not require a new 10 business day shopping period in cases in which the originator revises a GFE based on changed circumstances or borrower requested changes. However, HUD takes the following position in an FAQ:

> **Q:** If a revised GFE is provided due to changed circumstances or a borrower requested change, is it necessary to complete Line 2 of the "Important Dates" section on the revised GFE if the shopping period has ended and the borrower has already expressed intent to continue with the application?
>
> **A:** Yes, the loan originator must complete Line 2 in the "Important dates" section. The date entered must be at least 10 business days from the date the revised GFE is provided to the borrower.[33]

There does not seem to a need for the date, and it may confuse borrowers as to rate locks. That is, the consumer has had the initial period to shop, and can continue to shop. The consumer will likely have paid an application fee at this point, and will therefore shop only for settlement service providers and not lenders. The loan originator is already bound by the GFE, so the costs for the services for which the consumer is shopping are constrained by the GFE. The ten-day period at this stage of loan processing does not seem to have particular importance.

Including the date could confuse and consumers about their rate locks, which may have a different schedule. Suppose a GFE expires on day 10 and it discloses a rate that is locked for 14 days. If on day 11 the lender delivers a new GFE that expires 10 days hence, on day 21, the consumer may believe the rate lock is extended until day 21. It actually expired on day 14. We do not believe it is appropriate for consumers to need to track dates they do not need.

HUD should make certain that consumers are not confused by an unimportant date in revised GFEs.

[32] Appendix C to Part 3500—Instructions For Completing Good Faith Estimate (GFE) Form, 73 Fed. Reg. 68204, 68253 (November 17, 2008).
[33] FAQs page 18, number 12 (September 18, 2009).

XI. FAQs Are Increasing RESPA / TILA Inconsistencies

If HUD does delay the compliance date of the RESPA rules to give the industry a reasonable amount of time to implement the new requirements of the FAQs, we believe it would provide an opportunity for HUD to resolve inconsistencies between RESPA and TILA disclosures. The FAQs are creating new inconsistencies between RESPA and TILA disclosures, which we believe will confuse, rather than inform, consumer choice. We describe the new inconsistencies below.

- **Inconsistent TILA and RESPA Definitions of Initial Interest Rate**

The new GFE and HUD-1 require a disclosure of the "initial interest rate." The FAQs explain what this means.

> **Q:** What is meant by "initial interest rate"?
>
> **A:** The initial interest rate is the interest rate that is applicable on the date of closing.[34]

TILA disclosures also must include an interest rate in the APR calculation.[35]

Defining the interest rate at closing is not necessarily straightforward. Some loans may have features not included in the promissory note. For a common example, a seller may agree to pay a fee to the lender to temporarily reduce the borrower's interest rate. Or a lender may agree to charge a discounted interest rate as long as the borrower remains an employee. Typically, none of these arrangements are reflected in the note and, therefore, they are not included in computing the APR. Accordingly, the initial interest rate used for the APR calculation would be based on the note rate, while lenders will be required to disclose a different initial interest rate for RESPA purposes—the rate applicable at closing on the HUD-1.

We recommend that HUD revise its guidance to require RESPA disclosures to use the same initial interest rate used in APR calculations.

- **Inconsistent TILA and RESPA Disclosures of Finance Charges and Title or Settlement Fees**

TILA rules define a "finance charge" as the cost of consumer credit, and require its disclosure to consumers. Although the concept may appear to be simple, the rules governing the finance charge under TILA are complex. (Proposed changes to those rules are currently open for public comment.[36]) For example, the finance charge rules provide:

[34] FAQs page 19, number 6, (September 18, 2009).
[35] 12 C.F.R. § 226.18(e); 12 C.F.R. Part 226 Supp. I Appendix J.
[36] 74 Fed. Reg. 43232 (August 26, 2009).

> The finance charge includes fees and amounts charged by someone other than the creditor . . . if the creditor:
>
> (i) requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or
> (ii) retains a portion of the third-party charge, to the extent of the portion retained.[37]

If a third party settlement agent charges fees, the fees are finance charges if the creditor:

> (i) requires the particular services for which the consumer is charged;
> (ii) requires the imposition of the charge; or
> (iii) retains a portion of the third-party charge, to the extent of the portion retained.[38]

(Note that under these requirements, a separately itemized fee to conduct the settlement is viewed as a finance charge.) Certain fees in connection with mortgage loans are exempt from the finance charge, if bona fide and reasonable in amount. These fees may include:

> (i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
> (ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
> (iii) Notary and credit-report fees; and
> (iv) Property appraisal fees or fees to assess the value or condition of the property if the service is performed prior to closing . . . . [39]

These complex rules require that lenders know exactly what fees the settlement agent is imposing. To comply, lenders typically require settlement agents to provide a draft HUD-1 prior to closing so the lender may make these determinations accurately. Yet the new HUD-1 will have far less information than the current HUD-1 regarding settlement agent fees making it more difficult to compute the finance charge.

