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## MEMORANDUM

**TO:** CLIENTS AND FRIENDS OF THE FIRM

**FROM:** Al Alsup

**DATE:** November 12, 2002

**RE:** THE DEATH OF THE BELEAGUERED YIELD-SPREAD PREMIUM: HUD RUSHES TO IMPLEMENT NEW RESPA RULEMAKING TO FUNDAMENTALLY CHANGE THE WAY THAT FEES TO MORTGAGE BROKERS AND OTHER SETTLEMENT SERVICE PROVIDERS ARE PAID AND DISCLOSED

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### A. INTRODUCTION: HUD PROPOSES A DUAL APPROACH TO RESPA COMPLIANCE

The Department of Housing and Urban Development (HUD) in bold new rulemaking has proposed to fundamentally change the way that fees to mortgage brokers and other settlement service providers are paid and disclosed under the federal Real Estate Settlement Procedures Act (RESPA) and, in the process, eliminate the common industry practice of compensating mortgage brokers through the payment of so-called *yield-spread premiums* that are derived from premium interest rates charged borrowers. Yield-spread premiums have been attacked in more than 100 class-action suits pending in state and federal courts across the nation as violating RESPA, Section 8, which prohibits unlawful referral fees, kickbacks, fee splits, and unearned fees in connection with federally related home mortgage loans.

HUD's Proposed Rule would require home loan originators, including both mortgage lenders and mortgage brokers, to provide early written disclosures of settlement costs and other loan-related information to loan applicants that both (i) accurately disclose their own maximum origination fees and charges and, within tolerances, the maximum closing costs of other settlement service providers and (ii) effectively guarantee those costs for a period of at least 30 days while the applicants are allowed to shop for better loan terms among the loan originators' competitors. By also redefining what constitutes an "application," HUD would require loan originators in some cases to deliver the new disclosures and cost guarantees even before a written loan application is prepared or received by the loan originator.

Under what HUD characterizes as a "dual approach" to RESPA compliance, loan originators could choose between providing these written disclosures in the form of a significantly revamped Good Faith Estimate (GFE) or as part of a Guaranteed Mortgage Package Agreement (GMPA). GFEs would not be required of those loan originators who offer borrowers GMPAs that guarantee a stipulated interest rate and a lump-sum price covering virtually all required closing costs for a period of at least 30 days and that, if accepted by the borrower within that period, become binding agreements. Loan originators and other settlement service providers participating in any GMPA that satisfies HUD's requirements would

be given “safe harbor” protections that exempt or confer immunity on those parties from violations of RESPA, Section 8.

Under either of these approaches, mortgage lenders would no longer be permitted to compensate mortgage brokers for their services through the payment outside of closing of so-called “yield-spread premiums” derived from premium (i.e., above-par) interest rates charged the borrower. Mortgage brokers instead would be required to disclose, cap, and directly charge their total compensation to the borrower for any loan transaction, and any amounts routinely paid by the lender to the mortgage broker as a yield-spread premium under current practices would be credited to the borrower on the HUD-1 settlement statement at closing to offset, in whole or in part, the mortgage broker’s direct charges to the borrower. Mortgage brokers could not increase their compensation without the borrower’s knowledge by either packing the yield-spread premium or by splitting or retaining any portion of discount points charged the borrower by the mortgage lender. Although the economic effect should be the equivalent of a lender’s direct payment of a yield-spread premium to the mortgage broker in like amount, the Proposed Rule would make the amount of the mortgage broker’s total compensation apparent to the borrower from the outset and eliminate any incentive for the mortgage broker to quote or arrange an excessive interest rate — because any interest rate spread producing lender credits greater than needed to cover payment of the mortgage broker’s guaranteed maximum compensation would benefit the borrower solely. HUD believes these changes in disclosure requirements would resolve virtually all disputes challenging the legality under RESPA, Section 8, of lender-paid compensation to mortgage brokers in table-funded and intermediary transactions.

These fundamental changes in the way that fees to mortgage brokers and other settlement service providers would be paid and disclosed are set forth in HUD’s controversial new Proposed Rule published July 29, 2002 in the Federal Register (67 F.R. 49133), which is open to public comment until October 28, 2002. This memorandum summarizes key provisions of the proposed new regulations and comments on their effect on current practices under RESPA for disclosing and paying compensation to mortgage brokers and other settlement service providers.

