COMMENTS

of the

Center for Responsible Lending

on

RESPA Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages to Reduce Consumer Settlement Costs

pursuant to

24 C.F.R. 203 and 3500

Docket No. FR-5180-P-1
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<u>VIA ELECTRONIC SUBMISSION</u>

Regulations Division
Office of General Counsel
Room 10726
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SECTION I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a credit union and a non-profit loan fund. Self-Help is a relatively small lender that must comply with RESPA. It must also comply with any recommendations we make to the Proposed Rule that HUD accepts. While we have several recommendations for how the Proposed Rule[1] can do more to protect consumers, we believe its provisions are administratively feasible for both larger and smaller lenders.

For the past 28 years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans to low-income and minority families who otherwise might not have been able to get home loans. In other words, we work to provide fair and sensible loans to the people most frequently targeted for predatory and abusive subprime mortgages. Self-Help has provided over $5 billion in financing to more than 60,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across the United States. Although Self-Help is technically a subprime lender, its responsible lending practices keep its annual loan loss rate under one percent – far less than the typical subprime loss rate.

In addition to making direct loans, Self-Help encourages sustainable loans to applicants with blemished credit through a secondary market operation. Self-Help buys high-risk loans from banks, holds on to the credit risk, and resells the loans to Fannie Mae. Self-Help has used the secondary market to provide financing to thousands of families across the country, loans that have performed well and increased these families' wealth.

Today, as the U.S. economy faces significant challenges, there has never been a stronger need to ensure a transparent accounting of costs in real estate transactions. Right now, it is estimated that 20,000 foreclosures on subprime mortgages take place every single week.[2] The negative spillover effects from these foreclosures are substantial: property values are dropping by billions of dollars, crime is up in high-foreclosure communities, cities are losing their tax bases, and millions of Americans who depend on a robust housing market are losing jobs and income. As foreclosures accelerate during the next two years, these economic effects will be felt even more strongly.

Confusing, misleading, and inaccurate information has played a contributory role in the current mortgage crisis, and reforms to the current disclosure requirements are long overdue. We would

[1] Real Estate Settlement Procedures Act (RESPA): Proposed Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 73 Fed. Reg. 14030-124 (March 14, 2008) (hereafter "Proposed Rule").

[2] *See* Written Testimony of Mark Zandi, Moody's Economy.com, before House Subcommittee on Commercial and Administrative Law (Jan. 28, 2008), *available at* http://judiciary.house.gov/media/pdfs/Zandi080129.pdf (hereafter "Zandi Testimony"); *see also* Center for Responsible Lending, *Subprime Spillover* (Rev. Jan. 18, 2008), *available at* http://www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html (hereafter "*Subprime Spillover*").

like thank the staff of HUD for its diligent work in crafting this proposal. We recognize that the home mortgage process is unique and complex and that developing a fair and reasonable method of ensuring early and accurate price disclosure is incredibly challenging. We believe HUD's proposed GFE has the potential to significantly improve current disclosure requirements because it offers a standardized shopping tool with better linkages to the HUD-1, requires that terms be binding, and takes important steps toward trying to alert consumers to the risky features of their loans.

We must acknowledge, however, that poor disclosure has not been the sole, or even the most destructive, culprit in the slew of forces that has brought us all to where we are now. Inadequate disclosure has been only part of a broader system of skewed incentives that have encouraged originators to steer consumers into the riskiest, highest-cost loans available – because investors paid the most for these loans. Brokers could wash their hands clean of them as soon as they collected their origination fees, and lenders could do the same as soon as they sold them off into the secondary market.

Lender-paid fees to brokers, or yield-spread premiums, which we discuss thoroughly in Section V, played an integral role in this system of skewed incentives – a role that RESPA, by its statutory language alone, should not have allowed them to play. We believe that HUD has the authority and the responsibility, as the enforcing agency of RESPA, to recognize that under certain circumstances, YSPs violate the illegal kickback provisions of §8 of RESPA. Such recognition would be consistent with the purpose of the statute: *to ensure that consumers are protected from unnecessarily high settlement charges caused by abusive practices.*[3] And we believe that such recognition would be the single most helpful change HUD could make through this Proposed Rule because it would get to the real heart of the problem: a broken market, with broken incentives, that no disclosure – no matter how clear – will repair.

In these comments, we begin by describing in further detail how misaligned market incentives were largely responsible for the current mortgage crisis and broader economic downturn. With the factors that caused the current meltdown providing our framework, we then suggest several ways we believe HUD can strengthen its Proposed Rule to ensure that RESPA offers consumers the protection from predatory lending practices they deserve.

SUMMARY OF RECOMMENDATIONS

We offer the following recommendations:

- **Require an interest rate lock to allow consumers to meaningfully compare loan costs** (*Section III*). We strongly urge HUD to require an interest rate lock, especially given the extremely short period (10 days) for which the GFE is binding. Without an interest rate lock, consumers will effectively be left to shop on settlement costs alone – costs that are, in reality, dwarfed by the cost of credit. In addition, not requiring a lock will enable originators to easily play bait-and-switch games using the interest rate.

[3] 12 C.F.R. § 2601 (emphasis added).

- **Refrain from encouraging the charging of fees for the GFE** (*Section III*). Expressly permitting originators to charge fees for the GFE may discourage comparison shopping, thus undermining competition. Further, RESPA prohibits charging a fee for completing the HUD-1,[4] and we are concerned that HUD's express allowance of a GFE fee will undermine RESPA by enabling originators to pass the cost of completing the HUD-1 on to consumers during the shopping phase. Lastly, HUD's position may misleadingly suggest preemption of state laws that prohibit nonrefundable application fees.

- **Ensure that the GFE facilitates consumers' ability to understand the riskiest features of their loans** *(Section IV)*. A new GFE should ensure that consumers have the best chance possible to understand the riskiest features of their loans. In particular, the first page of the GFE is critical because most consumers will absorb much less beyond it. This will be especially true in the subprime market, where originators often have every incentive to sell consumers loans they don't understand and are therefore likely to rush consumers through the form. We commend HUD for adding several features that highlight risk to the first page of the GFE: the prepayment penalty, the balloon payment, the maximum possible loan balance, the maximum monthly payment, and whether certain fees are escrowed. We believe the following features are also essential to protecting consumers and should be added to page one:

    - <u>Increased emphasis on total monthly payment</u>. We support HUD's disclosure of the initial monthly payment of principal, interest and mortgage insurance as its own line item on page one of its proposed GFE. We believe HUD's inclusion of the maximum monthly payment marks a critical improvement over current requirements. However, we also believe that an estimate of property taxes, property insurance, and other charges currently included on page four of the proposed GFE should be listed, as one total line item, on page one. Consumers look to the monthly payment to determine whether or not they can afford the loan. Leaving major cost items off of page one facilitates deception and is likely to lead to payment shock too late in the process.

    - <u>Annual percentage rate (APR)</u>. The GFE should disclose the APR instead of the note rate because the APR is the standardized measurement of loan cost in the industry, and because it better captures the total cost of the loan. In addition, given that credit cost comprises the largest component of total loan cost, we recommend that HUD reduce the form's emphasis on settlement costs in recognition that it is not the only component consumers should compare. The APR is the only price tag that includes both upfront finance charges from the settlement costs and the cost from the note rate.

    - <u>First possible date on which the interest rate can rise.</u> In the current environment of payment option ARMs and introductory rate mortgages, consumers are likely

[4] 12 USC § 2610.

to underestimate just how soon their interest rate can rise. The first page of the GFE should tell them.

- Explanation of what prepayment penalties are and how they are triggered.

- Simplified broker compensation. Broker compensation should be described in a simple and straightforward way, including the portion paid directly by the consumer and the portion paid by the lender and recouped from the consumer through a higher interest rate.

- Notification that mortgage terms are negotiable.

In addition, while we support HUD's efforts to require a trade-off table and think something like it is essential, we believe it must be revamped in order to force the rate/point tradeoff HUD intends it to disclose. Further, we refer to the table as a "loan comparison chart" to more accurately describe it, absent greater assurance that it will in fact present legitimate trade-offs.

- **Eliminate yield-spread premiums that do not offer benefits to consumers** *(Section V).* HUD has the authority and the responsibility as the implementing agency of RESPA to clarify how the kickback and unearned fee provisions of §8 apply to yield-spread premiums. HUD has reiterated the position taken in its general counsel letter in 1999 – that a yield-spread premium may not be paid solely in exchange for a higher interest rate. As the evidence mounts that yield-spreads most commonly do just that, we ask that HUD revisit its current interpretation of §8. Consistent with recent empirical evidence, we urge that a YSP be permissible compensation in exchange for services only under conditions that ensure it is a trade-off, not an extra cost: when coupled with direct broker compensation, any payment reduction fee, other closing costs, or a prepayment penalty, it would be a violation of §8.

- **Strengthen protections related to the closing script** *(Section VI).* While we support efforts to ensure that the consumer understands the mortgage, we offer several protections that should help ensure the script does not cause more problems than it solves.

- **Pass along discounts** *(Section VI).* We support volume-based discounts as long as those discounts are passed along to the consumer.

- **Charge consumers an average price only when the originator pays an average price** *(Section VI). Average cost pricing*, i.e., passing along a price paid to a third party as an average, is fine, but *average pricing*, i.e., paying a specific price to a third party but charging the consumer an average, is not.

- **Expand the revised required use definition to apply to all loan costs, not only settlement costs** *(Section VI).* We commend HUD for mandating true discounts on settlement costs when unaffiliated settlement service providers are required, but we believe it is essential that the same principle apply to all loan costs.

- **Update RESPA's servicing rules** *(Section VI)***.** Given the array of servicing issues that have made an already disastrous mortgage market situation even worse, RESPA's servicing rules should be updated to include a duty to provide reasonable loss mitigation based on affordability; shorten the time period lenders have to respond to Qualified Written Requests from 60 to 14 calendar days; and provide transparency to consumers about their loan and servicing history.

- **Amend the technical amendment regarding the servicing disclosure requirement to apply to all federally related mortgages, not only first liens, and revised the required disclosure to inform consumers of the broad role of servicers** *(Section VI).* The statutory requirement applies to all federally related mortgages, not only first liens, and the regulation should do the same. Further, the required disclosure, which currently only mentions payment collection, must be significantly expanded to accurately convey the broad role servicers play.

- **Impose tolerances on each item rather than on the aggregate cost** *(Section VI).* We believe HUD's proposed prescribed tolerances will help prevent unwelcome surprises at the settlement table. However, a 10% tolerance on each item, rather than in the aggregate, will better protect consumers.

- **Request adequate enforcement mechanisms, including a private cause of action, to ensure that RESPA does what it's meant to do** *(Section VII).* We fully support HUD's plan to ask Congress to add or enhance civil penalties and equitable relief under several sections of RESPA, but it should also request a private cause of action for all elements of the statute.

- **Move forward with a new GFE even if HUD determines that other elements of the proposal are not feasible at this time** *(Section VIII*)**.**

SECTION II. MISALIGNED INCENTIVES IN THE MORTGAGE MARKET

The misaligned incentives and predatory lending of recent years have caused not only a crisis in the housing market, but a national and international economic crisis.

It seems like a distant memory, but less than one year ago, some in the mortgage industry were still insisting that the number of coming foreclosures would be too small to have a significant impact on the economy overall.[5] No one makes that claim today. As foreclosures reach an all-

[5] *See, e.g.*, Statement of John M. Robbins, CMB, Chairman, Mortgage Bankers Association, at the National Press Club's Newsmakers Lunch – Washington, DC (May 22, 2007) (Speaking of predicted foreclosures, Mr. Robbins stated: "As we can clearly see, this is not a macro-economic event. No seismic financial occurrence is about to overwhelm the U.S. economy."); Julia A. Seymour, "Subprime Reporting, Networks blame lenders, not borrowers for foreclosure 'epidemic,'" Business & Media Institute (Mar. 28, 2007) ("[T]here are experts who say the subprime

time high and are projected to grow higher,[6] the "worst case is not a recession but a housing depression."[7] At least two million American families are expected to lose their homes to foreclosures initiated over the next two years.[8] Industry projections forecast that by 2012, 1 in 8 mortgages – that's all mortgages, not just subprime mortgages – will fail.[9]

Recent data shows that 30% of families holding recent subprime mortgages now owe more on their mortgage than their home is worth.[10] These families are at an increased risk of foreclosure because "negative equity" precludes the homeowner from selling, refinancing or getting a home equity loan or other mechanism for weathering any financial difficulty.[11]

As we show in our recent report on the "spillover" effect of subprime foreclosures, the negative effects of foreclosures are not confined to the families who lose their homes. Forty million of their neighbors will see their property values decline as a result by over $350 billion.[12] Federal Reserve Chairman Ben Bernanke recently noted:

> At the level of the individual community, increases in foreclosed-upon and vacant properties tend to reduce house prices in the local area, affecting other homeowners and municipal tax bases. At the national level, the rise in expected foreclosures could add significantly to the inventory of vacant unsold homes—already at more than 2 million

'meltdown' is not the catastrophe reporters and legislators are making it out to be. 'We don't believe it will spill over into the prime market or the U.S. economy,' said [Laura] Armstrong [Vice President, Public Affairs] of the Mortgage Bankers Association").

[6] Renae Merle, *Home Foreclosures Hit Record High*, Washington Post (Mar. 6, 2008).

[7] David M. Herszenhorn and Vikas Bajaj, *Tricky Task of Offering Aid to Homeowners*, N.Y. Times (Apr. 6, 2008) (quoting Susan M. Wachter, a real estate finance professor at the Wharton School of the University of Pennsylvania: "In the market that we have in front of us, prices decline and supply increases, driving prices down further.").

[8] *See* Zandi Testimony, *supra* note 2; *Subprime Spillover, supra* note 2.

[9] Rod Dubisky, Larry Yang, Wen Zhang and Thomas Suehr, *Foreclosure Trends – A Sobering Reality*, Credit Suisse, Fixed Income Research (Apr. 28, 2008).

[10] Edmund Andrews, *Relief for Homeowners is Given to a Relative Few*, N.Y. Times (Mar. 4, 2008) (loans originated in 2005 and 2006).

[11] A recent Los Angeles Times article has called into question the widespread industry claim that people are simply walking away from underwater mortgages. However, when homeowners who cannot afford their abusive loans also have no options to refinance or modify, they are ultimately pushed into defaulting. Michael Hilzik, *Walk Away Homeowners May Be Urban Myth,* Los Angeles Times (March 10, 2008).

[12] See Center for Responsible Lending, The Impact of Court-Supervised Modifications on Subprime Foreclosures, (Feb. 25, 2008), *available at* http://www.responsiblelending.org/pdfs/us-info-with-fc-starts.pdf; for CRL's methodology for computing spillover, *see Subprime Spillover, supra* note 2 (Rev. Jan. 18, 2008), *available at* http://www.responsiblelending.org/issues/mortgage/research/subprime-spillover.html.

> units at the end of 2007—putting further pressure on house prices and housing construction.[13]

Robert Schiller recently noted that the meltdown and resulting crisis has erased any gains in the homeownership rate made since 2001, and the rate stands to fall further yet.[14] Even more ominous, according to the IMF, direct economic losses stemming from this crisis will likely top $500 billion and consequential costs will total close to a trillion dollars.[15]

Sadly, many of the families losing their homes to foreclosure today might not have found themselves in this position if they had been given the type of loan that they actually qualified for. Last year, the Wall Street Journal found that of the subprime loans originated in 2006 that were packaged into securities and sold to investors, 61% "went to people with credit scores high enough to often qualify for conventional [i.e., prime] loans with far better terms."[16] Even those applicants who did not qualify for prime loans could have received sustainable, thirty-year, fixed-rate loans for – at most – 50 to 80 basis points above the "teaser rate" on the unsustainable exploding ARM loans they were given.[17] Indeed, many consumers were charged 100 basis points more for "no-doc" loans when they had already handed over their W-2 statements or readily would have done so but for the broker's desire to originate these riskier loans. That made the typical risky adjustable rate subprime loan more expensive than far safer thirty-year fixed-rate loans *even at the initial payment*.

Wall Street's appetite for risky loans incentivized mortgage brokers and lenders to aggressively market these highly risky ARM loans instead of the sustainable loans for which consumers qualified. As Alan Greenspan told *Newsweek*:

> The big demand was not so much on the part of the borrowers as it was on the part of the suppliers who were giving loans which really most people couldn't afford. We created something which was unsustainable. And it eventually broke. If it weren't for securitization, the subprime loan market would have been very significantly less than it is in size.[18]

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[13] Statement of Federal Reserve Chairman Ben Bernanke on March 4, 2008, reprinted by Bloomberg.com, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=apeU.0IaETdM.

[14] Robert J. Schiller, *The Scars of Losing a Home*, N.Y. Times (May 18, 2008) (noting that the homeownership rate has fallen from 69.1% in 2005 to 67.8% in the first quarter of 2008, nearly the 67.5% rate at the beginning of 2001).

[15] Christopher Swann, *IMF Says Financial Losses May Swell to $945 Billion*, Bloomberg.com (Apr. 8, 2008), *available at* http://www.bloomberg.com/apps/news?pid=email_en&refer=home&sid=aK1zAj5FZ9Io.

[16] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy As Housing Boomed, Industry Pushed Loans To a Broader Market*, Wall Street Journal at A1 (Dec. 3, 2007).

[17] Letter from CFAL to Ben S. Bernanke, Sheila C. Bair, John C. Dugan, John M. Reich, JoAnn Johnson, and Neil Milner (Jan. 25, 2007) at 3.

[18] John Meacham and Daniel Gross, *The Oracle Reveals All*, Newsweek 32, 33 (Sept. 24, 2007).