In addition, settlement agents often charge borrowers for services that are not lender-required. These settlement charges are not a TILA "finance charge" because the lender does not require the service or retain the fee. On the HUD-1, however, these non-lender charges must be included in the title or settlement fees, and they will therefore be hidden.

The following FAQs set forth HUD's new "lump-sum" approach to the disclosure of settlement and title charges in the HUD-1:

> **Q:** Under the Truth In Lending Act, a settlement or closing fee is generally included in the finance charge, but if a settlement agent charges for a service that the lender does not require and as to which the lender retains no portion of the fee, the fee is not a finance charge. Should fees charged by a settlement agent for services that are not required by

[37] 12 C.F.R. § 226.4(a)(1).
[38] 12 C.F.R. § 226.4(a)(2).
[39] 12 C.F.R. § 226.4(c)(7).

the lender or requested by the borrower be listed on Line 1101 [Title services] and/or Line 1102 [Settlement fee] on the HUD-1, or separately itemized on a blank line?

A: "Title service" is defined to include "the service of conducting a settlement." If a settlement agent requires an additional service involved in the provision of title insurance, the charge for that service would be included with the total charge on Line 1101 on the HUD-1. If a fee for the additional service is not a processing or administrative service paid to a third party, it must be itemized outside the columns on a blank line in the 1100-series.[40]

Q: What are title services?

A: The term "title services" includes:
1. Any service involved in the provision of title insurance, including but not limited to:
- title examination and evaluation
- preparation and issuance of commitment
- clearance of underwriting objections
- preparation and issuance of policies
- all processing and administrative services required to perform these functions (e.g. document delivery, preparation and copying, wiring, endorsements, and notary); and

2. The service of conducting a settlement.[41]

Q: If the title agent conducts the settlement, should the charge for conducting the settlement be included in Line 1101 of the HUD-1, with the itemized charge listed outside the column on Line 1102?

A: Yes, the charge for conducting the settlement must be included in the total on Line 1101. If the charge is paid to a third party, the charge must be itemized outside of the columns on Line 1102.[42]

To summarize, the "title services" disclosure in the HUD-1 will include various fees, some of which are, and some of which are not, finance charges. Further, there will not be an itemization of all the specific fees that are included in the lump-sum disclosure. Loan origination systems, industry wide, use the itemized fee information from the existing version of the HUD-1 to calculate the finance charge. This can no longer be done under the FAQ's lump-sum approach.

Further, borrowers will receive less information than in the past, and will have no way to compare the TILA disclosures to the HUD-1 disclosures. Borrower confusion is sure to result.

This is also a significant problem because lenders simply do not have the time to develop, test and implement alternate means to obtain and assess the information necessary to prepare the TILA disclosures. For these reasons, we urge HUD to delay the implantation date of the RESPA

[40] FAQs page 37, number 18 (September 18, 2009).
[41] FAQs page 34, number 1 (September 18, 2009).
[42] FAQs page 36, number 13 (September 18, 2009).

rules until a method of implementing both sets of disclosures can be created and until there has been a reasonable period of time to implement the revisions.

Ideally, TILA and RESPA disclosures would work together so that lenders and borrowers could better understand which settlement costs are part of the finance charge. Moreover, since the Federal Reserve has proposed to adopt a more inclusive APR as part of its current TILA rulemaking,[43] this is an ideal time to for the agencies to work together on this issue.

HUD should facilitate compliance with RESPA and TILA by permitting use of the HUD-1, or a new method, to calculate the finance charge. HUD should permit a reasonable amount of time to implement a new and necessary compliance method.

- **Inconsistent GFE and TILA Disclosures of Changes**

RESPA rules require a loan originator to revise a GFE under certain circumstances, and the FAQs make clear when GFE revisions are not permitted.

> **Q:** If a GFE is revised to reflect a changed circumstance, may other charges on the GFE be made to reflect market fluctuations?
>
> **A:** No. A GFE may not be revised to reflect market fluctuations.[44]

Under TILA rules, a corrected disclosure is required when the APR becomes inaccurate, which can be caused by market fluctuations affecting one of the components of the APR. When a creditor corrects a TILA disclosure, "the creditor shall provide corrected disclosures with all changed terms."[45] In other words, consumers will receive corrected TILA disclosures that differ from their GFEs.

We urge HUD to permit GFE and TILA disclosures to be as consistent as possible.

- **Inconsistent RESPA and TILA Disclosures of Non-Monthly Payments**

While most consumer mortgage loans have monthly payments, some have biweekly payments or payments twice per month. In the FAQs, HUD made clear that RESPA disclosures must be made as if the payments are monthly when they are not. The FAQs provide:

[43] 74 Fed. Reg. 43232, and especially pages 43241 – 43251 (August 26, 2009).
[44] FAQs page 14, number 9 (September 18, 2009).
[45] 12 C.F.R. § 226.19(a)(2)(ii).