## **B. THE PROPOSED GOOD FAITH ESTIMATE DISCLOSURE RULE**

Loan originators, including both mortgage lenders and mortgage brokers (unless the mortgage broker is the exclusive agent of the lender), would be required under the Proposed Rule to provide a GFE in a revamped format to each applicant for a home loan at an earlier stage of the application process and before any significant fee has been charged or collected. (The lender apparently could collect only a nominal fee or such a fee as is “. . . necessary to provide the good faith estimate.”) The new GFE format would contain significantly more loan-related information, expanded consumer disclosures and caveats, and more reliable settlement cost estimates that could be used by the loan applicant to compare with the settlement cost estimates of competitive mortgage lenders or brokers when shopping for the lowest rates and costs or most suitable loan terms.

Loan originators would be prohibited from exceeding the charges disclosed on the GFE for (i) their own services, lender-required and -selected services, and governmental charges and (ii) within tolerances, charges for other third-party services in absence of *unforeseeable and extraordinary circumstances*. Furthermore, lender “mark-ups” or so-called “up-charges” would be prohibited and estimates of settlement costs for third-party services could not exceed the direct provider charges for the services. Estimates of settlement costs on the GFE, with some qualifications, would effectively constitute an offer and would be required to be held open to the loan applicant for acceptance for a minimum of 30 days while the applicant shops. The binding estimates, however, are subject to the loan applicant’s qualifying for the mortgage loan based upon credit rating, appraisal, and other appropriate underwriting criteria.

The new disclosure requirements would apply to all federally related residential mortgage loans, including first- and second-lien, purchase-money and refinance transactions.

**1. GFE Form and Content.** The proposed new GFE would be organized into five sections of significant disclosures set out in a required three-page format, including an Attachment A-1 wherein itemizations of (i) lender-required particular providers of settlement services; (ii) so-called “shoppable” third-party services; and (iii) subtotals of all mortgage lender and mortgage broker origination charges are required. Refer to the promulgated forms of the proposed new GFE and Attachment A-1 set out as Exhibits A and B to this memorandum for a better understanding when reading the following synopses of the five sections:

**Section I. OUR SERVICES** describes the loan originator’s function and contains bolded disclosures to the effect that (i) the loan originator does not offer loans from all funding sources and cannot guarantee the lowest price or best terms in the market, and that (ii) the borrower should compare prices and ... “shop for the loan originator, mortgage product, and settlement services that best meet [your] financing needs.” This language is intended to disabuse loan applicants of the presumption that the loan originator is acting as their agent and is comparing prices and shopping on their behalf.

**Section II. LOAN TERMS** describes the loan terms under application, including the loan amount, interest rate and Annual Percentage Rate (APR), including the annual percentage attributable to mortgage insurance premiums, and the loan term, total number of monthly payments, and the amount of the monthly payment, including principal, interest and mortgage insurance, if applicable.

**Section III. SETTLEMENT COSTS** groups and consolidates all fees and charges into ten major categories of settlement costs, A. – J., inclusive, with a single subtotal amount estimated for each category, and a total of all settlement costs due from the borrower estimated (Sum of A. – J.). A legend precedes the disclosures warning the borrower that the costs disclosed may change if the borrower chooses another loan product or if the interest rate changes before the borrower has elected to lock-in the rate.

**A. Origination Charges.** Discloses the total of all loan origination fees and charges payable to the lender and mortgage broker (except discount points that may be paid to the lender by the borrower that are reported in category B below). Actual amounts for origination charges may not exceed these estimated charges (0% Tolerance) except in *unforeseeable and extraordinary circumstances*.

**B. Interest Rate Dependent Payments.** Discloses (1) discount points (“Borrower Payment to Lender for Lower Interest Rate”) to be paid to the lender by the borrower and (2) lender credits (“Lender Payment to Borrower for Higher Interest Rate”) to the borrower (in the amount of any yield spread or differential in interest rate typically paid to the mortgage broker under current practices). A bolded legend warns the borrower “Until you lock in your interest rate these payments may change.” The offsetting effect of disclosed discount points (-) and lender credits(+) are taken into account in computing a Net Loan Origination Charge Due From Borrower, which is disclosed as the sum of categories A and B. This section must be completed for loans originated by mortgage brokers, but is optional for retail lenders.