Market participants readily admit that they were motivated by the increased profits offered by Wall Street in return for risky, higher-yielding loans. After filing for bankruptcy, the CEO of one mortgage lender explained it this way to the New York Times, "The market is paying me to do a no-income-verification loan more than it is paying me to do the full documentation loans," he said. "What would you do?"[19] Even the chief economist of the Mortgage Bankers Association, when asked why lenders made so many loans that they knew were unsustainable, replied, "Because investors continued to buy the loans."[20]

In short, this crisis was caused by loan originators selling unnecessarily risky loans to homebuyers and homeowners who did not understand what they were getting into, either because they were affirmatively misled or because the information they were given was simply too complex and voluminous. *A primary role of RESPA reform should be to make such steering less likely by providing potential homebuyers with the clear and concise information that will help them better understand their mortgage options.*

Even improved disclosure, however, will not provide sufficient protection to consumers dealing with complex mortgage transactions, particularly when they are subjected to inherently abusive practices encouraged by a broken incentive structure. HUD's effective blessing of incentives that encourage steering consumers to unaffordable loans only makes the situation worse. *Only substantive protections, in addition to improved disclosures, can adequately protect consumers, curb abusive lending practices, and restore health to the market.*

SECTION III. SHOPPING PROCESS

To start with, it is essential that the GFE application constitute an application under both the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA), and we believe that it clearly does. Coverage under these acts is critical to ensuring that GFE disclosures are binding and that originators do not increase interest rates on applicants for no reason at all. Without coverage, much of what HUD aims to achieve through its proposed GFE will be easily thwarted by originators' bait-and-switch tactics.

We agree with HUD that the determination of coverage under the ECOA, as well as FCRA, must be made by the Federal Reserve Board. We urge HUD to coordinate with the Federal Reserve to ensure that the GFE application is covered under both ECOA and FCRA.

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[19] Vikas Bajaj and Christine Haughney, *Tremors at the Door – More People with Weak Credit Are Defaulting on Mortgages*, N.Y. Times at C1, C4 (Jan. 26, 2007).

[20] *Subprime Loans Defaulting Even Before Resets*, CNNMoney.com (Feb. 20, 2008). *See also* Atif Mian and Amir Sufi, *The Consequences of Mortgage Credit Expansion: Evidence from the 2007 Mortgage Default Crisis*, NBER Working Paper 13936, http://www.nber.org/papers/w13936; Benjamin Keys, Tanmoy Mukherjee, Amit Seru and Vidrant Vig, *Securitization and Screening: Evidence From Subprime Mortgage Backed Securities*, working paper (Jan. 2008).

A. BINDING PERIOD and INTEREST RATE LOCK. ***The period for which the GFE is binding should be 30 days instead of 10, and an interest rate lock is absolutely critical for the GFE to be an effective shopping tool.***

The 10-day period HUD has proposed for which the GFE must remain binding is remarkably short. A 30-day binding period would be far more fair to consumers. Many consumers will not have the flexibility within a 10-day period to gather a sufficient number of loan quotes. As a result, they will find themselves paying for multiple GFEs from the same originator because their 10-day guarantee period has run out. In addition, originators should easily be able to project settlement costs at least 30 days in advance.

The most striking problem with the 10-day period is that, despite being so short, it does not apply to the interest rate, which can come with no guarantee at all. We believe HUD absolutely must require an interest rate lock in order for the GFE to be effective. First, not requiring a rate lock forces consumers to shop on settlements costs alone, which are a relatively small component of total lost. This seems to us nonsensical. Second, not requiring a rate lock makes it far too easy for originators to bait and switch consumers by presenting deceivingly low settlement costs, only to recoup those costs by increasing the rate when the consumer comes back three days later. The large majority of prime rate lenders offer a *30-day* interest rate lock, which indicates to us that (1) the implementation cost of a required rate lock would be minimal; and (2) a 10-day lock is more than feasible.

B. GFE FEES. ***HUD should not sanction charging fees for the GFE because fees will create barriers to shopping for consumers.***

An essential element of effective shopping is the ability to obtain multiple loan quotes. The cost of obtaining multiple GFEs will add up to a significant total for many consumers and will discourage consumers living on the margin from obtaining more than one quote. In addition, we are concerned that the costs of completing the HUD-1 and TILA disclosures, which are prohibited from being passed along to consumers, will be slipped through to consumers instead as a "GFE fee." Some states have recognized the negative impact nonrefundable application fees have on consumers and prohibit them by law. In the interest of consumers and their access to shopping, HUD should remain silent on whether GFE fees may be charged, and it should by no means endorse it.

SECTION IV. GOOD FAITH ESTIMATE

The GFE should alert consumers to the riskiest features of the loan.

As we mentioned earlier, we commend HUD for its proposed GFE. We agree with HUD's decision to aggregate fees for shopping purposes, as the unbundling of fees allows lenders to more easily justify them and does not facilitate comparative shopping. We also applaud the extensive testing HUD performed with the goal of devising a form that would allow the consumer to choose the least expensive loan. We think the proposed GFE resulting from HUD's efforts, and that testing, is a significant step forward.

We make several recommendations to the form below. We suggest including the most critical information on the first page, while remaining cognizant that only so many elements can be considered critical before returns rapidly diminish. We understand that HUD may be hesitant to make changes given the extensive testing that variations of the form have endured. However, we strongly encourage HUD to consider our recommendations in light of three limitations of its testing – the first a universal limitation, the second unique to the current mortgage market, and the third specific to HUD's approach : (1) individuals respond differently when they know they are being tested than when they are not being tested; (2) many originators, especially those who do not hold on to the credit risk of their loans, have the financial incentive to encourage consumers to ignore most of the GFE; and (3) HUD's testing did not consider one crucial, slippery feature of loan pricing: the relationship between settlement cost and interest rate.

A. HUD's Proposed GFE

1. *HUD has clear authority to require loan terms on the GFE.*

We believe HUD has clear authority to require that loan terms be included on the GFE. HUD has the statutory authority to write rules and regulations and make interpretations necessary to achieve the purposes of RESPA,[21] which include providing "more effective advance disclosure to home buyers and sellers of settlement costs."[22] RESPA requires a GFE, the purpose of which is to provide an estimate of settlement services.[23] RESPA's definition of "settlement services" includes origination, which includes "but is not limited to underwriting and the funding of loans."[24] Certainly this definition of origination leaves interstices that HUD may address. Therefore, the *Chevron* standard applies, and HUD's rules must be given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.[25] In today's mortgage market, settlement costs are so intertwined with loan terms, and the illusory trade-off between rate and points is so problematic (See Part 7 of this section, below), loan terms simply must be included on the GFE for the disclosure of settlement costs to be even remotely effective. HUD's authority to require them, therefore, is unambiguous.

[21] 12 USC 2617(a).

[22] 12 USC 2601(b)(1).

[23] 12 USC 2604(c).

[24] "Settlement services includes any service provided in connection with a real estate settlement including, but not limited to . . . origination . . . (including but not limited to underwriting and the funding of loans)." 12 USC 2602(3).

[25] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 844 (1984).

2. *The GFE should include all components of the monthly payment on page one.*

The vast majority of consumers shop for a mortgage focusing not on rates or settlement costs or other loan features, but on the one key number that signals to them whether or not they can afford the loan: the grand total that they will have to pay each month for their home. Most people know how much income they take home each month, and they try to figure out whether the mortgage payment will fit into their budget.

Unscrupulous lenders fully understand the desire to shop based on monthly payment, which explains why a primary way they sell abusive loans is to artificially deflate the monthly payment through teaser rates, discount points that don't provide a fair rate trade-off, and prepayment penalties. In addition, many subprime lenders do not require escrow for property taxes and insurance, which makes the monthly total appear very low in comparison to totals that included the full PITI. This deception has been particularly useful for lenders seeking to refinance people out of an existing loan into a loan that looks cheaper, but is in reality much more expensive.

We commend HUD's inclusion of the initial monthly payment and the maximum monthly payment of principal, interest, and mortgage insurance. Knowing the maximum payment is critical to the consumer's ability to determine whether or not the loan is sustainable. However, we recommend that the total of the "Total Other Annual Charges" section be disclosed on page one, along with a disclosure similar to HUD's page-four disclosure reading: "Do not shop based on these charges because they are not determined by your originator. Rather, use this figure to help estimate your grand total monthly payment." Following this figure should be an additional line showing the sum of that figure and the maximum monthly payment, resulting in total estimated maximum monthly housing charges.

We commend HUD for including Total Other Annual Charges in the proposed GFE. We are concerned, however, that consumers will not consider them when weighing whether or not they can afford the loan because they are buried on page four. While we understand that these costs are not relevant to shopping because they are not determined by the originator, they are nonetheless vital to determining affordability. To not include them on page one as part of what the consumer first sees as the "total monthly payment" is to further stack the already-high deck against the consumer's chances to determine whether or not the loan is affordable. Therefore, we suggest that the additional charges total be displayed on page one, as well as the sum of additional charges and the maximum monthly payment. This grand total figure will allow consumers to consider the highest estimated amount their house could cost them each month and hopefully make consumers less likely to pursue loans they cannot afford.

While we commend HUD for including the maximum monthly payment on the GFE, we recognize that the manner of calculating it will not always be clear. We have read the comments of the National Consumer Law Center (NCLC Comments)[26] with respect to calculating the

[26] National Consumer Law Center, Comments on RESPA, Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers, Department of Housing and Urban Development, 24 CFR Parts 203 and 3500, Docket Number FR-5180-P-01 (June 2008), at 12-14 (hereafter "NCLC Comments").

monthly payment both generally and for payment option ARMs and negative amortization loans in particular, and we concur.[27]

3. *The GFE must include the Annual Percentage Rate (APR) and reduce its disproportionate focus on settlement costs.*

We understand that with its proposed GFE, HUD is attempting to allow shopping for settlement costs while holding the note rate constant, rendering the APR irrelevant. However, the APR is the one single price that captures all finance charges, whether upfront and lump sum, or charged over time. More important, it is the legally mandated, *standardized* price tag. Therefore, we believe that the APR is the better rate to disclose on the GFE.

First, as the APR is the standard by which loan cost is measured in the mortgage industry, it is the single unitary price tag which consumers are trained to look for in shopping. Even if they can't tell you everything the APR includes, most consumers are familiar with it from more routine transactions such as credit cards and auto loans.

Second, the APR is a better measurement of total loan cost than the note rate since it accounts for settlement costs and controls for the term of the loan. While the APR still isn't perfect, now that broker fees are a finance charge, the APR captures most big-dollar upfront costs, and scrupulous lenders can explain the APR in relatively simple terms as a price tag that captures both interest and fees. In addition, and critical in today's mortgage market, the APR reduces the deception caused by teaser rate loans because it is a composite rate, reflecting both the initial low rate and the future increased rate. That, in turn, would also help consumers comparison shop between a fixed rate 30-year from one lender and an exploding hybrid-ARM from another. While no disclosure solves the problems caused by teaser rate loans, perhaps the APR makes these loans slightly less enticing – or at least gets the real cost a little more right.

Third, HUD's attempt to allow shopping based on settlement costs alone while holding the note rate constant is unlikely to play out in real life. Consumers may end up with three GFEs containing three different note rates, three different monthly payments, three different amortization schedules, and three different settlement cost amounts. In this case, the only apples-to-apples comparison is the APR.

Finally, and not insignificantly, a RESPA-required APR disclosure would be a move toward consistency between RESPA and TILA – a welcomed, and long overdue, improvement for consumers. Once both statutes require APR, momentum will favor the only term that at least comes close to being "fully loaded." (As a side note, TILA disclosures may not be relied on in

[27] We make one special note with respect to upfront mortgage insurance and its relationship to the monthly payment. Mortgage insurance paid upfront rather than monthly can make subsequent monthly payments lower, but the overall cost of a loan with less costly mortgage insurance spread out in monthly payments is *actually* much lower. Upfront mortgage insurance is standard on FHA loans, although not yet prevalent among private mortgage insurance. Should private lenders move to lump sum mortgage insurance, resulting in disclosure of a lower monthly payment that makes loans look artificially cheap, further provisions would likely be needed to address the distortion.

place of the GFE for early disclosure of the APR, as the early TILA disclosure of the APR is only required for purchase money mortgages.[28])

With respect to the relationship between cost of credit and settlement costs, we are concerned that HUD's form places too much emphasis on settlement costs. While HUD's jurisdiction is over settlement costs, the consumer must shop based on both – and the relationship between the two. The loan with the cheapest settlement costs is by no means necessarily the cheapest loan, and a small change in interest rate has a far greater impact on total cost than a small change in settlement costs. We suggest that HUD de-emphasize settlement costs on the GFE by un-bolding the last three line items of page one and conforming their font size to the rest of the page.

4. *The GFE must disclose on page one the first possible date on which the interest rate can rise and remove the maximum interest rate.*

In most types of adjustable rate loans, an increase in the monthly payment will follow an increase in the interest rate. Where it does not, as in payment option ARMs, it is still important that the consumer understand that the typically very low initial interest rate will likely last a very short time, usually just a few days or weeks. Therefore, the GFE should disclose the first possible date on which the interest rate could rise, both to warn consumers when they should be prepared to meet a higher monthly payment obligation and to alert them to the fact that some "teaser" rates are extremely ephemeral.

At the same time, HUD should remove the maximum interest rate for at least two reasons. First, most consumers cannot calculate how a change in interest rate translates into a change in payments. So, it's taking space and attention away from more useful metrics that consumers may actually make sense of. Second, and perhaps more critically, consumers are likely to underestimate the effect of a few points' increase in the interest rate over the life of a 30-year loan. Four percent doesn't sound like a lot of anything to average consumers. And they could even, logically, think it results in a four-percent increase in monthly payment – which would be disastrously incorrect.

5. *In disclosure of prepayment penalties, the first page of the GFE should also explain what they are and how they are triggered.*

In its new rules, HUD recommends that the GFE include disclosure of whether or not there is a prepayment penalty and, if so, the maximum amount of the penalty, on the first page. We commend HUD for adding this disclosure, as consumers deserve to be given a "red flag" warning about a product that, especially in the subprime market, has locked many consumers into unaffordable loans and played a primary role in equity stripping.

We are concerned, however, that consumers will not understand what a prepayment penalty is or how it is triggered. The Federal Reserve Board has also expressed concern about the lack of

[28] 15 U.S.C. 1638(b)(2).

transparency of these penalties.[29] In particular, many consumers do not realize that they will be charged a prepayment penalty for refinancing, and even after they have been flipped from one loan into the next, have no idea that they paid a prepayment penalty upon refinancing and that it stripped them of equity they had in their home.[30] The devastating effect these penalties have on family wealth is dramatic – especially in the subprime market, where the majority of loans made are refinancings,[31] and where 70% of loans continue to have prepayment penalties,[32] compared to 2% in the prime market,[33] even after the recent disruptions in the subprime market.[34]

The need for consumers to understand what triggers a prepayment penalty is heightened by perverse market incentives that encourage originators to pack loans with prepayment penalties.[35] As recently as February 2008, Bear Stearns' rate sheet told its brokers that their maximum 1% yield-spread premium would be cut in half on loans without a prepayment penalty, and Chase also retains the perverse link for its larger loans.[36] Lenders use prepayment penalties to recoup

[29] *See* 73 Fed. Reg. at 1694. The Federal Reserve Board has recognized that the value of "voluntary choice" to take a loan with a prepayment term is questionable because there is a lack of transparency about the cost, a lack of understanding of the cost, and it is not clear whether consumers can accurately assess and weigh contingent costs. The Fed has further recognized that this lack of transparency is magnified by market distortions that create incentives for originators to impose prepayment penalties for their own benefit.

[30] A recent FTC study found that two-thirds of the customers in its study did not recognize they could be charged a prepayment penalty if they refinanced with another lender in two years. James K. Lacko & Janis K. Pappalardo, *Improving Consumer Mortgage Disclosures,* p. ES-7 (Federal Trade Commission, Bureau of Economics Staff Report, June 2007) (hereafter Lacko & Pappalardo FTC Study).

[31] Statement by Martin J. Gruenberg, Vice Chairman, FDIC, Speech at 11th Annual Wall Street Project Economic Summit, New York, NY (Jan. 8, 2008): "But it is important to understand that the majority of subprime mortgages were refinancings of existing homes. In other words, these were homes in which the homeowner was living, with mortgages that the homeowner was paying and could afford." Even in 2007, 64% of subprime loans were refinancings. *Subprime Guidance Did Little To Diminish ARM Share,* Inside B&C Lending at 3 (Feb. 15, 2008).

[32] *See, e.g.* David W. Berson, *Challenges and Emerging Risks in the Home Mortgage Business*: *Characteristics of Loans Backing Private Label Subprime ABS,* Presentation at the National Housing Forum, Office of Thrift Supervision (December 11, 2006). According to MBA data, there was a 69.2% penetration rate for prepayment penalties on subprime ARMs originated in 2006. Doug Duncan, *Sources and Implications of the Subprime Meltdown,* Manufactured Housing Institute (July 13, 2007). A recent CRL review of 2007 securitizations showed a penetration rate for prepayment penalties averaging over 70%.

[33] *See* Berson, *id.*; a recent MBA analysis shows that 97.6% of prime ARMs originated in 2006 had no prepayment penalty, and 99% of 2006 prime FRMs had no penalty. Doug Duncan, *id.*

[34] Fully two-thirds (66.6%) of the subprime MBS market share for 2007 included prepayment penalties, down only slightly from 69.1% in 2006. Inside B&C Lending, p. 3 (Feb. 15, 2008). Even as overall subprime originations plummeted since August 2007, 47% of asset-backed securities issuances of 4Q07 included payment penalties. Inside B&C Lending, p. 3 (Feb. 15, 2008); Inside B&C Lending, p. 2 (Jan. 18, 2008).