> For loans with payment plans that are not monthly, the periodic payments should be converted to a monthly basis (e.g., payments for a biweekly plan with 26 payments per year would be multiplied by 26/12, quarterly payments would be divided by 3, etc.).[46]

On the other hand, TILA disclosures must include the "amounts and timing" of loan payments.[47] RESPA and TILA disclosures will give conflicting disclosures about the amounts of the loan payments in these cases.

HUD should allow lenders to accurately disclose the amounts of loan payments, even if the payments are not monthly. HUD should permit a reasonable amount of time to implement necessary changes.

- **Inconsistent TILA and RESPA Identification of the Lender in Table Funded Loans**

The FAQs state that the HUD-1 must disclose the identity of the lender, not the broker, in a table-funded loan that closes in the broker's name.

> **Q:** In a transaction that is closed in the mortgage broker's name but is table funded by the lender, must the name and address of the funding lender be shown in Section F (consistent with definition of "lender" under 24 CFR § 3500.2(b)) or may the mortgage broker's name and address be shown?
>
> **A:** The HUD-1 Instructions for Section F state that the name and address of the lender must be stated in this section. Therefore the name of the lender and not the mortgage broker must be stated in Section F on the HUD-1.[48]

Under TILA rules, the broker is identified as the lender when the loan closes in the broker's name. Under TILA, "creditors" must make consumer disclosures. A creditor is a person "who regularly extends consumer credit . . . and to whom the obligation is initially payable . . . on the face of the note or contract[.]"[49]

Consumers are sure to be misled or confused by two different disclosures about the identity of the lender or creditor on one loan.

[46] FAQs page 4, number 6 (September 18, 2009).
[47] 12 C.F.R. § 226.18(g).
[48] FAQs page 29, number 12 (September 18, 2009). *See also* the same version of the FAQs at page 7, number 15, defining an FHA loan correspondent as a broker in all cases. If the loan correspondent closes the loan in its name, the TILA disclosures will list the broker as the lender, while the HUD-1 will disclose the sponsor as the lender.
[49] 12 C.F.R. § 226.2(a)(17)(i).

We urge HUD to revise its guidance to require the lender's identity to be disclosed consistently with TILA disclosures. HUD should permit a reasonable amount of time to implement necessary changes.

- **Inconsistent Requirement For Early Fees**

Both RESPA and TILA rules prohibit charging loan applicants any fee until delivery of a GFE and an early disclosure, with one exception.

a. Under RESPA rules, the exception is for "a fee limited to the cost of a credit report."[50]

b. Under TILA rules, the exception is for "a fee for obtaining the consumer's credit history[.]"[51]

Credit reports and credit histories are commonly viewed as different. We believe the intent behind both rules is to permit loan originators and creditors to obtain information about a loan applicant's creditworthiness, including a credit score, before disclosing the GFE and early TILA disclosure. Having the credit score would improve the accuracy of the disclosures. Use of a credit history may help those consumers who do not have a credit report. It is important that those consumers have the opportunity to access home financing

HUD's guidance should clarify that credit histories and credit scores are afforded the same treatment as credit reports.

XII. Unanswered Questions

With a full compliance date just three months away, there are still unanswered questions about what HUD will require. Significant unanswered questions concern preapprovals and how lenders and brokers are to coordinate their GFEs, as discussed above. We describe other unanswered questions below.

- **Confusion About Requirement For Revised GFEs**

One provision of the new regulation is confusing. The regulation is not clear about when a loan originator may revise a GFE if changed circumstances cause certain settlement charges to increase:

[50] 24 C.F.R. § 3500.7(a)(4) (lenders) and § 3500.7(b)(4) (brokers).
[51] 12 C.F.R. § 226.19(a)(1)(iii).

> *If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.*[52]

Suppose a loan originator issues a GFE that discloses estimated charges for three services, the sum of which is $1000, and the $1000 sum is subject to the 10% tolerance, that is, a $100 tolerance. On day one, due to changed circumstances one of the charges, increases by $45. On day two, due to changed circumstances a second of the charges increased by $45, but the total of the changes is still under the $100 tolerance. On day six, due to changed circumstances the third of the charges increases by $11. The total of the charges subject to the $100 tolerance has now increased due to changed circumstances by $101.

The loan originator may revise the GFE due to changed circumstance. At what point in time does the three days begin to run?

In this case, we seek HUD confirmation that lenders may choose to either: (i) revise the GFE to reflect the new charge within three days of each changed circumstance even if the change does not cause the total charges to exceed the tolerance; or (ii) revise the GFE only within three days of the time the changes in total exceed the tolerance, and include in the revised GFE each of the changes that caused the total to exceed the tolerance.