**C. Lender-Required and Selected Third-Party Services.** Discloses the subtotal of fees and charges for settlement services that are required by the lender to be performed by third-party providers selected by the lender. This subtotal must cover the costs of all such services except for title-related services and title insurance disclosed in category D. This subtotal must include an estimate of the maximum mortgage insurance premium to be charged upfront to the borrower (based upon the borrower’s representations of the property value and loan amount needed). Actual amounts for lender-required and selected third-party services charges may not exceed these estimated charges (0% Tolerance) except in *unforeseeable and extraordinary circumstances*.

**D. Title Services and Title Insurance.** Discloses the subtotal for all fees or charges for title and settlement agent services and for title insurance premium costs. The loan originator must indicate whether the closing services and title insurance will be provided by an insurer or agency selected by the loan originator or by the borrower. Actual amounts for title services and title insurance at settlement may not exceed these estimated charges (0% Tolerance) if the insurer or agency is selected by the loan originator except in *unforeseeable and extraordinary circumstances*. Actual amounts may not exceed these estimated charges by more than 10% (10%

*traordinary circumstances*. Actual amounts may not exceed these estimated charges by more than 10% (10% Tolerance) at settlement if the title services and title insurance is *shoppable* by the borrower and the borrower selects an insurer or agency identified by the loan originator except in *unforeseeable and extraordinary circumstances* or in the event the borrower chooses to purchase a more expensive service.

E. ***Shoppable Lender-Required Third-Party Services***. Discloses the subtotal of all fees and charges for settlement services that are required by the lender to be performed by third-party providers but that are shoppable by the borrower. *Shoppable*, unknown to Webster, is a term coined by HUD in the Proposed Rule without further definition to refer to settlement services that may be independently obtained by the borrower. Required third-party services that may be independently obtained by the borrower must be itemized and the estimated cost disclosed (based on market averages for the locale) on a form of Attachment A-1 to the GFE. If the borrower elects to obtain a *shoppable* service through the loan originator, the actual amount of the charge for the service may not exceed the estimated charge on Attachment A-1 by more than 10% (10% Tolerance) except in *unforeseeable and extraordinary circumstances* or in the event the borrower chooses to purchase a more expensive service.

F. ***Government Charges – Taxes, State and Local***. Discloses the subtotal of all state and local fees, charges, and taxes that the borrower will be required to pay at settlement based on an assumed closing date that is specified. Actual amounts of all state and local fees, charges, and taxes may not exceed these estimated charges (0% Tolerance) for the assumed settlement date except in *unforeseeable and extraordinary circumstances*.

G. ***Reserves/Escrow (If Required)***. Discloses the subtotal of all reserves or escrow amounts that will be required by the lender at settlement, including taxes, hazard insurance, and mortgage insurance. Actual amounts required for such reserves or escrow may not exceed this estimate by more than 10% (10% Tolerance) except in *unforeseeable and extraordinary circumstances* or in the event the borrower chooses to purchase a more expensive service.

H. ***Per Diem Interest***. Discloses the estimated cost of *per diem* interest (i.e., the interim daily interest charged the borrower from the date of closing to the first day of the next succeeding month). The loan originator must provide reliable figures based on its experience (and an assumed closing date) but is not held accountable if the actual amount of *per diem* interest exceeds or otherwise varies from the estimate.

I. ***Hazard Insurance***. Discloses the estimated premium cost of the minimum amount of hazard insurance on the secured property that will be required by the lender. The loan originator must provide reliable figures based on its experience but is not held accountable if the actual amount of hazard insurance cost exceeds or otherwise varies from the estimate.

J. ***Optional Owner's Title Insurance***. Discloses the subtotal of the estimated costs of optional homeowner's title insurance that the borrower may choose to purchase. The loan originator must provide reliable figures based on its experience but is not held accountable if the actual amount of optional owner's title insurance exceeds or otherwise varies from the estimate.

**Section IV. OPTIONS TO PAY SETTLEMENT COSTS AND LOWER YOUR INTEREST RATE** explains the borrower's options for paying settlement costs, including variously that the borrower (A) may make cash payments of all settlement costs at closing from the borrower's own available funds, (B) may be able to borrow additional amounts as part of the mortgage loan principal to pay some or all settlement costs, in which case the borrower's monthly payments would increase, (C) may be able to pay a higher interest rate in exchange for lower settlement costs, in which case the borrower's monthly payments would increase, or (D) may be able to pay a lower interest rate in exchange for paying additional funds at closing, commonly known as "discount points." Following this explanation, the loan originator is required to demonstrate in a chart form, using figures relevant to the borrower's transaction, how the borrower's chosen interest rate, monthly payments, and settlement costs compare to loans of the same size with lower and higher rates.