[35] *See, e.g.* Gretchen Morgenson, *Inside Countrywide Lending Spree,* N.Y. Times (Aug. 26, 2007) (Countrywide's margin on loans with three year prepayment penalty could reach 15% of the loan; loans so lucrative because investors paid more for them.).

[36] *See,* App. B-1, Chase Subprime Rate Sheets Region 1 (March 10, 2008); App. B-2, Chase Subprime Rate Sheets Region 2 (March 10, 2008); App. B-3, Bear Stearns Rate Sheet, Wholesale Subprime (Feb. 19, 2008).

the costs of the yield-spread premiums they pay brokers to steer people into hybrid ARMs – which, until the recent crash in housing prices, were virtually assured to be refinanced in two-to-three years' time.[37]

But this price trade-off for lenders does not translate into a price trade-off for consumers. A conservative estimate is that "borrowers will pay $2 in prepayment penalties for every $1 in interest rate benefits on hybrid ARMs."[38] Overall, prepayment penalties in the subprime market represent an overall net loss to homeowners, costing consumers more at the front end and at the back end.

Given the stakes for consumers, then, the basic "red flag" raised for them should not only be that there is a prepayment penalty, but also how it is triggered. We recommend, therefore, that HUD add the following short parenthetical explanation to its disclosure on page one: "(Payment to lender if you refinance, sell home, or pay your loan off early)".

6. *<u>The broker compensation should be disclosed in a simple and straightforward manner.</u>*

In Section V below, we discuss the broader skewed incentives created by yield-spread premiums and explain why we believe they are illegal kickbacks in certain contexts. Our understanding of those incentives largely informs our thoughts on the proposed broker compensation disclosure at the top of page two of the GFE, which we discuss here. Apart from the need for substantive reform, the disclosure is misleading and must be replaced with a simpler disclosure even if substantive reforms are not made.

We appreciate HUD's effort to try to make the disclosure of broker fees more transparent. We agree that the current "required" disclosure of the yield-spread premium results in disclosure that is unclear and not uniform, if made at all. Yield-spread premiums, and rate/point trade-offs in general, are so complex that disclosing them clearly is very difficult (*see* Part 7 of this section, below, for further discussion).

Given that the incentives driving the way brokers price loans are not equal to those driving lenders, HUD's desire to avoid disadvantaging brokers through its origination fee disclosure is not justified.[39] (*See* Section V, *infra*, for a complete discussion.) Moreover, overwhelming evidence demonstrates that yield-spread premiums do not result in reductions in upfront settlement costs in most circumstances[40] and that consumers in the subprime market pay

[37] *See Steered Wrong*, *supra* note 2, at 32.

[38] Michael Calhoun, *Comments*, p. 5 (discussant on Elliehausen, Staten, and Steinbuks, *The Effect of Prepayment Penalties in the Pricing of Subprime Mortgages, Sept. 2006), at session, "Are Legislative Remedies to Limit Predatory Lending Really Remedies,"* The Federal Reserve System's Fifth Community Affairs Research Conference (Mar. 29, 2007).

[39] 73 Fed. Reg. at 14043.

[40] *See, e.g.,* A Study of Closing Costs for FHA Mortgages, Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Prepared by Susan E. Woodward, Urban Institute at x

significantly more for brokered loans than direct lender loans.[41] In essence, most yield-spread premiums amount to a rip-off, not a trade-off. HUD's responsibility under RESPA is to protect the consumer,[42] not mortgage brokers – and certainly not mortgage brokers *at the expense of consumers*.

YSPs also exacerbate racial and ethnic wealth disparities. Controlling for legitimate credit risk factors, African Americans and Latinos are likely to pay significantly more for subprime loans than whites.[43] This disparity exists partially because minorities are more likely to receive a higher rate loan when their loan contains a prepayment penalty.[44] The positive correlation between higher rates and prepayment penalties indicates that brokers are packing loans made to African Americans and Latinos with prepayment penalties, essentially locking consumers into unaffordable loans in exchange for higher compensation at the consumers' expense. This disastrous combination of the inability to afford a loan and the inability to get out of it has caused thousands of foreclosures in this country. Foreclosures by African Americans and Latinos will only increase the already tremendous difference in their homeownership rates and family wealth as compared to whites.

There are several problems with the proposed disclosure. First and foremost, it *presumes* a trade-off for the consumer through a reduction in upfront costs, which, as noted above, abundant research now proves does not occur except in limited circumstances.[45] A key goal of the broker disclosure should be to illuminate a common misconception rather than perpetuate it. We understand that HUD believes that the "Looking at trade-offs" table on page three provides protections for consumers. While we do believe this table is a helpful attempt to keep originators honest (discussed in Part 6, below), it only ensures a fair trade-off in an environment of fixed, and transparent, pricing, which is not the reality of the subprime market. Consumers don't see originators' rate sheets. *Originators could easily inflate the base rate* and fill out the entire table, nice and neat, presumably indicating that the consumer is getting a fair-trade off – when in fact the same exact incentives are driving the same exact abusive practices.[46]

(May 2008) (hereafter "Woodward FHA Closing Costs Study"); Howell E. Jackson and Laurie Burlingame, *Kickbacks or Compensation: The Case of Yield-spread premiums*, 12 Stan. J.L. Bus. & Fin. 289, 309 (2007) (hereafter "Jackson and Burlingame"); s*ee also* discussion in Part 6 below.

[41] *See, generally*, *Steered Wrong*, *supra* note 2.

[42] 12 C.F.R. § 2601.

[43] *See, generally,* Debbie Gruenstein Bocian, Keith S. Ernst and Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (Center for Responsible Lending, May 31, 2006), *available at* http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf.

[44] *Id.*

[45] *See* Woodward FHA Closing Costs Study, *supra* note 40; Jackson and Burlingame, *supra* note 40.

[46] Indeed, that practice is sadly common in the auto sales world, where a buyer loses the value of a down payment or a trade-in "credit" by the seller's simple act of raising the price of the car and add-ons to "swallow the down" or "swallow the trade." As with mortgage transactions, the more pieces at play in the pricing game, the harder it is for the consumer to keep track of them all.

We further note that the YSP portion of the disclosure ("You receive a credit of $__ for this interest rate of __%") provides no reference to the "Looking at trade-offs" table, giving the consumer no indication that the table is relevant to this portion of the disclosure, as it does for the discount points line item immediately below. If HUD leaves the YSP disclosure as is, it should at least refer consumers to the "Looking at trade-offs" table.

Second, the disclosure's characterization of the YSP as a "credit" only exacerbates the issue of the nonexistent trade-off. First, it suggests that this arrangement is somehow saving the customer money, when it is in fact doing just the opposite. Second, the disclosure could actually end up advantaging brokers over lenders because many individuals will believe they are receiving something of value when they see a big number following the word "credit" rather than a zero.[47]

Third, the disclosure in no way makes clear that this is a fee paid to a broker. It never uses the word "broker" and tells the consumer nothing about the dynamic at play among the broker, the lender, and the consumer's loan costs. We believe there is some value derived from the sheer "sticker shock" that occurs when a consumer realizes how much the broker is making off the loan.

Finally, the disclosure is truly confusing. We understand that HUD did several rounds of testing and believes it has adequately vetted the GFE. But HUD has not tested the effectiveness of this disclosure outside of controlled circumstances, and the discussion in the Proposed Rule does not suggest that HUD has tested the comprehensibility of this disclosure itself. Our attorneys with years of experience in the mortgage industry found this disclosure confusing. We find it very hard to believe that anyone other than the most sophisticated consumer will understand it.

We recommend that the following more simple, straightforward, and honest disclosure replace number 2 on the top of page two. This disclosure breaks out the portion of the broker fee paid directly by the consumer and the portion paid by the lender and recouped from the consumer through a higher interest rate:

[47] There is an additional problem with labeling it a "credit" in RESPA, in that the RESPA documents are often used to calculate the finance charge and APR for TILA purposes, and RESPA labels can engender much confusion in translating fees from the GFE and HUD-1 into their proper place in the TILA calculations. The credit should be treated as an additional downpayment, reducing the principal, but should not affect the calculations of the finance charge or APR.

MORTGAGE BROKER COMPENSATION	
Mortgage Broker Fees (see line 813 on GFE)* paid by you directly (included in settlement charges listed above):	$
+ additional fee received by broker from lender and paid by you through increased loan interest rate:**	$
Total Broker Fees:	**$**

7. *The "Looking at trade-offs" disclosure should be revised to enable consumers to better understand the relationship between upfront costs and interest rate.*

We commend HUD for developing this new and important disclosure. We have read NCLC's suggested improvements to the disclosure in its comments.[48] We concur with its improvements and believe they are essential.

We emphasize that the loan comparison chart, incorporating NCLC's suggested improvements, would benefit mortgage originators, consumers, and the market as a whole. Paying discount points up front, of course, should buy down the interest rate and, over the life of the loan, the consumer should recoup those upfront fees through lower monthly payments. As HUD's recently released study of closing costs on FHA loans found, however, "[t]he data reveal a market that is not even close to this ideal."[49] Consumers only get twenty cents on the dollar for discount points or yield-spread premiums, and those who borrow through brokers only get seven cents on the dollar for yield-spread premiums.[50]

We believe that charging points without providing a rate break in exchange for them is a deceptive practice. Yet some lenders believe that a trade-off is not legally required.[51] The loan comparison chart would force lenders to put on paper what we believe is required, at a minimum, by laws against misrepresentation and deception. Being able to charge discount points without having to clearly disclose the amount of the buy-down it would purchase is an open invitation to deception. Without both pieces of key information, there is no transparency, and no way for a consumer to make a meaningful decision about whether to pay the discount fee or not. Harvard Law Professor Howell Jackson notes, "even if consumers appreciate that they are being required to make higher monthly payments on their mortgage in order to compensate mortgage brokers,

[48] NCLC Comments, *supra* note 26, at 24-27.

[49] Woodward FHA Closing Costs Study, *supra* note 40, at x.

[50] *Id.*

[51] Some state regulators from two states have reported lenders taking this position in conjunction with regulatory matters.

consumers tend to undervalue periodic future payments as opposed to up front cash, and may thus underestimate the significance of higher interest rates."[52]

The revised loan comparison chart would ultimately benefit mortgage originators by providing clear guidance. Certain and clear rules make compliance easier for the industry and reduce the exposure of competent, honest lenders to enforcement risk. It would benefit consumers by providing more complete and accurate information about the rate-point trade-off, a factor that Susan Woodward identifies as one of the two features of mortgage transactions that make them so difficult for consumers.[53] Finally, it would benefit the market as a whole by enhancing the integrity of the marketplace, providing a level playing field for honest, efficient lenders to compete for customers.

8. *The GFE should educate consumers about their right to negotiate with mortgage originators.*

While we hope that an improved GFE and other RESPA rules can facilitate mortgage shopping, most consumers, especially those working with a mortgage broker, do not shop extensively for loans, and many of them do not understand that mortgage costs and rates are negotiable. The formal format of the proposed GFE may play a role in suggesting that the costs disclosed are fixed and are standard terms offered to every customer, much like the price of a gallon of milk. Because consumers need to understand that their mortgage terms are negotiable,[54] we recommend that the GFE include a prominent disclosure that reads: "You can shop or negotiate for lower settlement charges."

B. Our Proposed GFE

Given our belief that most consumers will not have the capacity to absorb everything in HUD's proposed four-page GFE, we have proposed an alternate two-page GFE, attached as Exhibit A.

Our proposed GFE is similar to HUD's in many respects, including disclosures of the following key items:

- Initial monthly amount owned for principal, interest, and any mortgage insurance. (We call this payment "Starting base monthly payment.")

[52] Jackson and Burlingame, *supra* note 40, at 309.

[53] *Id.* at 3. The other is the "sheer volume of different charges" involved and that the buyer doesn't know if they are compulsory, optional, or negotiable.

[54] Negotiations cannot work to consumers' advantage when consumers do not know they are in a negotiable situation: it's hard to win a game if you don't know that it is a game. After all, we rarely haggle over prices at the grocery store or Wal-Mart. In Ian Ayres classic 1991 study on negotiations in car sales, he cited a study from the Consumer Federation of America that found that 37% of Americans did not know that the sticker price of a car was negotiable, and that African- Americans were almost twice as likely to be unaware of that fact than whites (61% of blacks did not know that, as opposed to 31% of whites). Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 Harv. L. Rev. 817, 856 (1991).

- Highest possible monthly payment
- Highest possible loan balance
- Whether or not costs are escrowed
- Rate lock period
- Balloon payment
- Prepayment penalty
- A loan comparison chart incorporating NCLC's proposed changes, which we reference in Part A above

<u>Our proposed GFE differs from HUD's in the following respects:</u>

- ***Our form is two pages, while HUD's is four pages.***

- ***We include the APR***, for reasons noted in Part A above.

- ***We include the first date the interest rate can increase***. Flagging the first date the interest rate can increase will serve at least two important functions.

  First, it will raise a red flag for consumers taking out payment option ARMs. While the monthly payment may not increase for between one and five years, the interest rate changes every month, with the first increase generally occurring somewhere between a few days after the loan is closed and the date the first monthly payment is due. Alerting consumers that their 2% interest rate is actually only their interest rate for a few days or a few weeks is a primary way the GFE can alert consumers that their "deal" may not be as good as it seems. This is especially important because no TILA disclosure or other required form communicates this information to consumers in a comprehensible form.

  Second, whether customers have payment option ARMs or a hybrid ARM, alerting customers to when their interest rate can rise would potentially give them some advance notice that their monthly payment will be increasing sometime thereafter – and with hybrid ARMs, shortly thereafter.

- ***We include "Estimated Required Additional Housing Expenses" on page one.*** We agree with HUD's decision to separate costs that are determined by the originator from costs that aren't. However, as discussed in Part A above, we believe the additional costs should be included on page one to help ensure that consumers do not overestimate their ability to afford the loan.

- ***We include "Total Estimated Maximum Monthly Housing Costs" on page one.*** Again, to help ensure consumers do not overestimate the affordability of their loan, we recommend inclusion of this figure. While we understand that consumers should not *compare* loans based on this number, it is critical that consumers, particularly those in the subprime market who often don't shop behind their broker, begin evaluating their ability to afford the loan – based on the most complete estimate of total monthly costs possible – at the outset of the loan process.

- ***Our balloon payment disclosure is broader than HUD's.*** Rather than only disclosing whether or not there is a formal balloon payment included in the loan terms, our disclosure also considers that payment option ARMs can create larger than anticipated obligations at the end of the loan term. Our disclosure says, "Payment due at end of loan term: __ yes/ __ no/ __ possibly" and explains that "possibly" means that the loan lets the consumer choose to make lower monthly payments than the base monthly payment.

- ***We explain what triggers a prepayment penalty.*** As noted in Part A above, we believe a brief explanation of what triggers a prepayment penalty is essential and well-worth the extra line it adds to the form.

- ***We include a simple, straightforward broker compensation disclosure***, as recommended in Part A above.

- ***We include notices that the consumer can negotiate settlement charges,*** as recommended in Part A above.

- ***We include a summary of charges to facilitate reconciliation to the HUD-1.*** The top of the second page of our GFE provides a summarized version of the HUD-1 that should allow for easier reconciliation of the GFE and HUD-1 prior to closing.

SECTION V. YIELD-SPREAD PREMIUMS

Yield-spread premiums are more effectively and appropriately addressed under §8 than by disclosure.

We strongly believe that yield-spread premiums have significantly distorted the subprime market and that disclosures will not cure their ills. Although HUD holds to the position that the option to pay some closing costs through the rate should be available, it also states that it "should be at the consumer's choice, based upon a complete understanding of the trade-off between up-front settlement costs and the interest rate.[55]

We explain in the preceding section that the GFE proposal falls dramatically short of providing information necessary for an informed choice. More importantly, it falls dramatically short of assuring that such a trade-off exists. The empirical evidence now makes the *prima facie* case confirming the observations of those who have seen the loans made in the subprime, much of the recent Alt-A, and, we now see, the FHA sectors: the yield-spread premium is an integral part of the perverse incentives in the marketplace that have made loans more expensive and more risky. It made loans more expensive, and its purported function as an "alternative" way to pay part of the settlement costs is largely mythical in those market segments.

[55] 73 Fed. Reg. at 14041.

Were RESPA solely a disclosure law, it would be understandable for HUD to rely solely on trying to disclose a way through the murky, convoluted swamp of the impact of YSPs on loan pricing. But RESPA is not solely a disclosure law. Indeed, a cornerstone of the law is the prohibition against fees for referrals or otherwise unearned fees under §8.[56] By simply providing strict conditions to assure that YSPs are in fact an "alternative" way to pay costs, rather than simply a reward to brokers for delivering loans with higher costs or riskier terms, HUD would give flesh to §8's intent to prohibit anti-competitive and costly market perversions.

A. <u>The Yield-Spread Premium: Lifting the Veil</u>

HUD's policy position on YSPs rests on two key points: (1) they can be a useful option to help pay some or all closing costs through the higher rate rather than financing them in the loan or paying cash upfront,[57] but (2) payment for delivering a higher-cost loan to a lender is not a payment for services.[58]

Unfortunately, the market created other uses and incentives for yield-spread premiums. One of the most distorting – and damaging – incentives is the tie between prepayment penalties and yield-spread premiums. Brokers are rewarded through the YSP mechanism for bringing loans with prepayment penalties, and punished for bringing loans without them or with shortened penalty periods.[59]

The irony, of course, is that the public justification made for prepayment penalties was that they were a price-trade-off that would result in a *lower* interest rate. Few consumers would knowingly choose to simultaneously pay a "rate-increasing" YSP and a "rate-reducing" prepayment penalty. Yet the subprime market was filled with loans with prepayment penalties.[60]

It is virtually impossible to disclose a way through the minefield of multiple terms simultaneously imposed with opposing impacts on the rate. ("You have your choice of paying 1% more to get a loan with no prepayment penalty, or paying 1.25% more for a 2-point YSP with a prepayment penalty, which may – or may not – also impact settlement costs.") The attached Appendix C[61] is an analysis of the options available to a consumer just from one lender,

[56] 12 U.S.C. 2607(a), (c)(2).