- **Charges and Credits**

The rule is that a GFE may not disclose both a "credit" and a "charge" for the specific interest rate chosen in Block 2. However, a borrower may agree to pay a fee to a broker and later the borrower may elect to pay points to the lender to reduce the interest rate. Does the ban on disclosing both a credit and a charge mean that the two must be netted and only the net result disclosed, or does the rule prohibit the two from existing on the same loan?

- **No Definition of Application on Brokered Loan**

As noted above, the final regulation does not address the issue of lender and broker dueling GFEs. The final regulation also does not address issues regarding whether an application has been received that triggers the need to provide a GFE, as discussed below.

The final regulation defines a loan application, and states that the application "shall include" seven items. Six are enumerated, and the seventh is "any other information deemed necessary by the loan originator."[53] The timing as to when an application is received is significant under RESPA because a loan originator, either a broker or lender, is required to deliver a GFE within

[52] 24 C.F.R. § 3500.7(f)(1).
[53] 24 C.F.R. § 3500.2(b).

three days of receiving an application. Issues arise because HUD has tasked lenders with policing whether brokers have delivered GFEs.

> The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.[54]

But is the lender required to use the broker's definition of application or may the lender use its own? HUD has published an FAQ on this point that does not answer the question whether the broker's or lender's definition of application binds the lender.

> **Q:** If the mortgage broker has failed to provide the GFE on a timely basis, may the lender issue its own GFE?
>
> **A:** The lender is responsible for ascertaining whether or not the GFE has been provided. If the GFE has not been provided by the mortgage broker, the lender must provide the GFE. The failure to provide a GFE to a borrower within 3 business days of receipt of the borrower's application is a violation of Section 5 of RESPA.[55]

If the broker requires only the six enumerated items on an application but the lender requires more than six items, and both the broker and lender have received the six items but no more, the broker is required to deliver a GFE. If the broker fails to do so, must the lender deliver a GFE to the borrower even though the lender has not received what it requires on an application?

If the broker requires seven items but the lender requires only six, and both the broker and lender have received the six items but no more, the broker is apparently not required to deliver a GFE because it has not received an "application." But the lender has, so the lender must deliver a GFE. At what time does the lender's three-day clock begin to run? When the broker receives the six items? When the lender actually receives them? When the lender is aware of the possibility that some broker somewhere might have received them from some unidentified borrower?

Is the rule that every lender in the entire country that might be approached by a broker at some point is liable if the broker has not delivered a GFE under either the broker's definition of application, or under the lender's definition of application, without regard to what the lender has actually received? Lenders cannot know everything a consumer gives a broker. It would be completely inappropriate to make lenders liable for events they cannot know.

If lenders are required to deliver GFEs based on the broker's definition of application even when the lender uses different application requirements, this would effectively prohibit lenders from requiring any more than the six enumerated application items. Yet the regulation expressly permits lenders to require "any other information deemed necessary by the loan originator."[56]

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[54] 24 C.F.R. § 3500.7(b).
[55] FAQs page 7, number 18 (September 18, 2009).
[56] 24 C.F.R. § 3500.2(b).

Similarly, the FAQs require a revised GFE within 3 days of certain events, without regard to whether the lender is aware of the events.

> **Q:** Information constituting a changed circumstance or borrower-requested changes might become available to the broker and lender at different times. When is the time for providing a revised GFE triggered?
>
> **A:** If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish the changed circumstance. The 3 business days is triggered from the time of receipt by whichever loan originator, either the mortgage broker or the lender, receives the information first. Timely communication between the mortgage broker and the lender is essential to assure compliance.[57]

Thus, if broker learns of changed circumstances or borrower-requested changes that require a revised GFE but does not inform the lender in time for the lender to assess the information and either deny the loan or issue a revised GFE, the lender remains bound by the unrevised GFE. This is not appropriate and serves as another reason for lenders to cease taking applications from brokers. The lender must have some knowledge of the underlying events before it can be held to them.

Consumers are best served by the ability to use mortgage brokers when they choose to do so. And consumers are best served by receiving the most accurate GFEs possible. Accurate GFEs must be based on information. Collecting the extra information the lender uses that a broker does not would permit the lender to give the best-informed and more accurate GFE.