**Section V. ADDITIONAL LOAN TERMS** discloses whether the mortgage loan terms call for any of (i) a prepayment penalty, (ii) a balloon payment due at loan maturity, or (iii) adjustments in the interest rate after closing. If the loan is subject to a prepayment penalty, the loan originator must advise the borrower that he or she is entitled to a copy of the prepayment penalty terms upon request. If the loan is an adjustable rate mortgage (ARM), the loan originator must disclose terms of the ARM, including the initial interest rate, the first adjustment date and the fre-

quency of adjustments during the term of the loan, the index and margin upon which adjustments will be based, and any periodic and the lifetime rate caps.

The new GFE disclosure rule would preserve the basic requirement under current regulations that lenders disclose the identity of particular providers of settlement services that the lender both requires the borrower to use and to pay for. The new “required particular provider” rule would require these disclosures as part of Attachment A-1 of the GFE and would otherwise differ from current regulations in two important respects. First, the lender would no longer be required to disclose on the GFE whether a business or other relationship exists between the lender and the service provider and the nature of any such relationship; and, second, the lender would be required to provide the borrower the entire controlled list of required settlement service providers it maintains (or such a list maintained by others upon which the lender relies) from which it will select a required provider for any discrete service after the date of application and the estimated charge for the particular settlement service. Under the current rule, when the lender maintains or relies upon such a controlled list of five or more required particular providers and has not yet decided which provider it will select from that list at the time required to deliver the GFE, the lender may simply inform the borrower that it will require the use of a particular provider from a lender-controlled or -approved list, provide an estimated cost for such service, and then identify the actual provider and actual cost on the HUD-1 settlement statement at loan closing. Of course, lenders would still be required to comply with the written *affiliated business arrangement* disclosure requirements (24 CFR § 3500.15) when referring a loan applicant to an affiliated service provider and would be prohibited from requiring the use of such an affiliate (except for a lender’s chosen attorney, credit reporting agency, or appraiser).

**2. GFE Accuracy Requirements.** Because of strict accuracy requirements under the Proposed Rule, settlement cost *estimates* on the GFE would seem to be more accurately characterized as *guarantees*. Actual amounts charged at closing could not exceed the estimated amounts disclosed on the GFE for the categories of Loan Origination Charges (Section III. A.), Lender-required and -selected, third-party settlement provider charges (Section III. C.), lender-selected title services and title insurance charges (Section III. D.), and governmental fees and charges (Section III. F.). These categories are said to have a “zero tolerance (0%).”

Certain other categories would have a 10% tolerance, which allows actual costs at closing to exceed GFE estimates by no more than ten per cent, including specifically categories for borrower-selected title services and title insurance (Section III. D.), *shoppable* lender-required, third-party services (Section III. E.), and reserves/escrow deposits (Section III. G.). The 10% tolerance would apply to borrower-selected, third-party services from providers suggested by the loan originator, but not to third-party services from providers selected by the borrower independently of the loan originator’s recommendations. Furthermore, the 10% tolerance would apply only to the subtotals for each of these categories and not to each specific charge for services within a category.

Finally, several categories would not be subject to accuracy tolerances and the loan originator would not be held responsible if actual charges exceeded estimates for *per diem* interest charges (Section III. H.), hazard insurance (Section III. I), and optional owner’s title insurance charges (Section III. J.) as long as the lender had carefully prepared estimates of these costs based on its knowledge of relevant prices. These categories are said to have “no tolerance.”

Two exceptions to enforcement of these tolerances against the loan originator would be available. Loan originators would not be held accountable for their estimates if actual costs at closing exceed estimated costs plus any applicable tolerance (i) because of *unforeseeable and extraordinary circumstances* (which, as defined, would be limited to “acts of God, war, disaster, or any other emergency making it impossible or impractical to perform”) or (ii) because, in the case of borrower-selected services, the bor-

rower chooses to purchase a more expensive service than is available or than the lender can provide. However, in the latter case of borrower-selected services, the loan originator could be accountable for excess charges if the borrower uses a settlement service provider recommended or identified by the loan originator as a source where the service could be obtained within the tolerance but the actual charge exceeds the tolerance. When relying on the occurrence of “unforeseeable and extraordinary circumstances” to excuse charges exceeding an allowed tolerance, loan originators would be required to document any such circumstances and retain the documentation in accordance with RESPA recordkeeping requirements for the HUD-1 or HUD-1A settlement statements (essentially requiring record retention for a period of five years and providing for HUD’s rights to inspect and demand copies of the records).