[57] 73 Fed. Reg. at 14041.

[58] Statement of Policy 2001-1, 66 Fed. Reg. 53052, 53055 (Oct. 18, 2001) (Department affirms the 1999 Statement of Policy that "simply delivering a loan with a higher interest rate is not a compensable service.").

[59] The link is explained in greater detail in our comments to the Federal Reserve Board's recent proposed Regulation Z rules under HOEPA. Comments of the Center for Responsible Lending on Proposed Rules Regarding Unfair, Deceptive, Abusive Lending and Servicing Practices pursuant to the Home Ownership and Equity Protection Act (Docket No. R-1305) (April 8, 2008) (hereafter "CRL HOEPA Comment").

[60] See text accompanying notes 33-35, *supra*.

[61] *See* App. C – Kathleen Keest, Center for Responsible Lending, *Consumer Choice or Broker Choice? Suitability and Conflict of Interest* (2006).

with the interest rate ranging from 7.9% to 10.45% (teaser ARM), depending upon which permutations are selected. Since incentives drive markets, it is predictable that the options offered, and how they are offered, will be impacted by the brokers' own incentives. That is a structural problem, not a disclosure problem.

Among the most important – although unsurprising – findings of both the Federal Trade Commission study of homeowners' understanding of mortgage terms and Dr. Woodward's study was that consumers have more trouble understanding complex loan terms.[62] It appears as though in working with the focus groups on the GFE, HUD resolved this quandary by designing a disclosure that assumes that "all else would be equal" in weighing the trade-offs. While that certainly makes for more streamlined disclosures, it does not change the fundamental problem. It only simplifies the disclosure – not the product, not the choices, and not the economic consequences of those choices. In short, it isn't the way large swaths of the mortgage market work. Assuming away complexity will not result in the "complete understanding" of the trade-offs that is HUD's stated goal in its disclosure proposal regarding YSPs.

B. <u>The Evidence on the Trade-Offs: With One Exception, Mostly Missing.</u>

The articulated justification for yield-spread premiums has been as the "alternative method" of paying closing costs since the practice became widespread. Although regulation of this practice has remained lax based on this representation, proffers of reliable evidence to back it have been remarkably lacking. On the contrary, the empirical evidence, including several recent studies, has consistently given reason to doubt that this is the case. Most recently, of course, is Dr. Woodward's study of FHA loans. Except in the instance of "no-cost" loans, yield-spread premiums are associated with higher, not lower costs. The net loss to those who pay yield-spread premiums ranges from $93 per $100 for brokered loans to an average $71 for mortgage bank loans.[63]

[62] Lacko & Pappalardo FTC Study, *supra* note 30, at 74-76. *See also* Ren S. Essene and William Apgar, "Understanding Mortgage Market Behavior: Creating Good Mortgage Options for All Americans," Joint Center for Housing Studies. Harvard University (2007).

[63] Woodward FHA Closing Costs Study, *supra* note 40, at x. In her report, Dr. Woodward cites one study which concludes that brokered loans were not more costly than retail loans. *Id.* at 15. However, the study does so based on a database of subprime loans made from 1995 to 2002, contributed by ten subprime lenders, *see* Amany El Anshasy, Gregory Elliehausen, and Yoshiaki Shimazaki, *Mortgage Brokers and the Subprime Mortgage Market,* at 7 (May 2004). The contributors are not identified, other than by membership in a particular trade association, and we are concerned that the data from a self-selected and limited group of originators may create some selection bias, making it an unsuitable database, or at least one which must be treated with great caution. We note that three major originators with dominant market shares over that six-year period (and who were members of that trade association during some or all of that period) were the subject of law enforcement actions, Household, Associates and Ameriquest. *These actions resulted collectively in over $1 billion in penalties and restitution.* Additionally, at least two other major lenders during the early years of that period utilized a similar business model to two of the law enforcement targets but collapsed in bankruptcy. If this study is to be considered in any regulatory decision, we urge that, at a minimum, HUD consult with regulators familiar with the business models and practices in which these lenders engaged during the period, to determine whether the illegal practices might have affected outcomes reflected in loans in that database, making the data unreliable for some purposes.

Another study, released in 2007, showed that consumers only receive 25 cents in reduced fees for every one dollar paid in yield-spread premiums to brokers and that upfront fees are actually lower for retail loans than for brokered loans.[64] CRL released a study earlier this year that dramatically demonstrated the dichotomy between the prime and subprime markets.[65] The evidence from that study (which could not isolate settlement costs) indicates that brokered loans, overall, may help consumers find the cheapest deal, but that is not the case in the subprime market. In the prime market, homeowners and buyers generally did not pay more for brokered loans, while in the subprime and near prime markets, they did. Over a fairly typical 4-year loan term, that difference costs the subprime consumer over $5,000 more.[66] That extra money, of course, is paid by the consumers in those subprime loans who could have – *should* have – been in the lower cost prime loans, and, but for the perverse incentives making those loans better for the middlemen, might have been.

As noted, the exception found in Dr. Woodward's study is for "no-cost" loans. There, the substitution ("pay by rate or pay upfront") is real – not mythical.[67] Moreover, racial and ethnic disparities in loan pricing are not apparent with "no-cost" loans,[68] which is consistent with findings (discussed in Section IV, Part 6) suggesting that YSPs largely contribute to racial disparity in loan pricing. Given that "no-cost" loans are far more common in the prime market than in other sectors, this salutary outcome may well help explain the benefit found for prime loans in CRL's study that was missing in both subprime and near-prime. Over a typical loan-life of four years, a subprime consumer pays a $5,222 premium for brokered loans, a near-prime consumer pays a $1,316 premium, while a prime consumer gains a $42 benefit.[69]

Critically, the substitution of those costs into the rate reduces complexity, adds transparency, and therefore increases both understanding and competitiveness. Thus, although a no-closing cost loan increases the rate somewhat, that single-factor price tag becomes easier to understand, easier to shop on, and therefore, more useful for shopping for the best rate.

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[64] Jackson and Burlingame, *supra* note 40, at 332; *see also* Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing*, 44 Harvard J. on Legis. 123, 139 n.94 (2007) and sources cited therein.

[65] *Steered Wrong*, *supra* note 2.

[66] *Id.*

[67] Woodward FHA Closing Costs Study, *supra* note 40, at xi, 73.

[68] *Id.* at 70: "[R]ace and education premiums are nearly absent among no-cost loans."

[69] *Steered Wrong*, *supra* note 2, at 4. In the Woodward study, less than 8% of the FHA loans were no-cost, and, while we have no data, our many years of experience in the subprime market suggests that no-closing costs loans in subprime market are even more rare.

C. ANTI-KICKBACK RULES: Section 8 implementing rules should assure that yield-spread premiums are truly an alternative method of payment, not simply a surcharge.

In enacting RESPA, Congress recognized that anti-competitive behavior, and unearned compensation, made the already expensive mortgage even more expensive. It adopted a combination approach – disclosure plus substantive regulations taking square aim at anti-competitive, market-distorting conduct. Lender pricing schemes that pay the originator more for more expensive, riskier loan terms (such as prepayment penalties), fall squarely within that category.

HUD's challenge, then, is in *ensuring* that yield-spread premiums are, in fact, the price trade-off that has justified their existence, rather than a surcharge imposed amidst a flurry of complex, multi-variant price points that make it virtually impossible for a disclosure-only approach to work. Anything less is to abdicate its responsibility to what is 'necessary to achieve the purposes" of RESPA.[70]

We believe that the experience in the subprime and non-traditional segments of the market demonstrates that in those sectors, the YSP creates the market-distorting perverse incentives and functions as an added tax on consumers in those markets. Therefore, in other contexts, we have recommended that they be prohibited in those markets.[71]

For RESPA purposes, however, we believe that prescribing a set of conditions as to when yield-spread premiums are permitted under Section 8 is well within HUD's authority, carries out the letter and spirit of the law, will curb the abuses where they exist, will not adversely affect the portions of the market where they do not, and, finally, will assure that the promised price trade-offs actually occur.

Section 8 is clear that fees received must be compensation for performing a service, and HUD adheres to the position that simply delivering a higher rate is not a compensable service – as well it should.[72] As articulated, however, that puts the burden on the consumer – without all the relevant information of trying to parse out from the multi-variant price points what's compensation and what's surcharge. It is small wonder that such efforts, under the existing standard as articulated, have failed.

Dr. Woodward's study helps illuminate the consequences of that failure, while also illuminating a way forward. As a substitution for costs, yield-spread premiums can work. As a partial reduction of costs, the purported benefits are swallowed up and instead are redirected to the originator. That suggests the following RESPA rules: In the former case, the YSP is compensation for services under Section 8 and permissible; in the latter, it is a reward for a higher-cost loan, and prohibited.

[70] 12 USC §1617(a).

[71] *See, e.g.*, CRL HOEPA Comment, *supra* note 59, at 21-29.

[72] *See*, *supra*, note 58.

We therefore recommend that the relevant portion of 24 CFR §3500.14 be amended to read:

A yield-spread premium, or similar charge however denominated, may be permitted as *bona fide compensation* for services actually performed only where:

> (A) the mortgage broker receives no other compensation, however denominated, directly or indirectly, from the consumer, creditor, or other mortgage originator;
> (B) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;
> (C) the loan does not include a prepayment penalty; and
> (D) there are no other closing costs associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.

We believe that this will ensure the trade-off actually exists and that it can be understood, measured, and compared. HUD's goal of preserving the option of paying upfront or paying by rate will be honored, and the odds of a consumer making a genuinely informed choice are significantly improved.

We note that one state, Massachusetts, recently enacted regulations which effectively prevented originators from using yield-spread premiums as a mechanism for self-rewards, although it was accomplished in a different way. Like so many other recent reforms in states, it does not appear to be restricting access to responsible credit. This regulation precludes brokers from accepting compensation where there is a conflict of interest – functionally a ban on yield-spread premiums as the regulations define that conflict.[73] Shortly after implementation, Wells Fargo changed its broker compensation system from "a sliding fee based on loan's profitability to a flat 1.5% of the loan amount."[74] In short, the Massachusetts rule appears to be working to eliminate the perverse market incentives that have grown up around this practice. We believe that HUD should step to the forefront nationally.

SECTION VI: COMMENTS ON OTHER PROVISIONS

A. CLOSING SCRIPT. *Without additional protections, the risks entailed by this closing script may outweigh the benefit of providing an oral explanation to the consumer at settlement.*

Given the extensive damage wrought to the international economy by the failure of lenders to explain highly complex loans to consumers, a clear, oral explanation of the loan seems both obvious and crucial. We commend HUD's efforts, and we agree that the opportunity for

[73] Commonwealth of Massachusetts Attorney General's Regulations, 940 MA ADC 8.06(17), Mortgage Brokers and Mortgage Lenders – Prohibited Practices.

[74] Binyamin Appelbaum, *Most Lenders Accept Tough New Mortgage Rules in Mass*, Boston Globe, (Jan. 10, 2008).

consumers to hear an oral explanation and ask questions is more effective than being handed a stack of forms with no discussion. However, in practice, it is difficult to figure out how to require such an explanation.

First, there is the possibility that closing agents or settlement attorneys might fail to read through the closing script in a meaningful way that adds to the consumer's understanding. Second, the agent or attorney might fail to read it at all, yet the consumer might still unwittingly sign it as part of the barrage of other signatures required at closing or might be persuaded to sign it as just another "meaningless government form."[75] Third, the agent or attorney themselves might not fully read through the loan documents and therefore provide the consumer with incorrect information received from the lender. Fourth, the existence of the signature might be used in court as evidence that the consumer understood the loan, even if that is simply not the case.

If this script is to be required, we strongly recommend that it does not have a consumer signature requirement. Alternatively, the rules should clarify that the consumer's signature is not conclusive evidence that the disclosures were made.

In addition, if a closing script is used, it must disclose and explain the APR as the price which includes both interest and fees. It must also prominently disclose the consumer's three-day right to rescind for non-purchase money mortgage transactions, through language similar to that contained in the Right to Cancel Notice required by the Truth in Lending Act.

Finally, HUD should clarify that the consumer has the right to rely on the accuracy of the closing script, and the lender is jointly liable for any inaccuracies in it. While we believe closing agents and settlement attorneys do have a duty to understand the loan that they are closing, reality suggests that sometimes, that understanding might be less than complete. If closing agents and settlement attorneys are the sole actors liable for inaccuracies in the closing script, the lender has no incentive to ensure that the agents or attorneys fully understand the loan. Additionally, most closing agents and settlement attorneys will be thinly capitalized, and if liability rests solely with them, it is unlikely that consumers will be able to be compensated for violations of the law. Thus, we recommend the new rules establish that the lender is jointly liable along with the closing agent or settlement attorney for good faith delivery of the closing script.

B. VOLUME-BASED DISCOUNTS. *Volume-based discounts may offer value to the consumer, but safeguards are essential.*

CRL believes that volume-based discounts may offer value to homebuyers, but this value is only realized if the cost savings are passed on to the consumer rather than retained by the lender. We commend HUD for requiring that all savings be passed through to the consumer and for further requiring that, if a violation is alleged, the burden is on the settlement provider to demonstrate compliance.

[75] Predatory loan recipients often report that upon asking questions about a document that they didn't understand, they were told that it was just "red tape that the government requires" and that they "shouldn't worry about it."

However, we remain concerned that discounts may lead originators to steer consumers to certain settlement service providers, limiting consumers' choice of servicers. We would therefore support additional safeguards to ensure that volume-based discounts in fact benefit the consumer.

C. AVERAGE PRICING. *Average cost pricing is fine, but average pricing is not, and the actual cost charged to the consumer must be the cost disclosed on the HUD-1.*

We agree with HUD that average cost pricing may benefit consumers. However, in the Proposed Rule, HUD appears to use the terms *average cost pricing* and *average pricing* interchangeably, and we do not support average pricing. In the industry, average cost pricing generally describes an arrangement between an originator and the third-party settlement service provider whereby the service provider charges the originator an average price each time the service provider performs the service for the originator. Therefore, the originator pays the same amount for each consumer, and the amount paid is the cost disclosed on the HUD-1. We do not object to this method.

In its proposal, however, HUD appears to attempt to allow *average pricing*, whereby the originator charges the consumer an average cost while paying the third party settlement provider a different amount for each consumer. We believe there is no reason that the originator should not charge the consumer the actual cost of the third party service and reflect such cost on the HUD-1.

First, the vast majority of all settlement costs are known at the time the HUD-1 is completed. Second, for services such as courier charges and recording fees, which can vary slightly and late in the process, lenders have expressed reluctance to be bound by the average pricing safeguards. Without these safeguards, the Proposed Rule provides a giant loophole for lenders to charge additional fees. Third, lenders and settlement agents can already accomplish average pricing on these items without any rule change by including these costs in their general overhead. Doing so should not be difficult since it involves making the same cost projections as are proposed for itemized average pricing. Fourth, some of these charges are used to calculate the finance charge under TILA and high-cost loans under HOEPA, and using average costs to compute them would undermine their purpose Therefore, we recommend that HUD clarify its proposal and ensure that average pricing is not allowed. Most important, while the method HUD has proposed may reduce processing costs for originators and service providers, HUD provides no assurances that these costs will be passed on to consumers, and we do not believe they would be.

We also believe that even average cost pricing is inappropriate for certain costs that are partially dependent upon loan amount, such as title insurance premiums, recording costs, and transfer taxes, since average cost pricing would disadvantage those consumers purchasing or refinancing less expensive homes.

D. TOLERANCES. *Prescribed tolerances will help prevent unwelcome surprises at the settlement table.*

As HUD recognizes with these rules, a significant problem for consumers is what is often a complete disconnect between the costs disclosed in the GFE and the costs appearing later on the HUD-1. Establishing realistic tolerances for the maximum percentage that originator-controlled costs can change from the GFE to the HUD-1 is an excellent way to prevent this most unwelcome surprise.

We propose that the tolerance be calculated on each item rather than in the aggregate. Calculating the tolerance in the aggregate could still permit very significant changes in one or two cost categories. We believe a 10% tolerance on each item will make manipulation by originators less likely and thus do more to protect consumers.

It is true that for many reasons, consumers find it easier to look at total amounts rather than many different line items, and calculating the tolerance on each item may cause some confusion. Therefore, we propose that consumers also be presented with a total percentage change highlighted in a conspicuous manner at the top of any itemization of tolerances.

E. REQUIRED USE. *The definition of required use should include the total cost of the loan in addition to total settlement services.*

We commend HUD for revising the definition of required use so that originators may only require use of unaffiliated settlement service providers if consumers receive a true discount for the settlement services. However, we believe that this safeguard should apply to all elements of loan cost, not only settlement costs. We have read NCLC's comments with respect to this issue,[76] and we concur.

F. SERVICING PROVISIONS. *RESPA's servicing rules should be updated. In addition, the technical amendment should be revised to apply to all federally related mortgages, not only first liens, and the servicing disclosure should inform consumers of the broad role of servicers.*

We have read NCLC's comments discussing why RESPA's servicing rules must be updated,[77] and we concur.

We have also read NCLC's comments discussing the technical amendments related to servicing,[78] including its proposed language for the servicing disclosure, and we concur.

[76] NCLC Comments, *supra* note 26, at 34-35.
[77] *Id.* at 42-43.
[78] *Id.* at 35-36.

SECTION VII. ENFORCEABILITY GENERALLY and TIMING of HUD-1

Civil penalties, injunctive relief, equitable relief, and a private cause of action – particularly with respect to the GFE and HUD-1 – are vital to the effectiveness of RESPA.