Even if the broker and lender use the same definition of application, the lender cannot control the broker's GFE disclosures. It is inappropriate to hold a lender liable for disclosures about which the lender cannot control in any case. This is especially so when the regulation does not do so. The regulation is clear that "If the mortgage broker has provided a GFE, the lender is **not required** to provide an additional GFE."[58]

Conversely, if the broker provides a GFE, the lender is permitted to do so. The following FAQ makes this point:

> **Q:** If the mortgage broker purports to permit a borrower to lock in a rate, but the mortgage broker does not lock that rate with the lender, what tolerances apply to the lender for the credit or charge for the interest rate chosen and the adjusted origination charge?
>
> **A:** If the lender accepts the GFE issued by the mortgage broker, the lender is subject to the loan terms and settlement charges. Charges for the credit or credit for the interest rate chosen and the adjusted origination charge may not change (zero tolerance). Timely

[57] FAQs page 14, number 11 (September 18, 2009).
[58] 24 C.F.R. § 3500.7(b)((1)

communication between the lender and the mortgage broker is essential to assure compliance.[59]

If the lender does not "accept" the broker's GFE, the lender should be permitted to issue a GFE within three business days of receipt of the application with accurate information regarding loan terms and settlement chargers and should not be bound by the information that the broker has provided. Otherwise, the FAQs put the lender in the position of having to decline the application delivered by the broker to avoid being bound by erroneously quoted terms or charges. This would require the consumer to reapply either directly with the lender or wait for the broker to find a lender that will accept the terms and charges disclosed by the broker on the GFE.

We believe HUD should publish an FAQ to clarify that the lender is required to deliver a GFE within three days of the ***lender's receiving*** what it requires on an application, even if a broker has earlier received from the prospective borrower what the broker requires on an application and has either not delivered a GFE or has delivered an inaccurate GFE.

- **Exclusive Agent – Lender or Broker?**

The industry has asked whether an exclusive agent of a lender is treated as a lender or broker. This distinction is important for compliance purposes because a GFE is required within three days after a "loan originator" receives six application items. If a broker has received them but a lender has not, the lender is not able to issue a GFE, but the broker is. The FAQs address this question by merely restating the regulation.

> **Q:** If the mortgage broker receiving the application is an exclusive agent of the lender (similar to the requirements of Regulation Z per Comment 19(b)-3), will the lender be considered to have received the application when its exclusive agent received it?
>
> **A:** The loan originator must issue a GFE when it receives information sufficient to be considered an application under RESPA. The mortgage broker may issue the GFE, but the lender is responsible to ascertain whether the GFE has been provided. Timely communication between the lender and the mortgage broker is essential to assure compliance.[60]

This is an accurate recitation of the regulation, but it does not answer the question whether HUD considers an exclusive agent to be a lender or a broker. We believe HUD should clarify in an FAQ that a mortgage broker is a mortgage broker even if the broker is an exclusive agent of a lender. Otherwise, HUD would need to answer questions about what constitutes "exclusive," and what happens to loans in process when a broker's exclusivity status changes.

- **Changed Circumstances?**

A loan originator may deliver a GFE that does not disclose the charge for conducting a settlement that is commonly seller-paid because items that are commonly seller-paid are not

[59] FAQs page 7, number 17 (September 18, 2009).
[60] FAQs page 7, number 16 (September 18, 2009).

disclosed on a GFE.[61] If the buyer later agrees to pay what had been the seller's portion of the charge, is this a changed circumstance?

A loan originator delivers a GFE that discloses a fee for a loan commitment that lasts a defined period of time, but the borrower later wishes to extend the commitment period for an additional fee. Is this a changed circumstance?

- **When Can Lenders Use IRS Form 4506-T?**

May a loan originator require the borrower to sign an IRS Form 4506-T prior to issuing a GFE, if the loan originator does not submit the Form 4506-T to the IRS until after the GFE has been delivered and received?

This IRS form, with taxpayer signature, permits the IRS to verify certain tax return information. It does not authorize the IRS to send a copy of the tax return to a lender.

A loan originator may not require "supplemental documentation to verify" application information as a precondition to a GFE, under § 3500.7(a)(5). Is collecting the signed Form 4506-T, or submitting the signed form to the IRS, a prohibited precondition to issuing a GFE?

One step in the application paperwork process may be avoided if the loan originator can collect the IRS Form 4506-T along with a loan application. At this stage, the loan originator cannot charge an application fee, regardless of whether the loan originator collects the form and does not submit it to the IRS, or does not collect the form until later. There is no substantive documentation burden on applicants from signing one common form when they submit a loan application. Rather, applicants may prefer the ease of saving one trip to the lender to sign papers. Very importantly, there is no reason why the consumer would be discouraged from shopping by having signed an ordinary form. Permitting loan originators to collect, but not submit to the IRS, Forms 4506-T before issuing a GFE would ease the application process without burdening borrowers and without limiting their ability or inclination to shop for a loan or for settlement services.

We believe HUD should clarify in a FAQ that loan originators may require that consumers sign a Form 4506-T at any time, but may not submit the form to the IRS until after the loan originator has provided a GFE.

XIII. Conclusion

We strongly support HUD's continuing efforts to make the important improvements to consumer mortgage disclosures. We do not, however, believe the new RESPA regulation is ready for final implementation.