**3. GFE Delivery Requirements.** Lenders would be required to provide a GFE to each applicant for a federally related mortgage loan, unless (i) the GFE had already been provided to the applicant by a mortgage broker and the lender had ascertained that the GFE has been delivered, or (ii) the lender, or its agent, has provided the applicant a GMPA. A mortgage broker (who is not an exclusive agent of the lender) is required to provide a GFE if it is the loan originator that receives the application for a federally related mortgage loan. Neither the lender nor the mortgage broker would be required to provide a GFE if credit is denied within three business days of application.

Mortgage loan originators would be required to either deliver the GFE or place it in the mail not later than three business days after an application is received or prepared. Although this timing requirement appears to be unchanged from the current timing rule, the Proposed Rule would blur the line of when an application is deemed received or prepared by redefining “Application” as follows:

“(b) *Application* means the submission of credit information (Social Security number, property address, basic income information, the borrower’s information of the house price or a best estimate on the value of the property, and the mortgage loan needed) by a borrower in anticipation of a credit decision, whether oral, written or electronic, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.”

This revised definition would expand the meaning of an application to include even the oral submission of credit information in anticipation of a credit decision and would raise the specter that any credit inquiry by a prospective loan applicant, including even a telephone conversation for which no written record is maintained, may be regarded as an application triggering the GFE disclosure obligations if sufficient credit information is discussed upon which the loan originator could make a preliminary credit decision and, at least in the contemplation of the prospective applicant, a credit decision is anticipated. It is unclear whether the parenthetical description of “credit information” (as including the Social Security number, property address, *et cetera*) is intended to be merely representative of the types of credit information typically submitted in an application or an enumeration of the minimum information that must be collected before any oral inquiry could be deemed to mature into an application. The Proposed Rule preserves the “pre-qualification” rule in any event, whereby a submission of credit information that does not identify a specific property to be financed is deemed a request for a pre-qualification and not a loan application that would give rise to the requirement to provide a GFE.

**4. GFE Binding Effect.** Once delivered or placed in the mail to the borrower, the GFE would be open to acceptance by the borrower for a stipulated period of not less than 30 days from the date of delivery (i.e., the date the GFE is delivered in hand or is mailed to the borrower), during which period the borrower must inform the loan originator of its agreement to go forward and complete the application and “pay the additional money [necessary] to complete the underwriting process” (including presumably the traditional deposit or application fee required to cover the costs of appraisal, survey, and consumer

credit reports). The Proposed Rule refers to the GFE in terms of an “offer” that is “open” to the borrower’s acceptance for a stipulated period of not less than 30 days, and if the offer “expires” (i.e., if the borrower fails to affirmatively accept the offer within that stipulated period), the borrower may request the loan originator to either ratify the GFE for an extended period or to issue a new GFE (which presumably would reflect the interest rate, loan terms, and estimated settlement costs available under then current market conditions).

**5. GFE Redisclosure Requirements.** HUD’s supplemental commentary to the Proposed Rule suggests that loan originators would have re-disclosure obligations in the event of certain changed circumstances. First, if the loan originator, after complete underwriting, determined that a prospective borrower did not qualify for a loan product for which a GFE has been provided, the loan originator would be required to inform the borrower either that it does not offer loan products meeting the borrower’s needs or qualifications or that it does offer loan products meeting the borrower’s circumstances and that the borrower may request a new GFE related to that loan product. Second, if the loan originator determines that the prospective borrower does qualify for the loan product described in the GFE but the borrower has not locked-in the interest rate and the “interest rate dependent” charges quoted in the GFE, the loan originator would be required to provide the borrower an amended GFE at such time as the borrower does lock the interest rate and interest rate dependent charges if either has changed from that first quoted. In no case could the amended GFE include increases in cost categories that are not dependent on changes in the interest rate.