Requiring the HUD-1 three days prior to closing is essential.

RESPA violations are notoriously underenforced at this time. Consequently, we are glad to see that HUD is planning to ask Congress to provide for civil penalties, injunctive relief, and equitable relief for several sections of RESPA. However, unless a private right of action, which would provide for actual damages, is also included for all sections of RESPA, enforcement will continue to be minimal and RESPA violations will continue to be rampant throughout the industry. Given the volume of mortgage lending in this country, there will never be sufficient public resources to rely solely on public enforcement.

Therefore, we recommend that HUD also urge Congress to add a private cause of action to RESPA, especially with respect to the HUD-1 and GFE, by codifying that the violation of those provisions constitutes an unfair trade practice, as some states have done. Absent the availability of a private cause of action, relief to consumers taken advantage of by abusive lending practices is often completely out of reach.

We welcome HUD's plan to request an expanded statute of limitations and recommend that the time frame be three years. The trouble noncompliant loan disclosures create often won't manifest itself until the consumer has difficulty making loan payments, and we believe three years is a reasonable period of time to allow violations to come to light.

We also commend HUD for seeking authority from Congress to require delivery of the HUD-1 three days prior to closing. Early receipt of the HUD-1 is vital to the consumer's ability to make a deliberate, informed decision about whether or not to close the loan.

SECTION VIII. MAKE THE GFE THE PRIORITY

Throughout the comment period, we have heard the concerns raised by various players in the mortgage market about the Proposed Rule. Regardless of how much or how little we sympathize with those concerns (and the range is great!), we urge HUD to ensure that complaints about provisions other than the proposed GFE do not sink the entire rule. We believe the standardized GFE is the single most important provision for consumers, and we urge HUD to go forward with it, with our suggested changes, regardless of the Department's decisions with respect to the rest of the rule.

SECTION IX. CONCLUSION

In conclusion, we applaud HUD for addressing the challenge of reforming RESPA. We believe HUD's proposed GFE provides important improvements over existing requirements. We hope that HUD will take our suggested changes to the GFE to heart, as they merely attempt to better alert consumers to the most hazardous loan terms in the market.

At the same time, we remain convinced that there are some financial incentives so strong, and so skewed, that they create problems disclosures cannot fix. In fact, these incentives undermine most of what HUD hopes to accomplish through this Proposed Rule. We know that HUD shares our commitment to protect consumers, as recently conveyed by RESPA Director Ivy Jackson: "It is no longer acceptable to stand in the way of millions of Americans who are crying out for clarity when it comes to the biggest purchase of their lives."[79] As we have expressed earlier in these comments, lack of clarity is not due to poor disclosure as much as it is due to complex loan terms driven by warped incentives that encourage minimal transparency in the mortgage market. This minimal transparency cannot be overcome by the clearest of disclosures. We hope that HUD will make the substantive reform needed to correct this broken market and give consumers the clarity they deserve.

[79] Written Statement of Ivy Jackson, Director, Office of RESPA and Interstate Land Sales, U.S. Department of Housing and Urban Development, Hearing before the Committee on Small Business, May 22, 2008.

APPENDIX A

Name & Address of Borrower:	Name & Address of Lender:
Property Location:	Name & Address of Broker, if any:

GOOD FAITH ESTIMATE: USE THIS TO COMPARE LOAN TERMS AND CHARGES.

LOAN TERMS	
1. Loan Amount:	$
2. Loan Term:	
CAREFULLY REVIEW the following IMPORTANT provisions of your loan.	
3. **Annual Percentage Rate** (cost of credit per year, including interest rate, points, fees, and other costs) **Can your interest rate rise?** ☐ yes ☐ no **If yes, earliest date interest rate can rise:**	% [date]
4. (a) **Starting Base Monthly Payment** (principal, interest, and mortgage insurance): (b) **Can Base Monthly Payment in crease?** ☐ yes ☐ no **If yes, Maximum Base Monthly Payment:**	$ per month $ per month
5. **Estimated Required Additional Housing Expenses** (property taxes, homeowner's insurance, flood insurance, and homeowners association/condo fees). *-->Find out if these fees will be included (escrowed) with your monthly mortgage payment. If not, you must pay them in addition to your monthly payment.* *-->Do not compare loans based on this estimate because the actual expenses are not determined by your lender and may be different from these estimates. This figure is included so your Total Estimated Maximum Monthly Housing Costs can be calculated (Box 6).*	$ per month
6. **Total Estimated Maximum Monthly Housing Costs** *(Equal to 4(a) + 5 if the monthly payment cannot increase or 4(b) + 5 if the monthly payment can increase.)*	$ per month
7. **Any payment due at end of loan term?** ☐ yes ☐ no ☐ possibly *"Possibly" means that the loan lets you choose to make lower monthly payments than the base monthly payment listed above.*	$
8. **Any prepayment penalty?** ☐ yes ☐ no (Payment to lender if you pay off loan early, sell home, refinance, etc.) Time period penalty applies:	$ max. amount [months/years]
9. **Your interest rate lock period is:** *You must close the loan within this number of days to be guaranteed this interest rate.*	days

SETTLEMENT CHARGES **Summary of Estimated Charges, shown in more detail on reverse side** *You can shop or negotiate for lower settlement charges.*	
10. **TOTAL SETTLEMENT CHARGES** Portion included in the Loan Amount shown above (you will pay interest on this amount): $ Portion you must pay at closing: $	**$**
11. Lender Fees (see "800" section on next page):*	$
12. Other Fees or Required Payments (see itemization on next page):	$

MORTGAGE BROKER COMPENSATION	
13. **MORTGAGE BROKER FEES** (see line 813 on next page) paid by you directly (included in settlement charges listed above):	$
+ additional fee received by broker from lender and paid by you through increased loan interest rate (not included in settlement charges listed above):	$ ______
Total Broker Fees:	**$**

* THESE "LENDER FEES" ARE GUARANTEED UNTIL CLOSING OR __________________ (WHICH IS 30 DAYS FROM TODAY'S DATE), WHICHEVER COMES FIRST. OTHER FEES MAY CHANGE, BUT YOU WILL RECEIVE WRITTEN NOTICE OF ANY SUCH CHANGE AT LEAST 3 DAYS BEFORE CLOSING.

FOR MORE INFORMATION ABOUT LOANS OR FOR NAMES OF FREE HOUSING COUNSELORS IN YOUR AREA, CONTACT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AT (800) 569-4287 OR VISIT ITS WEBSITE AT HTTP://WWW.HUD.GOV.

Further Detail of Estimated Settlement Charges
This section is designed to compare to the Form HUD-1 (the "Settlement Statement") you receive prior to closing.

800. Origination Points or Fees (line 801) These are fees that the lender may charge in connection with the loan. Each "point" is equal to one percent of the loan amount.

Discount Points (line 802): This fee, paid to your lender, should lower your interest rate. Make sure that the one-time cost of the points is a fair tradeoff for actual interest rate savings, using the "Loan Comparison Chart" at the bottom of this page.

Mortgage Broker Fees (line 813): These are fees that the mortgage broker might charge in connection with the loan.

Series 800 fees are guaranteed through the date of settlement or for 30 days from date this document is signed, whichever comes first.			**Paid by Borrower**
801. Loan Origination Fee	%	to:	$
802. Loan Discount	%	to:	$
803-812 Other Fees		to:	$
813. Mortgage Broker Fee	%	to:	$
813a. From Borrower	%		$
813b. From Lender	%		You pay through higher interest rate
Subtotal Series 800 fees			**$**

The remaining fees on this form are estimates. Your lender is required to give you written notice of any change in these estimates at least 3 days before closing.

900. Items Required By Lender To Be Paid In Advance: –The lender will keep interest payments, will pay insurance premiums to insurance companies, and will pay any VA funding fee to the U.S. Dept. of Veterans Affairs.	**$**
1000. Reserves Deposited With Lender (Escrow Account Deposits): These fees show the maximum payment of taxes and/or insurance and other items that must be put into an escrow account, a special account that the lender will set up for the borrower so the lender can make certain payments on the borrower's behalf. The lender is not allowed to collect more than the amounts listed. Actual payments may be less than the maximum amounts listed.	**$**
1100. Title Charges: The lender does not set these fees. The title company or agent charges these fees in connection with the title insurance policy. You do not have to use the lender's recommended title company and may shop for your own.	**$**
1200. Government Recording and Transfer Charges: These fees may be paid by you or by the seller, depending upon your agreement of sale with the seller. The buyer usually pays the fees for legally recording the new deed and mortgage (line 1201 on Settlement Statement). Some state and/or local governments collect transfer taxes whenever ownership of property changes or a mortgage loan is made; they also may require the purchase of city, county and/or state tax stamps (lines 1202 and 1203). The lender collects these fees but does not set them.	**$**
1300. Additional Settlement Charges (survey, pest inspection, home warranty fees, elevation certificate).	**$**
Total Costs to Close this Transaction:	**$**

[Insert Loan Comparison Chart, incorporating NCLC's changes, here.]

APPENDIX B-1

Rate Sheet Notification

Effective March 17, 2008

Chase Subprime Change Update

No Change to Rates!

Rate Sheets

Effective Date: 3/10/08

Current Indices for Compliance (3/17/08 - 3/23/08 only)	
6 Month LIBOR (Bloomberg)	2.67
Prime Rate (Bloomberg)	6.00

Date	10 YR	20 YR	30 YR	Treasury Yields Used for High Cost Mortgage Test
2/15/2008	3.76	4.55	4.58	Use 10 Year for 10 and 15 Year Terms
1/15/2008	3.72	4.30	4.28	Use 20 Year for 20 and 25 Year Terms
12/15/2007	4.24	4.71	4.66	Use 30 Year for 30 Year Terms

For a Copy of Current Rates

Visit our Web site at:
http://www.ChaseB2B.com > click Wholesale Lending / Broker, then click Subprime.

For Additional Information, please call your Account Executive.

CHASE

Full Documentation

Effective as of March 10, 2008

Fixed 1st Lien - Full Prepayment Option

Rates reflect 30 Yr Fixed Product with a 3 yr Prepay Option at Par

Credit Grade	Score	65%	70%	75%	80%	85%
	700	6.375	6.500	6.625	6.875	7.625
M0	**680**	6.500	6.625	6.750	7.000	7.750
0x30	**660**	6.625	6.750	6.875	7.125	7.875
Last 12 Mo	**640**	6.875	7.000	7.125	7.375	8.250
	620	7.000	7.125	7.250	7.500	8.375
DTI	**600**	7.375	7.500	7.625	7.875	8.750
45%	**580**	7.750	7.875	8.500	8.875	9.500
	700	6.750	6.875	7.000	7.250	
M1	**680**	6.875	7.000	7.125	7.375	
1x30	**660**	7.000	7.125	7.250	7.500	
Last 12	**640**	7.250	7.375	7.500	7.750	
	620	7.375	7.500	7.625	7.875	
DTI	**600**	7.750	7.875	8.000	8.250	
45%	**580**	8.125	8.250	8.875	9.250	
	700	6.875	7.000	7.125		
M2	**680**	7.000	7.125	7.250		
2x30	**660**	7.125	7.250	7.375		
Last 12	**640**	7.375	7.500	7.625		
	620	7.500	7.625	7.750		
DTI	**600**	7.875	8.000	8.125		
45%	**580**	8.250	8.375	9.000		
M3	**680**	7.250	7.375			
3x30	**660**	7.375	7.500			
Last 12	**640**	7.625	7.750			
	620	7.750	7.875			
DTI	**600**	8.125	8.250			
45%	**580**	8.500	8.625			

Minimum Rate For All Fixed 1st lien Loans is 6.25%

RATES GUARANTEED FOR 35 DAYS FROM APPLICATION RECEIPT DATE

Adjustments to Rate	
Loan Size:	
<50,000	1.500
>=50,000 <100,000	0.500
>=100,000 <125,000	0.250
>=125,000 <300,000	-
>=300,000 <=650,000	(0.125)
Product:	
15 yr Term	-
30/15 Balloon	-
40 Yr Amort/30 Yr Term	0.175
Interest Only (10 yr IO period):	0.500
Property Type:	
Investment Property	1.500
Second Home	0.750
3-4 Units	0.375
Mfg Hsg	0.500
Small Mixed Use	0.250
Condo (not available in FL)	0.250
Programs:	
Purchase Money	0.125
1st Time Home Buyer (add to purchase money)	0.250
LTV <= 60% All Credit Grades from 65% LTV	(0.125)
State=Florida, Ohio, Tennessee	0.125
Michigan, Missouri and Mississippi	0.250

Adjustments to Rate	
Prepayment Option to Buy-out/Buy-down	
Buydown to 2 Yr Prepayment Option	0.250
Buyout of Prepayment Option:	0.875
Buy-Down/(Discount) - Max Buydown = 3 Points:	
Buydown of Rate at a Ratio of 35 bps to 1 Point	
Buy-Ups/(YSP/Rebate) (See Maximum YSP Note*):	
Buyup of Rate at a Ratio of 50 bps to 1 Point YSP	
Buyup of Rate at a Ratio of 75 bps for every Point over 1 Point YSP	
*The Max YSP for Various Loan Amt/PPO Combinations are as follows:	
For Loans $0 to $500,000:	**Maximum YSP**
2 Yr and 3 Yr Prepayment Option	2
No Prepayment Option (<=$400,000)	2
No Prepayment Option (>$400,000 <=$500,000)	1
For Loans $500,001 to $650,000:	
No Prepayment Option	0
2 Yr and 3 Yr Prepayment Option	1
Other:	
7 Day Pays	(0.250)
(Lock must occur within 7 business days of Initial U/W decision)	

Please refer to the Chase Subprime Product and Credit Matrices for details including BK\FC rules.

General Guidelines

Chase does not originate High Cost loans.

PRICE SHEET FOR THE FOLLOWING STATES ONLY:

AZ, CA, CO, CT, DC, DE, FL, HI, IA, ID, IL, IN, KS, KY, LA, MD, MI, MO, MS, MT, ND, NE, NH, NV, OH, OK, OR, PA, RI, SD, TN, UT, VA, VT, WA, WI, WV, WY

(Refer to the Chase Subprime Product and Credit Matrices for state specific max LTVs)

EQUAL HOUSING LENDER

Full Documentation
Effective as of March 10, 2008

CHASE

Adjustable Rate Mortgage - Full Prepayment Option

Rates reflect 5 / 25 Arm Product with a 3 Yr Prepay Option at Par

(Caps (3 / 1.5 / 7)

Credit Grade	Score	65%	70%	75%	80%	85%	Margin @80% LTV*
	700	6.875	7.000	7.125	7.375	8.125	3.750
M0	**680**	7.000	7.125	7.250	7.500	8.250	3.875
0x30	**660**	7.125	7.250	7.375	7.625	8.375	4.000
Last 12	**640**	7.375	7.500	7.625	7.875	8.750	4.250
	620	7.500	7.625	7.750	8.000	8.875	4.375
DTI	**600**	8.750	8.875	9.000	9.250	10.125	5.625
45%	**580**	9.000	9.125	9.500	9.875	10.750	6.250
	700	7.250	7.375	7.500	7.750		3.750
M1	**680**	7.375	7.500	7.625	7.875		3.875
1x30	**660**	7.500	7.625	7.750	8.000		4.000
Last 12	**640**	7.750	7.875	8.000	8.250		4.250
	620	7.875	8.000	8.125	8.375		4.375
DTI	**600**	9.125	9.250	9.375	9.625		5.625
45%	**580**	9.375	9.500	9.875	10.250		6.250
	700	7.375	7.500	7.625			3.625
M2	**680**	7.500	7.625	7.750			3.750
2x30	**660**	7.625	7.750	7.875			3.875
Last 12	**640**	7.875	8.000	8.125			4.125
	620	8.000	8.125	8.250			4.250
DTI	**600**	9.250	9.375	9.500			5.500
45%	**580**	9.500	9.625	10.000			6.000
M3	**680**	7.750	7.875				3.750
3x30	**660**	7.875	8.000				3.875
Last 12	**640**	8.125	8.250				4.125
	620	8.250	8.375				4.250
DTI	**600**	9.500	9.625				5.500
45%	**580**	9.750	9.875				5.750

Minimum Rate For All ARM Loans is 6.25%

RATES GUARANTEED FOR 35 DAYS FROM APPLICATION RECEIPT DATE

***Quoted margins reflect 80% LTV or next lowest LTV.**

To calculate margin at other LTVs subtract\add difference from 80% LTV.

Please refer to the Chase Subprime Product and Credit Matrices for details including BK\FC rules.

Adjustments to Rate and Margin

Loan Size:	
<50,000	1.500
>=50,000 <100,000	0.500
>=100,000 <125,000	0.250
>=125,000 <300,000	-
>=300,000 <=650,000	(0.125)
Product:	
40 Yr Amort/30 Yr Term	0.050
Interest Only (10 yr IO period):	0.375
Property Type:	
Investment Property	1.500
Second Home	0.750
3-4 Units	0.375
Condo (not available in FL)	0.250
Programs:	
Purchase Money	0.125
1st Time Home Buyer (add to purchase money)	0.250
LTV <= 60% All Credit Grades from 65% LTV	(0.125)
State=Florida, Ohio, Tennessee	0.125
Michigan, Missouri and Mississippi	0.250

Adjustments to Rate and Margin

Prepayment Option to Buy-out/Buy-down
5/25 ARM - Base 3yr Prepayment Option:

Buydown to 2 Yr Prepayment Option	0.250
Buyout of Prepayment Option:	0.875

Buy-Down/(Discount) - Max Buydown = 3 Points:
Buydown of Rate at a Ratio of 35 bps to 1 Point

Buy-Ups/(YSP/Rebate) (See Maximum YSP Note*):
Buyup of Rate at a Ratio of 50 bps to 1 Point YSP
Buyup of Rate at a Ratio of 75 bps for every Point over 1 Point YSP

*The Max YSP for Various Loan Amt/PPO Combinations as follows:

For Loans $0 to $500,000:	**Maximum YSP**
2 Yr and 3 Yr Prepayment Option	2
No Prepayment Option (<=$400,000)	2
No Prepayment Option (>$400,000 <=$500,000)	1
For Loans $500,001 to $650,000:	
No Prepayment Option	0
2 Yr and 3 Yr Prepayment Option	1

Other:
7 Day Pays (0.250)
(Lock must occur within 7 business days of Initial U/W decision)

PRICE SHEET FOR THE FOLLOWING STATES ONLY:
AZ, CA, CO, CT, DC, DE, FL, HI, IA, ID, IL, IN, KS, KY, LA, MD, MI, MO, MS, MT, ND, NE, NH, NV, OH, OK, OR, PA, RI, SD, TN, UT, VA, VT, WA, WI, WV, WY
(Refer to the Chase Subprime Product and Credit Matrices for state specific max LTVs)

General Guidelines
Chase does not originate High Cost loans.