At this time, because of the inability of the industry to implement the regulation as interpreted by the FAQs, and positions HUD has taken in the FAQs, the regulation and its FAQs would harm

[61] FAQs page 22, number 7 (September 18, 2009).

consumers in a number of ways. Consumers would be far less likely to receive written lists, and any written lists will include very few service providers. Consumers would lose the option of brokers' assistance in loan shopping. Consumers would lose the ability to benefit from loan preapprovals. ARM disclosures would be misleading.

Additionally, the FAQs are changing the final requirements very late during the implementation period. The new FAQs require revisions to settlement statements to accommodate tax deductions for points, but the revisions conflict with the final rule. The FAQs sometimes prohibit the use of a HUD-1A after lenders had incorporated the HUD-1A into their systems. The FAQs create a new requirement before a loan may be processed. They require the industry to go through a preemption process that will not be complete by January 1. In addition, the FAQs increase rather than decrease the inconsistencies between RESPA and TILA disclosures. Unanswered compliance questions remain as well.

For these reasons, while we share your goal of clear and accurate consumer disclosures, we respectfully request that the new requirements be finalized, after which there be a reasonable period during which the final requirements may be implemented, before any entity is bound to the requirements. Finally, during a reasonable implementation period, lenders and other settlement service providers should be permitted to choose to use the new or old forms without sanction or liability for the reasons described in this letter.

We welcome the opportunity to further discuss any of the items described in this letter. For further information, please call or e-mail:

- Rod Alba -- (202) 663-5592, ralba@aba.com;
- Anne Canfield -- (202) 742-4366 or (202) 742-4365; anne@canfieldassoc.com; or
- Ken Markison (202) 557-2930; kmarkison@mortgagebankers.org

Thank you for your consideration of our views.

Sincerely,

American Bankers Association
American Escrow Association
American Financial Services Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

Attachment

cc: The Honorable Ben S. Bernanke
The Honorable Timothy F. Geithner

The Honorable Christopher J. Dodd
The Honorable Richard C. Shelby

The Honorable Barney Frank
The Honorable Spencer Bachus

Date and Time Issued: Settlement Agent File No:

[REVIEWER: Please note, that the form is not shown in final layout. For example, there may likely will be only two columns in each section rather than three to accommodate programming. Also, text in brackets will not appear in the form, but indicates notes, sample data, or basic programming instructions. There will be an Attachment page to accommodate data overflow.]

UNIFORM SPECIFIC CLOSING INSTRUCTIONS

Mortgage Bankers Association of America (MBA)
American Land Title Association (ALTA)
American Escrow Association (AEA)
Comment Draft 7/02/09

These SPECIFIC INSTRUCTIONS are for single family 1-4 unit properties and are to be read in conjunction with the GENERAL INSTRUCTIONS provided by the Lender, which are incorporated in their entirety by reference. If any provisions in these SPECIFIC INSTRUCTIONS conflict with provisions in the GENERAL INSTRUCTIONS, the provisions in these SPECIFIC INSTRUCTIONS will control. The Lender may elect to use the Uniform General Instructions prepared by MBA, ALTA and AEA. See Section 11 for Lender's selection of GENERAL INSRUCTIONS applicable to this Closing.

By taking any steps to Close this transaction, Settlement Agent agrees to comply with these SPECIFIC INSTRUCTIONS and Applicable Law. If Closing is not completed as provided for in these SPECIFIC INSTRUCTIONS, Settlement Agent must immediately notify Lender and, unless otherwise instructed, immediately return the Loan Proceeds and Loan Documents to Lender.

1. PRO FORMA HUD-1

A. Settlement Statement (HUD-1)

B. Type of Loan

1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: **See Section 3**	E. Name & Address of Seller: **See Section 6C**	F. Name & Address of Lender: **See Section 4**

G. Property Location: **See Section 2**	H. Settlement Agent: **See Section 6A for more details**	
	Place of Settlement:	**A.** ettlement Date: S Funding Date:

J. Summary of Borrower's Transaction	**K. Summary of Seller's Transaction**
100. Gross Amount Due From Borrower	**400. Gross Amount Due To Seller**

101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to Borrower (line1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower		**420. Gross Amount Due To Seller**	
200. Amounts Paid By Or In Behalf Of Borrower		**500. Reductions In Amount Due To Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to Seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	

208.		508.	
209.		509.	
Adjustments for items unpaid by Seller		**Adjustments for items unpaid by Seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash At Settlement from/to Borrower		**600. Cash At Settlement to/from Seller**	
301. Gross amount due from Borrower (line 120)		601. Gross amount due to Seller (line 420)	
302. Less amounts paid by/for Borrower (line 220)	( )	602. Less reductions in amount due Seller (line 520)	( )
303. Cash ☐ From ☐ To Borrower		**603. Cash ☐ To ☐ From Seller**	

L. Settlement Charges

700. Total Real Estate Broker Fees	**Paid From Borrower's Funds at Settlement**	**Paid From Seller's Funds at Settlement**
Division of Commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at Settlement		
704.		