**6. GFE Borrower Remedies.** If the actual costs at loan settlement exceed the GFE estimates, absent unforeseeable and extraordinary circumstances, the borrower would be entitled to withdraw the loan application and receive a full refund of all loan-related fees and charges. It is doubtful that HUD intends this to be an exclusive remedy for the borrower in any case in which the loan originator has failed to meet the new GFE requirements because the supplemental commentary to the Proposed Rule indicates that HUD would establish procedures for closely scrutinizing loan originators that fail to meet the new GFE requirements for possible RESPA, Section 8 violations. Although generally there is no private right of action recognized for violations of RESPA, Section 5 pertaining to the required distribution of special information booklets and good faith estimates of settlement costs, a separate contractual right independent of that regulation may be created by the borrower’s acceptance of the GFE estimates. If this provision entitling the borrower to withdrawal and refund is not deemed an exclusive remedy, loan originators that fail or refuse to honor agreed GFE estimates under this statutory scheme would also appear to be liable to the borrower for damages under general contract principles and possibly some state laws regulating deceptive trade practices.

### **C. THE PROPOSED GUARANTEED MORTGAGE PACKAGE “SAFE HARBOR” RULE**

In lieu of providing loan applicants a GFE, loan originators under the Proposed Rule would have the alternative of offering applicants a so-called guaranteed mortgage package (GMP) that contains an interest rate guarantee and a lump-sum price for settlement costs conforming to criteria set out in a new proposed § 3500.16 of Regulation X. The GMP offer would be required to be extended without an upfront fee or cost to the applicant, held open for acceptance by the applicant for a stipulated period of not less than 30 days, and, if accepted during that period, constitute a binding agreement. Significantly, loan originators offering a GMP that meets §3500.16 criteria would enjoy “safe harbor” protections against civil liability or regulatory enforcement actions claiming that the Guaranteed Mortgage Package Agreement (GMPA), or any pricing or payment arrangements between the participating settlement service providers to the GMPA, violates RESPA, Section 8, regarding prohibited kick-backs, referral fees, or unearned fees or Sections 4 and 5, regarding the obligation to provide applicants special information booklets, good faith estimates, and uniform settlement statements prescribed by HUD. By exempting packagers and participating settlement service providers from Section 8 scrutiny, HUD intends to re-

move the regulatory barriers under RESPA that otherwise could hamper those parties from effectively packaging and marketing settlement services as part of a qualifying GMP. This approach is intended by HUD to foster market-driven competition among GMP packagers that would enhance the ability for informed applicants to compare and shop firm rate and cost figures among competing packagers over a 30-day period, or more, and ultimately, in HUD's estimation, produce significantly lower overall settlement costs.

**1. GMPA "Safe Harbor" Criteria.** In order to qualify for the *safe harbor* protections, a lender, or other packager would be required to deliver a GMP offer to the loan applicant ("borrower") that meets new proposed §3500.16 criteria within three [business] days after application (or such longer period as may be reasonable in special cases) and before the Borrower has paid any fee. The GMP offer would be required to include (i) a package of a named lender's required settlement services at a guaranteed price that is fixed from the time the guaranteed package is offered to the borrower through the date of loan settlement, provided that the borrower accepts the offer within the 30-day period, or longer, offered by the packager, from the date the GMP offer is delivered or mailed to the Borrower; (ii) a mortgage loan with an interest rate and Annual Percentage Rate (APR) that is guaranteed through the date of settlement, provided that the Borrower accepts the offer within the same 30-day period, or longer, offered by the packager (which rate can be adjusted, until "locked in" with the lender, only to reflect changes in market interest rates based on movement in an observable and verifiable index or other appropriate measure); and (iii) a Guaranteed Mortgage Package Agreement (GMPA) as prescribed in, and completed in a promulgated form set out as Exhibit C to this memorandum (proposed Appendix F to Regulation X to RESPA).

The form and content of a qualifying GMPA would be required to include (i) a preamble explaining that the GMPA, upon the applicant's timely acceptance and payment of stipulated fee, commits the lender (or other packager) to provide the loan applicant a mortgage loan secured on a therein described property at a guaranteed interest rate stipulated in the GMPA, a guaranteed price for all settlement services required by the lender, a guaranteed price within a 10% tolerance for accuracy of stipulated estimates in the GMPA for other required settlement costs, and a guaranteed lump-sum price of the total estimated settlement costs that the loan applicant would be required to pay at or before settlement to obtain the mortgage loan, all subject only to the lender's verification of the applicant's credit rating, final property appraisal, and other appropriate underwriting criteria; (ii) a caveat reading : "**Other providers offer similar packages, or alternative approaches to mortgage origination. You should shop to find the best packager or originator and mortgage product to meet your needs.**"; and (iii) seven sections of disclosures synopsized as follows:

**Section I. INTEREST RATE GUARANTEE** first stipulates variously the (i) guaranteed interest rate, (ii) mortgage loan principal amount, loan term in years, number of monthly payments, and amount of the monthly payment (including principal, interest, and, if applicable, mortgage insurance premium); and (iii) annual percentage rate (APR), including any percentage attributable to mortgage insurance. The availability of the guaranteed interest rate is then qualified with an explanation that the rate so stipulated is guaranteed through the date of settlement only if the applicant then accepts and signs the agreement and thereafter "locks in" the rate by a later stipulated date. If the applicant chooses not to then accept the agreement and lock-in the rate, but later does so within the 30-day, or more, period provided (or even if the applicant then accepts the agreement but fails to lock-in the rate within the later stipulated date), the explanation continues, the guaranteed interest rate, if increased, would be guaranteed not to exceed a rate equal to the value of a named index plus a stipulated margin (expressed as a percentage).

**Section II. GUARANTEED MORTGAGE PACKAGE** contains (i) the express commitment to provide the loan applicant a guaranteed mortgage package of settlement services required to settle the mortgage loan at a Guaranteed Mortgage Package Price in a stipulated dollar amount, EXCEPT for certain required settlement costs outside the lender's control as itemized in Section III of the GMPA; (ii) a cross reference to Attachment A-1 to the GMPA for a disclosure of whether services for pest inspection, lender's title insurance, and property appraisal

will be included in the guaranteed mortgage package; and (iii) a caveat reading: “**This guaranteed mortgage price may include a maximum mortgage insurance premium based upon your assertion of the value of the property and the loan amount needed. The mortgage insurance premium may decrease or be removed after full underwriting.**”

**Section III. OTHER REQUIRED SETTLEMENT COSTS** contains (i) estimated costs for the totals of *per diem interest* (for the period from the date of settlement to the first day of the next month) based on an assumed closing date, *escrow reserves* (if required for property taxes, insurance, and other items such as mortgage insurance) with a notation that the actual amount of such reserves generally may not exceed the estimated amount by more than 10% absent unforeseeable and extraordinary circumstances, and *hazard insurance*; and (ii) a caveat reading: “**No cost may be imposed on you at settlement that is not specifically itemized and estimated in this Section other than the Guaranteed Mortgage Package Price.**”

**Section IV. OPTIONAL OWNER’S TITLE INSURANCE** contains only an estimated dollar amount of any optional owner’s title insurance premium not required as a condition of the loan.

**TOTAL ESTIMATED SETTLEMENT COSTS** appears immediately below Section IV. and provides for the sum of subtotal amounts appearing in Sections “III, IV, and V [sic]” to be added up and entered as a total. The reference to Section V is an apparent typographic error because Section V appears after the total and does not contain estimates of settlement costs. Most likely the Total Estimated Settlement Costs is intended to be the sum of Sections II, III and IV, which would provide useful information on the total of all settlement costs that the borrower would be required to pay at closing, including both those settlement costs that are guaranteed and included in the Guaranteed Mortgage Package Price (Section II) and those settlement costs that are estimated and may vary (Sections III and IV).

**Section V. OPTIONS TO PAY SETTLEMENT COSTS & LOWER YOUR INTEREST RATE** explains (i) the borrower’s options for paying settlement costs variously by paying cash at closing using the borrower’s own available funds, by borrowing additional funds that would be added to the loan principal amount, or by paying a higher interest rate in exchange for lower settlement costs; (ii) that the borrower may lower the interest rate by paying discount points to the lender at closing; and (iii) how the borrower’s chosen interest rate, monthly payments, and settlement costs compare to loans of the same principal amount with higher and lower interest rates, respectively, using a chart illustrating those comparisons completed with figures relevant to the borrower’s transaction.

**Section VI. ADDITIONAL LOAN TERMS** discloses whether or not the mortgage loan is subject to (i) a prepayment penalty at any time, (ii) a balloon payment at the end of the loan term, and, if so, the dollar amount of the balloon payment, and/or (iii) an adjustable rate feature. If the loan is subject to a prepayment penalty, the borrower, according to instructions for completing this section, must be advised that he or she is entitled to an advance copy of the prepayment penalty terms upon request (although no such advice is contained in the proposed form of GMPA itself). If the loan is an adjustable rate mortgage (ARM), the initial interest rate, the frequency of rate adjustments, the index and margin used in determining future rate adjustments, and the periodic and lifetime rate caps must be specified.