LENDER

APPENDIX B-2

CHASE

Rate Sheet Notification

Effective March 17, 2008

Chase Subprime Change Update

No Change to Rates!

Rate Sheets

Effective Date: 3/10/08

Current Indices for Compliance (3/17/08 - 3/23/08 only)	
6 Month LIBOR (Bloomberg)	2.67
Prime Rate (Bloomberg)	6.00

Date	10 YR	20 YR	30 YR	Treasury Yields Used for High Cost Mortgage Test
2/15/2008	3.76	4.55	4.58	Use 10 Year for 10 and 15 Year Terms
1/15/2008	3.72	4.30	4.28	Use 20 Year for 20 and 25 Year Terms
12/15/2007	4.24	4.71	4.66	Use 30 Year for 30 Year Terms

For a Copy of Current Rates

Visit our Web site at:
http://www.ChaseB2B.com > click Wholesale Lending / Broker, then click Subprime.

For Additional Information, please call your Account Executive.

CHASE

Full Documentation

Effective as of March 10, 2008

Fixed 1st Lien - No Prepayment Option

Rates reflect 30 Yr Fixed Product with No Prepay Option at Par

Credit Grade	Score	65%	70%	75%	80%	85%
	700	6.875	7.000	7.125	7.375	8.125
M0	**680**	7.000	7.125	7.250	7.500	8.250
0x30	**660**	7.125	7.250	7.375	7.625	8.375
Last 12	**640**	7.375	7.500	7.625	7.875	8.750
	620	7.500	7.625	7.750	8.000	8.875
DTI	**600**	7.875	8.000	8.125	8.375	9.250
45%	**580**	8.250	8.375	9.000	9.375	10.000
	700	7.250	7.375	7.500	7.750	
M1	**680**	7.375	7.500	7.625	7.875	
1x30	**660**	7.500	7.625	7.750	8.000	
Last 12	**640**	7.750	7.875	8.000	8.250	
	620	7.875	8.000	8.125	8.375	
DTI	**600**	8.250	8.375	8.500	8.750	
45%	**580**	8.625	8.750	9.375	9.750	
	700	7.375	7.500	7.625		
M2	**680**	7.500	7.625	7.750		
2x30	**660**	7.625	7.750	7.875		
Last 12	**640**	7.875	8.000	8.125		
	620	8.000	8.125	8.250		
DTI	**600**	8.375	8.500	8.625		
45%	**580**	8.750	8.875	9.500		
M3	**680**	7.750	7.875			
3x30	**660**	7.875	8.000			
Last 12	**640**	8.125	8.250			
	620	8.250	8.375			
DTI	**600**	8.625	8.750			
45%	**580**	9.000	9.125			

Adjustments to Rate	
Loan Size:	
<50,000	1.500
>=50,000 <100,000	0.500
>=100,000 <125,000	0.250
>=125,000 <300,000	-
>=300,000 <=650,000	(0.125)
Product:	
15 yr Term	-
30/15 Balloon	-
40 Yr Amort/30 Yr Term	0.175
Interest Only (10 yr IO period):	0.500
Property Type:	
Investment Property	1.500
Second Home	0.750
3-4 Units	0.375
Mfg Hsg (LTV <= 75%)	0.500
Small Mixed Use	0.250
Condo (not available in FL)	0.250
Programs:	
Purchase Money	0.125
1st Time Home Buyer (add to purchase money)	0.250
LTV <= 60% All Credit Grades from 65% LTV	(0.125)
State = Georgia	0.125

Adjustments to Rate	
Buy-Down/(Discount) - Max Buydown = 3 Points:	
Buydown of Rate at a Ratio of 35 bps to 1 Point	
Buy-Ups/(YSP/Rebate) (See Maximum YSP Note*):	
Buyup of Rate at a Ratio of 50 bps to 1 Point YSP	
Buyup of Rate at a Ratio of 75 bps for every Point over 1 Point YSP	
*The Max YSP for Various Loan Amt Combinations are as follows	
For Loans $0 to $500,000:	**Maximum YSP**
No Prepayment Option	2
For Loans $500,001 to $650,000:	
No Prepayment Option	1
Other:	
7 Day Pays	(0.250)
(Lock must occur within 7 business days of Initial U/W decision)	

Minimum Rate For All Fixed 1st lien Loans is 6.25%

RATES GUARANTEED FOR 35 DAYS FROM APPLICATION RECEIPT DATE

PRICE SHEET FOR THE FOLLOWING STATES ONLY:
AR, GA, MA, ME, MN, NC, NJ, NM, NY, SC, and TX.
(Refer to the Chase Subprime Product and Credit Matrices for state specific max LTVs)

Please refer to the Chase Subprime Product and Credit Matrices for details including BK\FC rules.

General Guidelines
Chase does not originate High Cost loans.

Full Documentation

Effective as of March 10, 2008

Adjustable Rate Mortgage - No Prepayment Option

Rates reflect 5 / 25 Arm Product with No Prepay Option at Par

(Caps (3 / 1.5 / 7)

Credit Grade	Score	65%	70%	75%	80%	85%	Margin @80% LTV*
	700	7.375	7.500	7.625	7.875	8.625	4.250
M0	**680**	7.500	7.625	7.750	8.000	8.750	4.375
0x30	**660**	7.625	7.750	7.875	8.125	8.875	4.500
Last 12	**640**	7.875	8.000	8.125	8.375	9.250	4.750
	620	8.000	8.125	8.250	8.500	9.375	4.875
DTI	**600**	9.250	9.375	9.500	9.750	10.625	6.125
45%	**580**	9.500	9.625	10.000	10.375	11.250	6.750
	700	7.750	7.875	8.000	8.250		4.250
M1	**680**	7.875	8.000	8.125	8.375		4.375
1x30	**660**	8.000	8.125	8.250	8.500		4.500
Last 12	**640**	8.250	8.375	8.500	8.750		4.750
	620	8.375	8.500	8.625	8.875		4.875
DTI	**600**	9.625	9.750	9.875	10.125		6.125
45%	**580**	9.875	10.000	10.375	10.750		6.750
	700	7.875	8.000	8.125			4.125
M2	**680**	8.000	8.125	8.250			4.250
2x30	**660**	8.125	8.250	8.375			4.375
Last 12	**640**	8.375	8.500	8.625			4.625
	620	8.500	8.625	8.750			4.750
DTI	**600**	9.750	9.875	10.000			6.000
45%	**580**	10.000	10.125	10.500			6.500
M3	**680**	8.250	8.375				4.250
3x30	**660**	8.375	8.500				4.375
Last 12	**640**	8.625	8.750				4.625
	620	8.750	8.875				4.750
DTI	**600**	10.000	10.125				6.000
45%	**580**	10.250	10.375				6.250

Adjustments to Rate and Margin

Loan Size:	
<50,000	1.500
>=50,000 <100,000	0.500
>=100,000 <125,000	0.250
>=125,000 <300,000	-
>=300,000 <=650,000	(0.125)
Product:	
40 Yr Amort/30 Yr Term	0.050
Interest Only (10 yr IO period)	0.375
Property Type:	
Investment Property	1.500
Second Home	0.750
3-4 Units	0.375
Condo	0.250
Programs:	
Purchase Money	0.125
1st Time Home Buyer (add to purchase money)	0.250
LTV <= 60% All Credit Grades from 65% LTV	(0.125)
State = Georgia	0.125

Adjustments to Rate and Margin

Buy-Down/(Discount) - Max Buydown = 3 Points:
Buydown of Rate at a Ratio of 35 bps to 1 Point

Buy-Ups/(YSP/Rebate) (See Maximum YSP Note*):
Buyup of Rate at a Ratio of 50 bps to 1 Point YSP
Buyup of Rate at a Ratio of 75 bps for every Point over 1 Point YSP

*The Max YSP for Various Loan Amt Combinations as follows:

For Loans $0 to $500,000:	**Maximum YSP**
No Prepayment Option	2
For Loans $500,001 to $650,000:	
No Prepayment Option	1

Other:

7 Day Pays	(0.250)

(Lock must occur within 7 business days of Initial U/W decision)

Minimum Rate For All ARM Loans is 6.25%

RATES GUARANTEED FOR 35 DAYS FROM APPLICATION RECEIPT DATE

***Quoted margins reflect 80% LTV or next lowest LTV.**

To calculate margin at other LTVs subtract\add difference from 80% LTV.

Please refer to the Chase Subprime Product and Credit Matrices for details including BK\FC rules.

PRICE SHEET FOR THE FOLLOWING STATES ONLY:
AR, GA, MA, ME, MN, NC, NJ, NM, NY, SC, and TX
(Refer to the Chase Subprime Product and Credit Matrices for state specific max LTVs)

General Guidelines
Chase does not originate High Cost loans.

APPENDIX B-3

Wholesale Subprime
DISCOUNT RATE SHEET Includes 1.0% Discount Point

NEW!

Website: www.BearDirect.net
EFFECTIVE DATE 02/19/08
Price Code 1902008-1

Contact BSRM:
E-mail: LockDesk@Bear.com
AZ Service Center: (866) 339-8355

Discount First Mortgage Liens Traditional 5/25 ARM (3-YR PPP With 1.00% Discount Point)

FULL DOC

PROGRAM	Score	Max Loan	65%	70%	75%	80%	85%
	720		6.14	6.24	6.39	6.49	7.19
	700		6.24	6.34	6.49	6.59	7.29
A+	680	650K	6.29	6.39	6.54	6.64	7.39
0 x 30	660		6.59	6.74	6.84	6.99	7.54
	640		6.94	7.04	7.14	7.34	7.89
CLTV = 80% MAX, 55% DTI	620		6.99	7.14	7.24	7.49	7.99
CLTV = 85% MAX, 50% DTI	600		7.54	7.69	7.79	8.19	8.84
	580	450K	7.69	7.84	8.19	8.69	9.79
550 FICO >70.01-$417,000	550		8.69	8.79	9.39	10.04	
Margin: 4.00							
	700		6.49	6.64	6.74	6.89	7.49
	680		6.59	6.74	6.84	6.99	7.59
A	660	650K	7.04	7.09	7.24	7.39	7.69
1 x 30	640		7.24	7.29	7.39	7.54	8.04
CLTV = 80% Max 55% DTI	620		7.34	7.39	7.49	7.64	8.14
CLTV = 85% MAX, 50% DTI	600		7.89	7.94	8.04	8.29	8.94
>$600K 50% DTI	580	450K	8.09	8.14	8.54	8.89	
550 FICO >70.01-$417,000	550		9.09	9.19	9.69	10.29	
Margin: 4.25							
	680		7.09	7.19	7.29	7.39	7.69
A-	660	650K	7.19	7.29	7.39	7.49	7.79
2 X 30	640		7.39	7.44	7.54	7.64	8.14
CLTV = 80%, Max 55% DTI	620		7.49	7.54	7.64	7.74	8.24
CLTV = 85% MAX, 50% DTI	600		8.04	8.09	8.19	8.34	8.99
>$600K, 50% DTI	580	450K	8.29	8.39	8.64	8.99	
550 FICO >70.01-$417,000	550		9.29	9.39	9.79	10.39	
Margin: 4.25							
	660		7.39	7.49	7.59	7.74	8.04
B	640	650K	7.59	7.69	7.79	7.94	8.44
1 x 60	620		7.69	7.79	7.89	8.04	8.54
CLTV = 80%, Max 55% DTI	600		8.34	8.44	8.54	8.69	
CLTV = 85% MAX, 50% DTI	580	450K	8.99	9.14	9.24	9.69	
550 FICO >70.01-$417,000	550		9.49	9.69	10.24	10.89	
Margin: 4.50							

STATED/LITE DOC

PROGRAM	Score	Max Loan	65%	70%
	720		7.84	7.99
	700		7.94	8.09
A+	680		7.99	8.14
0 x 30	660		8.09	8.19
	640		8.39	8.59
CLTV = 70% MAX	620	417K	8.49	8.79
	600		8.79	9.04
	580		9.29	9.39
	550		9.64	9.69
	700			
	680			
A	660			
1 x 30	640			
	620			
CLTV = 70% MAX	600			
	580			
	550			
	680			
A-	660			
2 X 30	640			
	620			
	600			
CLTV = 70% MAX	580			
	550			

NOTES

HIGH COST OR SECTION 32 LOAN NOT ALLOWED
Floors (minimum start rate): ARM = 6.00% (Including Buy Down)
IL, No Pre Payment Penalty Allowed, PPP Buyout not charged.
Owner Occupied Residences Only, No Manufactured Housing
Prepay penalty is hard and 6 months interest on 80% of balance.
ARM Adjustment Caps Traditional= 3/1/6

Subprime Underwriting Fee	$549.00
Admin Fee	$475.00
Tax Service Fee	$46.00
Flood Cert Fee	$7.25

MSA Restrictions may apply. Check with your Account Executive for details.

Mortgagee Clause;
EMC Mortgage Corporation, ISAOA P.O. Box 7589 Springfield, OH 45501-7589

STATES/ ADJUSTMENTS

CA and IL				0.00
AZ, CO, CT, DE, HI, IN, FL, LA, MO,				0.15
ND, NE, NH, NV, OK, OR, PA, RI, TN, TX, UT, VA, WA				0.15
GA, KS, ME, MD, MN, NC, NJ, NY, NM, SC, WI, VT (No-Pre-Pay Allowed)				0.40
LOAN AMOUNT				**RATE**
< $100,000 (TX Cash Out 1.00)				0.500
$100,001 - $200,000				0.000
$200,001 - $417,000				-0.250
$417,001 - $650,000				0.125
**PROPERTY				**RATE**
Condos (FL condos -5%, max 80% / 75% >4 Stories)				0.250
2 Units				0.25
Rural (max 70%)				0.50
Row Homes (max 80%, 3-4 Row Max $500K)				0.50
Amortization Options				**RATE**
40/30 Balloon (AZ, CA, DE, GA, ID, IL, IN, MD, MN, MO, MS, NC, ND, NJ, NM, NV, OR, PA, RI, SC, VA, W/				0.15
Interest Only Loans				0.40
DOCUMENTATION TYPE				**RATE**
Full Doc: 24 Mo Income Documentation				-0.10
Full Doc: 12 Mo Income Documentation				0.00
***YSP (Max 1.0%, If No PPP MAX .50%)**				**RATE**
Rebate - 0.50%				0.25
Rebate - 1.00%				0.50
Prepay States/ NO Prepay - Max Rebate 0.00%				
PREPAY (Where Allowed By Law)				**RATE**
5/25 ARM (2 YR PPP)				0.50
5/25 ARM (1 YR PPP)				0.75
ARM PPP Buyout (not charged in non-PPP States)				1.00
RATE BUYDOWN (may not exceed floor)	**Rate**			**Points**
1 Disount Point (Included in Base Rate)	**Base Rate**			1.00
2 Discount Points	**-0.30**	or		2.00
3 Discount Points	**-0.50**	or		3.00
Minimum start rate 6.00%				
Other				**RATE**
TX Cash out >$100,000 <=$150,000				0.375
TX Cash out <=$100,000				0.500
TX Cash out > $150,000 - NO waiving of any fees allowed/ No rate add				0.000
* Note: For Texas Cash out Refinance Primary Residence loan <= $150,000 BSRM will automatically waive the doc prep/underwriting fee, tax service fee and flood cert fee.				
NY State Mortgage Tax				0.125
No Impounds (taxes & insurance)				0.150
Subject Property Listed in last 6 months	**Max Price (No rebate allowed) 1.0**			

Wholesale Subprime
DISCOUNT RATE SHEET Includes 1.0% Discount Point

Website: www.BearDirect.net
EFFECTIVE DATE 02-19-08
Price Code 1902008-1

Contact BSRM:
E-mail: LockDesk@Bear.com
AZ Service Center: (866) 339-8355

Discount First Mortgage Liens 30 Yr. Fixed (3-YR PPP With 1.00% Discount Point)