800. Items Payable In Connection With Loan				
801. Our Origination Charge	$	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen	$	(from GFE #2)		
803. Your adjusted origination charges		(from GFE A)		
804. Appraisal fee to		(from GFE #3)		
805. Credit report to		(from GFE #3)		

806. Tax service to		(from GFE #3)	
807. Flood certification		(from GFE #3)	
808.			

900. Items Required By Lender To Be Paid In Advance			
901. Daily interest charges from to @ $ /day		(from GFE #10)	
902. Mortgage Insurance Premium for months to		(from GFE #3)	
903. Homeowner's insurance for year(s) to		(from GFE #11)	
904.			

1000. Reserves Deposited With Lender			
1001. Initial deposit for your escrow account		(from GFE #9)	
1002. Homeowner's insurance	months @ $	per month	
1003. Mortgage insurance	months @ $	per month	
1004. Property taxes	months @ $	per month	
1005.	months @ $	per month	
1006.	months @ $	per month	
1007.	months @ $	per month	

1100. Title Charges:			
1101. Title services and lender's title insurance		(from GFE #4)	
1102. Settlement or closing fee	$		
1103. Owner's title insurance		(from GFE #5)	
1104. Lender's title insurance	$		
1105. Lender's title policy limit $			
1106. Owner's title policy limit $			
1107. Agent's portion of the total title insurance premium		$	
1108. Underwriter's portion of the total title insurance premium		$	

1200. Government Recording And Transfer Charges			
1201. Government recording charges:		(from GFE #7)	
1202. Deed $	Mortgage $	Release $	
1203. Transfer taxes		(from GFE #8)	
1204. City/County tax/stamps Deed $		Mortgage $	
1205. State tax/stamps Deed $		Mortgage $	
1206.			

1300. Additional Settlement Charges

1301. Required services that you can shop for (from GFE #6)		
1302.		
1303.		
1304.		
1305.		

1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)		

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		**Good Faith Estimate**	**HUD-1**
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%		**Good Faith Estimate**	**HUD-1**
Government recording charges	#1201		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or %	

Charges That Can Change		**Good Faith Estimate**	**HUD-1**
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms See Section 5 for more details

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance

Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be **lower** than % or **higher** than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment payment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such a property taxes and homeowner's insurance. You must pay these directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below. ☐ Property taxes ☐ Homeowner's insurance ☐ Flood Insurance ☐ ☐ ☐

2. PROPERTY

Address:

County: Parcel No:

Appraised Value: Sales Price: Down Payment:

Flood Insurance: *[Y/N]* Property Type: *[SFR, Condo, PUD…]*

Additional Loan included in closing [Y/N]:

If Second Loan is included in this closing, an additional HUD1 Pro Forma is attached in Section 13

3. BORROWER AND OTHER SIGNATORIES

Name: Phone:

Signing as: *[Borrower, Non-Borrower Spouse, Vested Owner, Co-Signer, Officer, etc.]*

Type: *[Individual, Partnership, Corporation, etc.]* Fax:

Mailing Address: Email:

Power of Attorney Information:

Name: Phone:

Signing as: *[Borrower, Non-Borrower Spouse, Vested Owner, Co-Signer, Officer, etc.]*

Type: *[Individual, Partnership, Corporation, etc.]* Fax:

Mailing Address: Email:

Power of Attorney Information:

Name: Phone:

Signing as: *[Borrower, Non-Borrower Spouse, Vested Owner, Co-Signer, Officer, etc.]*

Type: *[Individual, Partnership, Corporation, etc.]* Fax:

Mailing Address: Email:

Power of Attorney Information:

Name: Phone:

Signing as: *[Borrower, Non-Borrower Spouse, Vested Owner, Co-Signer, Officer, etc.]*

Type: *[Individual, Partnership, Corporation, etc.]* Fax:

Mailing Address: Email:

Power of Attorney Information:

[Programming if additional Borrowers or Signatories: "See Attachment for Additional Borrowers and Other Signatories."]