FULL DOC

PROGRAM	Score	Max Loan	65%	70%	75%	80%	85%
A+ 0 x 30	720	650K	6.39	6.49	6.64	6.74	7.49
	700	650K	6.49	6.59	6.74	6.84	7.59
	680	650K	6.54	6.64	6.79	6.89	7.69
	660	650K	6.84	6.99	7.09	7.24	7.84
	640	650K	7.19	7.29	7.39	7.59	8.19
CLTV = 80% MAX, 55% DTI	620	650K	7.24	7.39	7.49	7.74	8.29
CLTV = 85% MAX, 50% DTI	600	450K	7.79	7.94	8.04	8.44	9.14
	580	450K	7.99	8.14	8.49	8.99	10.09
550 FICO >70.01-$417,000	550	450K	8.99	9.09	9.69	10.34	
A 1 x 30	700	650K	6.74	6.89	6.99	7.14	7.79
	680	650K	6.84	6.99	7.09	7.24	7.89
	660	650K	7.29	7.34	7.49	7.64	7.99
	640	650K	7.49	7.54	7.64	7.79	8.34
CLTV = 80% Max 55% DTI	620	650K	7.59	7.64	7.74	7.89	8.44
CLTV = 85% MAX, 50% DTI	600	450K	8.14	8.19	8.29	8.54	9.24
>$600K 50% DTI	580	450K	8.39	8.44	8.84	9.19	
550 FICO >70.01-$417,000	550	450K	9.39	9.49	9.99	10.59	
A- 2 X 30	680	650K	7.34	7.44	7.54	7.64	7.99
	660	650K	7.44	7.54	7.64	7.74	8.09
	640	650K	7.64	7.69	7.79	7.89	8.44
CLTV = 80%, Max 55% DTI	620	650K	7.74	7.79	7.89	7.99	8.54
CLTV = 85% MAX, 50% DTI	600	450K	8.29	8.34	8.44	8.59	9.29
>$600K, 50% DTI	580	450K	8.59	8.69	8.94	9.29	
550 FICO >70.01-$417,000	550	450K	9.59	9.69	10.09	10.69	
B 1 x 60	660	650K	7.64	7.74	7.84	7.99	8.34
	640	650K	7.84	7.94	8.04	8.19	8.74
	620	650K	7.94	8.04	8.14	8.29	8.84
	600	450K	8.59	8.69	8.79	8.94	
CLTV = 80%, Max 55% DTI	580	450K	9.29	9.44	9.54	9.99	
CLTV = 85% MAX, 50% DTI	550	450K	9.79	9.99	10.54	11.19	
550 FICO >70.01-$417,000							

STATED/LITE DOC

PROGRAM	Score	Max Loan	65%	70%
A+ 0 x 30	720	417K	8.14	8.29
	700	417K	8.24	8.39
	680	417K	8.29	8.44
	660	417K	8.39	8.49
	640	417K	8.69	8.89
CLTV = 70% MAX	620	417K	8.79	9.09
	600	417K	9.09	9.34
	580	417K	9.59	9.69
	550	417K	9.94	9.99
A 1 x 30	700			
	680			
	660			
	640			
	620			
CLTV = 70% MAX	600			
	580			
	550			
A- 2 X 30	680			
	660			
	640			
	620			
	600			
CLTV = 70% MAX	580			
	550			

NOTES

HIGH COST OR SECTION 32 LOAN NOT ALLOWED

Minimum Rate FIXED = 6.25% (Including Buy Down)

Owner Occupied Residences Only, No Manufactured Housing

Prepay penalty is hard and 6 months interest on 80% of balance.

IL, No Pre Payment Penalty Allowed, PPP Buyout not charged.

Subprime Underwriting Fee	$549.00
Admin Fee	$475.00
Tax Service Fee	$46.00
Flood Cert Fee	$7.25

MSA Restrictions may apply. Check with your Account Executive for details.

Mortgagee Clause:

EMC Mortgage Corporation, ISAOA P.O. Box 7589 Springfield, OH 45501-7589

STATES / ADJUSTMENTS

CA and IL	0.00
AZ, CO, CT, DE, HI, IN, FL, LA, MO,	0.15
ND, NE, NH, NV, OK, OR, PA, RI, TN, TX, UT, VA, WA	0.15
GA, KS, ME, MD, MN, NC, NJ, NY, NM, SC, WI, VT (No-Pre-Pay Allowed)	0.40
LOAN AMOUNT	**RATE**
< $100,000 (TX Cash Out 1.00)	0.500
$100,001 - $200,000	0.000
$200,001 - $417,000	-0.250
$417,001 - $650,000	0.125
****PROPERTY**	**RATE**
Condos (FL condos -5%, max 80% / 75% >4 Stories)	0.25
2 Units	0.25
Rural (max 70%)	0.50
Row Homes (max 80%, 3-4 Row Max $500K)	0.50
Amortization Options	**RATE**
40/30 Balloon (AZ, CA, DE, GA, ID, IL, IN, MD, MN, MO, MS, NC, ND, NJ, NM, NV, OR, PA, RI, SC,	0.15
Interest Only Loans	0.40
DOCUMENTATION TYPE	**RATE**
Full Doc: 24 Mo Income Documentation	-0.10
Full Doc: 12 Mo Income Documentation	0.00
***YSP (Max 1.0%, If No PPP MAX .50%)**	**RATE**
Rebate - 0.50%	0.25
Rebate - 1.00%	0.50
Prepay States/ NO Prepay - Max Rebate 0.00%	
PREPAY (Where Allowed By Law)	**RATE**
5/25 ARM (2 YR PPP)	0.50
5/25 ARM (1 YR PPP)	0.75
ARM PPP Buyout (not charged in non-PPP States)	1.00

RATE BUYDOWN (may not exceed floor)	Rate		Points
1 Disount Point (Included in Base Rate)	Base Rate		1.00
2 Discount Points	-0.30	or	2.00
3 Discount Points	-0.50	or	3.00
Minimum start rate 6.25%			

Other	**RATE**
TX Cash out >$100,000 <=$150,000	0.375
TX Cash out <=$100,000	0.500
TX Cash out > $150,000 - NO waiving of any fees allowed/ No rate add	0.000
* Note: For Texas Cash out Refinance Primary Residence loan <= $150,000 BSRM will automatically waive the doc prep/underwriting fee, tax service fee and flood cert fee.	
NY State Mortgage Tax	0.125
No Impounds (taxes & insurance)	0.150
Subject Property Listed in last 6 months	**Max Price (No rebate allowed) 1.0**

Wholesale Subprime

PAR RATE SHEET

Website: www.BearDirect.net
EFFECTIVE DATE 02-19-08
Price Code 1902008-1

Contact BSRM:
E-mail: LockDesk@Bear.com
AZ Service Center: (866) 339-8355

First Mortgage Liens Traditional 5/25 ARM (3-YR PPP @ PAR)

FULL DOC

PROGRAM	Score	Max Loan	65%	70%	75%	80%	85%
A+ 0 x 30	720	650K	6.89	6.99	7.14	7.24	7.94
	700		6.99	7.09	7.24	7.34	8.04
	680		7.04	7.14	7.29	7.39	8.14
	660		7.34	7.49	7.59	7.74	8.29
	640		7.59	7.69	7.79	7.99	8.54
CLTV = 80% MAX, 55% DTI	620		7.64	7.79	7.89	8.14	8.64
CLTV = 85% MAX, 50% DTI	600	450K	8.09	8.24	8.34	8.74	9.39
	580		8.24	8.39	8.74	9.24	10.34
550 FICO >70.01-$417,000	550		9.19	9.29	9.89	10.54	
Margin: 4.00							
A 1 x 30	700	650K	7.24	7.39	7.49	7.64	8.24
	680		7.34	7.49	7.59	7.74	8.34
	660		7.79	7.84	7.99	8.14	8.44
	640		7.89	7.94	8.04	8.19	8.69
CLTV = 80% Max 55% DTI	620		7.99	8.04	8.14	8.29	8.79
CLTV = 85% MAX, 50% DTI	600	450K	8.44	8.49	8.59	8.84	9.49
>$600K 50% DTI	580		8.64	8.69	9.09	9.44	
550 FICO >70.01-$417,000	550		9.59	9.69	10.19	10.79	
Margin: 4.25							
A- 2 X 30	680	650K	7.84	7.94	8.04	8.14	8.44
	660		7.94	8.04	8.14	8.24	8.54
	640		8.04	8.09	8.19	8.29	8.79
CLTV = 80%, Max 55% DTI	620		8.14	8.19	8.29	8.39	8.89
CLTV = 85% MAX, 50% DTI	600	450K	8.59	8.64	8.74	8.89	9.54
>$600K, 50% DTI	580		8.84	8.94	9.19	9.54	
550 FICO >70.01-$417,000	550		9.79	9.89	10.29	10.89	
Margin: 4.25							
B 1 x 60	660	650K	8.14	8.24	8.34	8.49	8.79
	640		8.24	8.34	8.44	8.59	9.09
CLTV = 80%, Max 55% DTI	620		8.34	8.44	8.54	8.69	9.19
CLTV = 85% MAX, 50% DTI	600	450K	8.89	8.99	9.09	9.24	
550 FICO >70.01-$417,000	580		9.54	9.69	9.79	10.24	
	550		9.99	10.19	10.74	11.39	
Margin: 4.50							

STATED/LITE DOC

PROGRAM	Score	Max Loan	65%	70%
A+ 0 x 30	720	417K	8.59	8.74
	700		8.69	8.84
	680		8.74	8.89
	660		8.84	8.94
	640		9.04	9.24
CLTV = 70% MAX	620		9.14	9.44
	600		9.34	9.59
	580		9.84	9.94
	550		10.14	10.19
A 1 x 30	700			
	680			
	660			
	640			
	620			
CLTV = 70% MAX	600			
	580			
	550			
A- 2 X 30	680			
	660			
	640			
	620			
	600			
CLTV = 70% MAX	580			
	550			

NOTES

HIGH COST OR SECTION 32 LOAN NOT ALLOWED

Floors (minimum start rate): ARM = 6.00% (Including Buy Down)
IL, No Pre Payment Penalty Allowed, PPP Buyout not charged.
Owner Occupied Residences Only, No Manufactured Housing
Prepay penalty is hard and 6 months interest on 80% of balance.
ARM Adjustment Caps Traditional= 3/1/6

Subprime Underwriting Fee	$549.00
Admin Fee	$475.00
Tax Service Fee	$46.00
Flood Cert Fee	$7.25

MSA Restrictions may apply. Check with your Account Executive for details

Mortgagee Clause:
EMC Mortgage Corporation, ISAOA P.O. Box 7589 Springfield, OH 45501-7589

STATES/ ADJUSTMENTS

CA and IL	0.00
AZ, CO, CT, DE, HI, IN, FL, LA, MO,	0.15
ND, NE, NH, NV, OK, OR, PA, RI, TN, TX, UT, VA, WA	0.15
GA, KS, ME, MD, MN, NC, NJ, NY, NM, SC, WI, VT (No-Pre-Pay Allowed)	0.40
LOAN AMOUNT	**RATE**
< $100,000 (TX Cash Out 1.00)	0.500
$100,001 - $200,000	0.000
$200,001 - $417,000	-0.250
$417,001 - $650,000	0.125
****PROPERTY**	**RATE**
Condos (FL condos -5%, max 80% / 75% >4 Stories)	0.25
2 Units	0.25
Rural (max 70%)	0.50
Row Homes (max 80%, 3-4 Row Max $500K)	0.50
Amortization Options	**RATE**
40/30 Balloon (AZ, CA, DE, GA, ID, IL, IN, MD, MN, MO, MS, NC, ND, NJ, NM, NV, OR, PA, RI, SC, VA, W	0.15
Interest Only Loans	0.40
DOCUMENTATION TYPE	**RATE**
Full Doc: 24 Mo Income Documentation	-0.10
Full Doc: 12 Mo Income Documentation	0.00
***YSP (Max 1.0%, If No PPP MAX .50%)**	**RATE**
Rebate - 0.50%	0.25
Rebate - 1.00%	0.50
Prepay States/ NO Prepay - Max Rebate 0.00%	
PREPAY (Where Allowed By Law)	**RATE**
5/25 ARM (2 YR PPP)	0.50
5/25 ARM (1 YR PPP)	0.75
ARM PPP Buyout (not charged in non-PPP States)	1.00

RATE BUY DOWN (may not exceed min. start rate)	1 Point	2 Points	3 Points
FICO Score >=660	-0.75	-1.05	-1.25
FICO Score >=620-659	-0.65	-0.95	-1.15
FICO Score >=580-619	-0.55	-0.85	-1.05
FICO Score >=550-579	-0.50	-0.80	-1.00

Minimum start rate 6.00%

Other	**RATE**
TX Cash out >$100,000 <=$150,000	0.375
TX Cash out <=$100,000	0.500
TX Cash out > $150,000 - NO waiving of any fees allowed/ No rate add	0.000
* Note: For Texas Cash out Refinance Primary Residence loan <= $150,000 BSRM will automatically waive the doc prep/underwriting fee, tax service fee and flood cert fee.	
NY State Mortgage Tax	0.125
No Impounds (taxes & insurance)	0.150

Subject Property Listed in last 6 months **Max Price (No rebate allowed) 1.0**

Wholesale Subprime

PAR RATE SHEET

Website: www.BearDirect.net
EFFECTIVE DATE 02-19-08
Price Code 1902008-1

Contact BSRM:
E-mail: LockDesk@Bear.com
AZ Service Center: (866) 339-8355

First Mortgage Liens 10, 15, 20, 25, 30 Year FIXED RATE (3-YR PPP @ PAR)

FULL DOC

PROGRAM	Score	Max Loan	65%	70%	75%	80%	85%
	720	650K	7.14	7.24	7.39	7.49	8.24
	700	650K	7.24	7.34	7.49	7.59	8.34
A+	680	650K	7.29	7.39	7.54	7.64	8.44
0 x 30	660	650K	7.59	7.74	7.84	7.99	8.59
	640	650K	7.84	7.94	8.04	8.24	8.84
CLTV = 80% MAX, 55% DTI	620	650K	7.89	8.04	8.14	8.39	8.94
CLTV = 85% MAX, 50% DTI	600	450K	8.34	8.49	8.59	8.99	9.69
	580	450K	8.54	8.69	9.04	9.54	10.64
550 FICO >70.01-$417,000	550	450K	9.49	9.59	10.19	10.84	
	700	650K	7.49	7.64	7.74	7.89	8.54
	680	650K	7.59	7.74	7.84	7.99	8.64
A	660	650K	8.04	8.09	8.24	8.39	8.74
1 x 30	640	650K	8.14	8.19	8.29	8.44	8.99
CLTV = 80% Max 55% DTI	620	650K	8.24	8.29	8.39	8.54	9.09
CLTV = 85% MAX, 50% DTI	600	450K	8.69	8.74	8.84	9.09	9.79
>$600K 50% DTI	580	450K	8.94	8.99	9.39	9.74	
550 FICO >70.01-$417,000	550	450K	9.89	9.99	10.49	11.09	
	680	650K	8.09	8.19	8.29	8.39	8.74
A-	660	650K	8.19	8.29	8.39	8.49	8.84
2 X 30	640	650K	8.29	8.34	8.44	8.54	9.09
CLTV = 80%, Max 55% DTI	620	650K	8.39	8.44	8.54	8.64	9.19
CLTV = 85% MAX, 50% DTI	600	450K	8.84	8.89	8.99	9.14	9.84
>$600K, 50% DTI	580	450K	9.14	9.24	9.49	9.84	
550 FICO >70.01-$417,000	550	450K	10.09	10.19	10.59	11.19	
	660	650K	8.39	8.49	8.59	8.74	9.09
B	640	650K	8.49	8.59	8.69	8.84	9.39
1 x 60	620	650K	8.59	8.69	8.79	8.94	9.49
	600	450K	9.14	9.24	9.34	9.49	
CLTV = 80%, Max 55% DTI	580	450K	9.84	9.99	10.09	10.54	
CLTV = 85% MAX, 50% DTI	550	450K	10.29	10.49	11.04	11.69	
550 FICO >70.01-$417,000							

STATED/LITE DOC

PROGRAM	Score	Max Loan	65%	70%
	720	417K	8.89	9.04
	700	417K	8.99	9.14
A+	680	417K	9.04	9.19
0 x 30	660	417K	9.14	9.24
	640	417K	9.34	9.54
CLTV = 70% MAX	620	417K	9.44	9.74
	600	417K	9.64	9.89
	580	417K	10.14	10.24
	550	417K	10.44	10.49
	700			
	680			
A	660			
1 x 30	640			
	620			
CLTV = 70% MAX	600			
	580			
	550			
	680			
A-	660			
2 X 30	640			
	620			
	600			
CLTV = 70% MAX	580			
	550			

NOTES

HIGH COST OR SECTION 32 LOAN NOT ALLOWED

Minimum Rate FIXED = 6.25% (Including Buy Down)
Owner Occupied Residences Only, No Manufactured Housing
Prepay penalty is hard and 6 months interest on 80% of balance.
IL, No Pre Payment Penalty Allowed, PPP Buyout not charged.