Date and Time Issued: Settlement Agent File No:

4. LENDER CONTACTS

A. GENERAL CONTACT

Name: File No:
Phone:
Title: Fax:

Mailing Address: Email:

B. FRAUD PREVENTION CONTACT (See **Section J** of the GENERAL INSTRUCTIONS)

Name: Phone:

Email: Fax:

5. LOAN INFORMATION

Signing Date:	MIN No:	FHA/VA No:
Signing Expiration Date:	Notice of Right to Cure Commencement Date:	Disbursement Date:
Occupancy (primary, 2nd home, investor, etc)::	Loan Purpose: *[Purchase, Refi, Cash-out]*	Loan Type: *[Conv Fxd, FHA 203(b), VA, HELOC,].*
Initial Draw:	Maturity Date:	Initial Interest Rate:
First Payment Amount (excl. impounds):	First Payment Date:	Original Date GFE sent to Borrower:
Index:	Periodic Cap:	Interest Rate Change Date:
Margin:	:	Payment Change Date:
Junior Lien Loan: *[Y/N]*		Electronic Recording: [Y/N]

Date and Time Issued: Settlement Agent File No:

*[Programming if additional Loan Information: "*See Data Overflow Page for Additional Loan Information"]*

6. OTHER CONTACTS

A. SETTLEMENT AGENT

Name: File No
Phone:
Company: Fax:

Mailing Address: Email for Contact:

Email for Loan Documents:

B. MORTGAGE BROKER

Name: File No
Phone:
Company: Fax:

Mailing Address: Email:

C. SELLER

Name: Phone:

Contact: Fax:

Mailing Address: Email:

[Programming if other sellers: "See Data Overflow Page for additional Sellers"]

D. REAL ESTATE AGENT/BROKER

Listing Agent: File No
Phone:
Company: Fax:

Date and Time Issued:

Settlement Agent File No:

Mailing Address:

Email:

Selling Agent:

File No
Phone:

Company:

Fax:

Mailing Address:

Email:

E. TITLE AGENT

Contact:

File No
Phone:

Company:

Fax:

Mailing Address:

Email:

Date and Time Issued: Settlement Agent File No:

7. MORTGAGEE TITLE INSURANCE

Title Vesting:

Insured Lien Position: Insured Lender: Title Policy Type:

Minimum Coverage: Title Insurer: Survey Required: *[Y/N]*

Required Endorsements: Allowable Exceptions:

Forward Title Policy to (the following completed sections are acceptable methods of delivery):

Regular Mail:

Express Mail:

Encrypted Email:

Fax:

Electronic Delivery System: *[URL or company name]*

Batch requirements for electronic delivery: *[n/a, once a month, etc.]*

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8. PROPERTY INSURANCE

Loss payee/mortgagee clause:

Impounds: *[Y/N]*

Type:	Provider:	Premium:
Endorsements:		Maximum Deductible:
Minimum Coverage:	Payment Address:	
Type:	Provider:	Premium:
Endorsements:		Maximum Deductible:
Minimum Coverage:	Payment Address:	
Type:	Provider:	Premium:
Endorsements:		Maximum Deductible:
Minimum Coverage:	Payment Address:	

9. LOAN DOCUMENTS

Signing Expiration Date:

Loan Document Delivery Method:

If Signing is canceled, return Loan Documents to:

After Signing, return Loan Documents to:

After Recording, return Loan Documents to:

LOAN DOCUMENTS ENCLOSED:

LOAN DOCUMENTS DELIVERED BY THIRD PARTY:

11. LOAN CONDITIONS

A. PRE-SIGNING CONDITIONS

Lender GENERAL INSTRUCTIONS are (attached) (The latest version of the Uniform General Instructions incorporated in their entirety by reference and may be found at www.mbaa.org/gci.htm).

B. PRE-FUNDING CONDITIONS

12. FUNDING AND RETURN OF LOAN PROCEEDS

A. FUNDING INFORMATION

Disbursement must occur on or before Business Day(s) after Funding.

Funding Expiration Date: Net Loan Proceeds:

Funding No: (If this space is blank, Funding authority has not been given. See below.)

Funding Instructions:

B. RETURN OF LOAN PROCEEDS

1. Loan Disburses: Return Excess Loan Proceeds via:

Regular Mail: *[N/A or address]*

Certified Mail: *[N/A or address]*

Overnight Delivery: *[N/A or address]*

Wire: *[N/A or wire instructions]*

2. Loan Does Not Disburse: Return Loan Proceeds via:

Regular Mail: *[N/A or address]*

Certified Mail: *[N/A or address]*

Overnight Delivery: *[N/A or address]*

Wire: *[N/A or wire instructions]*

13. ATTACHMENTS

Items marked below are attached to and amend these SPECIFIC INSTRUCTIONS. If any provisions in an Attachment conflict with these SPECIFIC INSTRUCTIONS or the GENERAL INSTRUCTIONS, the provisions in the Attachment will control.

__ Data Overflow Page
__ Amendments to GENERAL INSTRUCTIONS
__ Construction Loan Addendum
__ Government Loan Addendum
__ Home Equity Addendum
__ State Specific Requirements Addendum
__ Manufactured Housing Loan Addendum
__ Reverse Mortgage Addendum
__
__
__
__