Subprime Underwriting Fee	$549.00
Admin Fee	$475.00
Tax Service Fee	$46.00
Flood Cert Fee	$7.25

MSA Restrictions may apply. Check with your Account Executive for details

Mortgagee Clause:

EMC Mortgage Corporation, ISAOA P.O. Box 7589 Springfield, OH 45501-7589

STATES/ ADJUSTMENTS

CA and IL	0.00
AZ, CO, CT, DE, HI, IN, FL, LA, MO,	0.15
ND, NE, NH, NV, OK, OR, PA, RI, TN, TX, UT, VA, WA	0.15
GA, KS, ME, MD, MN, NC, NJ, NY, NM, SC, WI, VT (No-Pre-Pay Allowed)	0.40
LOAN AMOUNT	**RATE**
< $100,000 (TX Cash Out 1.00)	0.500
$100,001 - $200,000	0.000
$200,001 - $417,000	-0.250
$417,001 - $650,000	0.125
****PROPERTY**	**RATE**
Condos (FL condos -5%, max 80% / 75% >4 Stories)	0.25
2 Units	0.25
Rural (max 70%)	0.50
Row Homes (max 80%, 3-4 Row Max $500K)	0.50
Amortization Options	**RATE**
40/30 Balloon (AZ, CA, DE, GA, ID, IL, IN, MD, MN, MO, MS, NC, ND, NJ, NM, NV, OR, PA, RI, SC, \	0.15
Interest Only Loans	0.40
DOCUMENTATION TYPE	**RATE**
Full Doc: 24 Mo Income Documentation	-0.10
Full Doc: 12 Mo Income Documentation	0.00
***YSP (Max 1.0%, If No PPP MAX .50%)**	**RATE**
Rebate - 0.50%	0.25
Rebate - 1.00%	0.50
Prepay States/ NO Prepay - Max Rebate 0.00%	
PREPAY (Where Allowed By Law)	**RATE**
5/25 ARM (2 YR PPP)	0.50
5/25 ARM (1 YR PPP)	0.75
ARM PPP Buyout (not charged in non-PPP States)	1.00

RATE BUY DOWN (may not exceed min. start rate)	**1 Point**	**2 Points**	**3 Points**
FICO Score >=660	-0.75	-1.05	-1.25
FICO Score >=620-659	-0.65	-0.95	-1.15
FICO Score >=580-619	-0.55	-0.85	-1.05
FICO Score >=550-579	-0.50	-0.80	-1.00
Minimum start rate 6.25%			

Other	**RATE**
TX Cash out >$100,000 <=$150,000	0.375
TX Cash out <=$100,000	0.500
TX Cash out > $150,000 - NO waiving of any fees allowed/ No rate add	0.000
* Note: For Texas Cash out Refinance Primary Residence loan <= $150,000 BSRM will automatically waive the doc prep/underwriting fee, tax service fee and flood cert fee.	
NY State Mortgage Tax	0.125
No Impounds (taxes & insurance)	0.150
Subject Property Listed in last 6 months	**Max Price (No rebate allowed) 1.0**

APPENDIX C

CONSUMER CHOICE OR BROKER CHOICE?
Suitability and Conflict of Interest

Kathleen Keest
Center for Responsible Lending
302 W. Main, Durham, NC 27701
www.responsiblelending.org

9th Annual Predatory Lending Conference
American Conference Institute
November 16-17, 2006

Shopping in the Subprime Market

Loan Applicant: $110,000 Refinance sought
Applicant Characteristics: AA / 650 FICO / Home Value $129,500 (85% LTV) / DTI – less than 50% DTI / Wage earner

Price & Product Options – per rate sheet (10/16/06 – major subprime lender)

1. **30 yr Fixed Rate Mortgage**:
   Rate: 7.25% par + .65 adjustment for 30 year fixed rate = **7.9%**
   Loan: Assume 2% fees and points = Loan principal $112,200
   Consumer is happy to offer full doc because a wage-earner with W-2s.

   A. Accept the company's default product – 3 yr. prepayment penalty, because no need to refinance due to payment shock:
   $112,200 @ 7.9% = 360 @ $815.47/mo
   (Principal balance after 24 payments $110,210 / no need to refinance due to payment shock)

   B. Consider buying waiver of prepayment penalty, just in case rates drop precipitously within next 3 years, add 1% = 8.9%
   $112,200 @ 8.9% = 360 @ $894.72
   (Principal balance after 24 payments $110,563)

2. **2/28 Hybrid ARM with teaser ("exploding ARM") / No "upselling" of loan amount / No prepayment penalty**
   Index: 6-mo LIBOR*[1] 5.407% as of 10/16/06 Margin: 6.05%
   Fully indexed rate as of date of consummation (10/16/06) = 11.457%

   A. Teaser Rate: 7.25%[2]

[1] Not specified on the rate sheet, but that appears to be the most commonly used index in subprime ARMs.

Loan Amount: Assume 2% fees and points = $112,200
Terms as used for TIL disclosure of payment schedule on loan docs:

24@ 7.25% + 336 @ 11.457% (rates)
24@ $765.39 + 336 @ $1094.66 (payments)
Principal balance at month 24 to refi: $109,947

B. No prepayment penalty: Add 1% to par rate = teaser = **8.25%**

24@ 8.25% + 336 @ 11.457% (rates)
24 @ $842.91 + 336 @ $1098.83[3]
Principal balance at month 24 to refi: $110,340

3. **Broker steers to *stated doc* 2/28 loan; wants 2 pts back-end points for himself to add to his cut of 2% front-end points**
Broker can NOT sell consumer a waiver of prepayment penalty if he wants his 2 back-end points.
(Apparently can sell a 1-year prepayment penalty, which adds .75% to the rate.)

A. Rate = 8.1% + 1.25% for 2 point YSP for broker: = 8.1 + 1.25% = **9.35%** **with** a prepayment penalty.

24@ 9.35% + 336 @ 11.457%
24@ $931.28 + 336 @ $1102.44
Principal balance at month 24 to refi: $110,703

B. If broker (still wanting his 2% YSP) says he can offer to reduce the prepayment penalty period to 1 year, add .75%

---

[2] It is unclear from the rate sheet, but we'll assume that for a 2/28, the company's default prepayment penalty period is 2 years instead of 3 years. If the company allows a mismatch of the teaser period and the prepayment penalty period, then it would cost the consumer an extra .5% to buy out that third year of prepayment penalty so they can refinance when the teaser ends.

[3] Ignores possible effects of per change caps. Hybrid ARMs may have a 1 – 3% rate cap for the initial change, and a 1% per change cap thereafter. Rate changes after the initial FR period typically are at 6 month or 1 year intervals.

for a **10.1%** teaser rate. (= first 24 payments@ $985.46)

4. **Another scenario:**

Broker "upsells" the loan into a debt consolidation loan, and goes for maximum compensation to himself:
increases upfront compensation = 3% Fees & Points / 2% YSP

Add $10,000 debt consolidation to refi amount plus 3%.
Loan amount: $123,600 = 95.4% LTV
Stated Doc: Par rate for 95% LTV = **9.2%**
2% YSP: + 1.25% = **10.45%** (first 24 @ $1126)

Offers to sell 1 year PPP instead of 2 (or 3) Add .75% = **11.2%**

(Note: At this point, it's no longer a "teaser" rate 2/28, but it still turns into an adjustable rate after two years. This is how, for example, a legal services client can be sold a 2/28 with an initial rate of 10.5%, a floor of 10.5%, when the fully indexed rate at consummation was 10.18%.)

Got all that? Without seeing the rate sheet?

(And if my math is all goofed up – could your grandparents or your 24 year old kids do any better?

SUMMARY: Partial Range of Options

Information on pricing within that range of options typically not available to borrower: "For wholesale use only."

	Borrower Gets	**Broker Gets**	**Comments**
30 Year FRM/ PPP/ full doc	7.9% / 360 @ $815.47	2% up front = $2200	
30 Year FRM / no PPP / full doc	8.9% / 360 @ $894.72	ditto	
2/28 ARM, full doc / PPP	7.25% teaser/ fully indexed =11.47% Pmts 24 @ $765.39 336 est. @ $1094.66[4]	ditto	Teaser rate permits "low-ball" sales pitch on monthly payments. Commonly promises ability to refinance to FRM when teaser period ends
2/28 ARM, full doc/ no PPP	Add 1% to par = 8.25% Fully indexed = 11.457% 24@ $842.91 + 336@ $1098.83	ditto	Ditto / but at least no PPP.
2/28 ARM, stated doc/ 2 pt YSP / PPP	9.35% / fully indexed, same Pmts 24 @ $931.28 336 est @ $1102.44	2% up front + 2% YSP = $4400	Borrower pays more for "exploding ARM" with a prepayment penalty and no initial payment break than for a 30 year Fixed with no ppp; broker gets a 2% YSP
Worst case scenario (for borrower) Principal upsell (taking loan amount to 95% LTV / 2/28 ARM /stated doc / 2 pts YSP / PPP	10.45% teaser / fully indexed same Payments: 24 @ $1126	3% up + 2% YSP on higher loan amount = $6180	Broker maximizing his revenue, and delivering bigger balance, higher priced loan to lender.

[4] See note 3.

[redacted] MORTGAGE® CORPORATION

Traditional Rate Sheet

NORTH CAROLINA

Effective 10/16/2006 | 888-623-LOAN(5626) | www.newcentury.com

2 Year ARM @ PAR

FULL DOC

Mortgage Lates (last 12 months)	Max D/R / LTV / Credit Score*	55% 65%	55% 70%	55% 75%	50% 80%	50% 85%	50% 90%	50% 95%
AAA	700 +	6.050	6.150	6.250	6.450	6.600	6.850	7.200
0x30	680-699	6.250	6.350	6.450	6.600	6.750	7.000	7.350
BK None Last 24 Months	660-679	6.300	6.400	6.500	6.700	6.850	7.100	7.500
No NOD Last 36 Months	640-659	6.350	6.450	6.550	6.750	6.950	7.200	7.600
Margin: 5.90	620-639	6.500	6.650	6.750	6.950	7.200	7.450	7.800
AA	660 +	6.650	6.750	6.850	7.000	7.150	7.400	7.800
0x30	640-659	6.700	6.800	6.900	7.050	7.250	7.500	7.900
BK Rules - see matrix	620-639	6.850	7.000	7.100	7.250	7.500	7.750	8.100
	600-619	6.950	7.100	7.200	7.350	7.600	7.850	8.300
No NOD Last 24 months	580-599	7.100	7.200	7.300	7.450	7.750	8.350	9.050
	550-579	7.500	7.600	7.750	7.850	8.250	8.900	
	525-549	7.900	8.000	8.100	8.200	8.600		
Margin: 6.05	500-524	8.400	8.500	8.650	8.750	9.150		
A+	660 +	6.800	6.850	7.000	7.100	7.350	7.550	8.150
1x30	640-659	6.900	6.950	7.050	7.150	7.400	7.600	8.200
BK Rules - see matrix	620-639	7.100	7.150	7.250	7.350	7.600	7.800	8.350
	600-619	7.200	7.250	7.350	7.450	7.750	7.950	8.500
No NOD Last 24 months	580-599	7.350	7.400	7.650	7.850	8.150	8.600	
	550-579	7.900	8.000	8.300	8.450	8.600	8.950	
	525-549	8.050	8.150	8.500	8.650	8.850		
Margin: 6.25	500-524	8.450	8.650	8.850	8.950	9.350		
A-	660 +	6.850	6.950	7.050	7.150	7.400	7.650	8.200
3x30	640-659	6.950	7.000	7.100	7.200	7.450	7.700	8.250
BK Rules - see matrix	620-639	7.150	7.200	7.300	7.400	7.650	7.950	8.500
	600-619	7.250	7.300	7.400	7.500	7.850	8.050	
No NOD Last 24 months	580-599	7.500	7.550	7.800	8.050	8.200	8.750	
	550-579	8.000	8.150	8.350	8.500	8.700	9.050	
	525-549	8.350	8.500	8.650	8.850	9.150		
Margin: 6.45	500-524	8.750	8.900	9.050	9.250	9.650		
B	660 +	7.000	7.100	7.200	7.350	7.900	8.450	
1x60	640-659	7.100	7.200	7.300	7.450	8.000	8.550	
BK Rules - see matrix	620-639	7.200	7.300	7.400	7.550	8.100	8.650	
	600-619	7.400	7.500	7.600	7.750	8.200		
No NOD Last 18 months	580-599	7.800	7.900	8.000	8.150	8.400		
	550-579	8.100	8.200	8.300	8.550	8.700		
	525-549	8.450	8.550	8.700	8.900	9.500		
Margin: 6.70	500-524	8.850	8.950	9.150	9.300			
C	660 +	7.400	7.500	7.600	7.900			
1x90	640-659	7.500	7.600	7.700	8.000			
BK Rules - see matrix	620-639	7.750	7.850	7.900	8.250			
	600-619	7.900	8.000	8.100	8.400			
No NOD Last 12 months	580-599	8.150	8.200	8.300	9.350			
	550-579	8.450	8.600	8.750	9.600			
	525-549	8.850	8.950	9.100				
Margin: 7.35	500-524	9.150	9.400	9.800				

STATED DOC

Mortgage Lates (last 12 months)	Max D/R / LTV / Credit Score*	55% 65%	55% 70%	55% 75%	50% 80%	50% 85%	50% 90%	50% 95%
AAA	700 +	6.600	6.750	6.950	7.200	7.350	7.700	8.100
0x30	680-699	6.800	6.950	7.150	7.350	7.500	7.850	8.250
BK None Last 24 Months	660-679	6.900	7.000	7.250	7.500	7.750	8.150	8.450
No NOD Last 36 Months	640-659	7.000	7.100	7.300	7.600	7.800	8.250	8.550
Margin: 6.15	620-639	7.200	7.400	7.600	7.900	8.200	8.550	8.900
AA	660 +	7.250	7.350	7.600	7.800	8.050	8.450	8.750
0x30	640-659	7.350	7.450	7.650	7.900	8.100	8.550	8.850
BK Rules - see matrix	620-639	7.550	7.750	7.950	8.200	8.500	8.850	9.200
	600-619	7.700	7.900	8.050	8.450	8.700	9.000	
No NOD Last 24 months	580-599	8.000	8.050	8.250	8.550	8.900	9.350	
	550-579	8.300	8.450	8.650	8.800	9.250		
	525-549	8.700	8.850	9.000	9.300	9.700		
Margin: 6.30	500-524	9.200	9.300	9.450	9.650			
A+	660 +	7.450	7.500	7.750	8.050	8.100	8.650	
1x30	640-659	7.600	7.700	7.850	8.150	8.250	8.750	
BK Rules - see matrix	620-639	7.900	8.000	8.150	8.350	8.600	9.000	
	600-619	8.200	8.250	8.350	8.500	8.850	9.350	
No NOD Last 24 months	580-599	8.300	8.400	8.650	9.050	9.200		
	550-579	8.650	8.800	9.150	9.350	9.500		
	525-549	8.950	9.050	9.400	9.750			
Margin: 6.55	500-524	9.550	9.750	9.950	10.050			
A-	660 +	7.550	7.600	7.850	8.150	8.400		
3x30	640-659	7.700	7.800	7.950	8.200	8.450		
BK Rules - see matrix	620-639	7.950	8.050	8.300	8.450	8.800		
	600-619	8.300	8.350	8.550	8.700	8.950		
No NOD Last 24 months	580-599	8.350	8.450	8.750	9.150	9.400		
	550-579	8.750	8.850	9.200	9.450			
	525-549	9.250	9.400	9.550	10.050			
Margin: 6.75	500-524	9.850	10.000	10.250				
B	660 +	7.700	7.850	7.950	8.250			
1x60	640-659	7.800	7.900	8.100	8.400			
BK Rules - see matrix	620-639	8.100	8.250	8.400	8.700			
	600-619	8.250	8.450	8.600	8.900			
No NOD Last 18 months	580-599	8.650	8.900	8.950	9.250			
	550-579	8.850	8.950	9.400	9.700			
	525-549	9.400	9.600	9.700				
Margin: 7.05	500-524	10.000	10.100	10.350				
C	660 +	7.800	8.100	8.600				
1x90	640-659	7.900	8.200	8.700				
BK Rules - see matrix	620-639	8.300	8.450	8.950				
	600-619	8.450	8.750	9.250				
No NOD Last 12 months	580-599	8.850	9.100	9.600				
	550-579	9.150	9.500	10.000				
	525-549	10.050	10.300					
Margin: 7.35	500-524	10.550	10.800					

Adjustments To Rate

Adjustments To Rate	+/- Rate
SPECIAL	
2/38 ARM (AAA, AA, A+)	-0.200
2/28 ARM, including IO (AAA, AA, A+)	-0.350
Purchase if LTV/CLTV <= 90%	-0.125
LTV/CLTV <= 60%	-0.125
LOAN SIZE	
> $1,000,000	+0.125
$500,001 - $750,000	-0.375
$350,001 - $500,000	-0.500
$150,000 - $350,000	-0.250
$75,001 - $100,000	+0.250
$50,000 - $75,000	+0.500
INCOME TYPES	
Stated Wage Earner	+0.300
Limited Docs (6 mos Bank Statements)	+0.375
Full Doc (12 mos Bank Statements)	+0.250
No Doc/NINA (AAA) above stated	-0.500
PROPERTY TYPES	
Rural	+0.500
3-4 Units (Full/Limited Doc)	+0.500
3-4 Units (Stated Doc)	+1.000
Condo LTV/CLTV > 80%	+0.250
OCCUPANCY	
N/O/O	+0.750
2nd Home LTV/CLTV > 80%	+0.250
YSP (1st mortgages only)	
0.50 point YSP	-0.250
1 point YSP	-0.500
1.50 point YSP	+0.875
2 point YSP	+1.250
1 point Buydown (N/A with YSP)	-0.500
PREPAYMENT PENALTY	
2-yr ppp term (products w/3 yrs Prepay)	+0.500
1-yr ppp term (all products)	+0.750
Waive Pre-pay Penalty	+1.000
PROGRAM	
3 Year ARM	+0.250
5 Year ARM	+0.500
40/30 Year ARM	+0.100
Fixed (30, 20, 15 YR terms)	+0.650
Fixed (40/30 term)	+0.750
Interest Only Full/Limited Doc	+0.250
Interest Only Stated/No Doc/NINA	+0.300
OTHER	
Bankruptcy discharged < 1 year	+0.250
Full Doc C- rates above C grade (C- grade Max 70% LTV - Full/Limited)	+2.250
MINIMUM PRODUCT RATES	
ARMs	5.625%
Fixed	6.500%

NOTE: Final calculated rate can't be lower than the minimum product rate

TERMS AND CONDITIONS
Max YSP = 1 pt. if no pre-pay or Loan Amount > $500,000.

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[illegible]

Par = 3yr PPP (?)

A-A+

w/ Rate Pack
Full doc
Asks for (eg 85% LTV)

Best rate 7.25%
Add 1% [illegible]
10P a .25%

Broker - upsells/fee to 90% LTV → 8.55
Stated doc
max YSP 2pt

1.25
9.80

Add 3yr PPP

add another .80% [illegible]