**Section VII. GUARANTEED MORTGAGE PACKAGE AGREEMENT** contains a contracting clause stipulating that the GMPA is provided at no cost and that the lender, or other packager, will be contractually bound by the terms of the GMPA if the borrower agrees to seek a mortgage loan using the GMPA services within 30 days (by signing, dating, and returning the signed copy with a required application fee by a designated date) and qualifies for the mortgage loan based on credit rating, appraisal and other appropriate underwriting criteria. This section must be signed by an authorized agent of the packager and the borrower to become legally binding, and non-lender packagers must obtain the signature of a named lender agreeing to make the loan at the guaranteed rate and otherwise upon agreed terms of the GMPA.

**Attachment A-1** designates by entries in a table of either a “yes” or “no” opposite certain itemized services to indicate whether the packager anticipates that those certain services will be included in the Guaranteed Mortgage Package Price, specifically including (i) Pest Inspection, (ii) Lender’s Title Insurance, (iii) Property Appraisal, or (iv) Credit Report. The attachment also discloses that the borrower is entitled to receive a copy of any reports generated in connection with any of these services if included in the GMP.

**2. Scope and Limitations of GMPA “Safe Harbor” Protections.** HUD proposes to exercise its exemption authority conferred by RESPA, Sections 8(c)(5) and 19, to establish a “safe harbor” for transactions meeting the GMPA criteria as a means to assure the availability in the marketplace of guaranteed mortgage packages to consumers that in HUD’s estimation would “simplify [consumers’] shopping for settlement services and allow them to gain the benefit of an active competitive marketplace where market forces lower settlement costs.” By exempting packagers and participating settlement service providers of a qualifying GMPA from Section 8 scrutiny, packagers would be free to enter into payment and pricing arrangements with participating settlement service providers, including such practices as the discounting of fees and the payment of volume incentives in exchange for referrals, and to require the use of affiliated service providers that otherwise might be prohibited under Section 8 of RESPA as unlawful referral fees, fees splits, or unearned fees. HUD believes that with this regulatory barrier removed, market competition among packagers of qualifying GMPAs would significantly drive down the costs of settlement services for the benefit of consumers seeking home financing.

Specifically, a new proposed § 3500.16(b) to Regulation X would provide that a qualifying GMPA, including payments, discounts, pricing arrangements and other exchanges of things of value by and among packagers and participating settlement service providers of the GMPA in connection with any home mortgage transaction would not violate RESPA, Section 8 (or the corresponding § 3500.14 of Regulation X) and would satisfy the requirements of RESPA, Sections 4 and 5 regarding required consumer disclosures. Excluded from the safe harbor protections, however, would be any pricing or payment arrangements (i) between packagers or participating settlement service providers with any parties *outside* the GMPA or (ii) in connection with a loan transaction that because of a high rate or high costs is subject to the Home Ownership Equity Protection Act (HOEPA), commonly referred to as a Section 32 loan. Moreover, the § 3500.16 safe harbor would not exempt or excuse compliance with affiliated business arrangement safe harbor requirements under §3500.15 when a borrower is referred to a packager by a person or entity that is an affiliate of the packager or an affiliate of any participating settlement service provider.

**3. GMPA Contractual Remedies and HUD Enforcement Actions.** HUD’s supplemental commentary suggests that the Proposed Rule contemplates that borrowers, whether individually or as a class, would have an action at law for specific performance of a GMPA or for damages under general contract principles in the event a packager breaches a GMPA contract. Beyond any contractual remedies under state law, HUD indicates that it would assign enforcement priority to claims of a packager’s non-compliance with the terms of a GMPA, and any packager or other entity found to be in violation of its obligations under a GMPA would not be able to claim a safe harbor under Section 8 of RESPA. Consequently, packagers or other entities found to have breached a GMPA contract would be subject to Section 8 scrutiny and possible HUD enforcement actions as well as private actions for individual or class relief.

#### **D. DISCLOSURES OF “LENDER PAYMENTS TO BORROWER” (formerly “YIELD SPREAD PREMIUMS”) AND GUARANTEED MORTGAGE PACKAGE PRICE ON HUD-1 SETTLEMENT STATEMENT**

The Proposed Rule would spell the death of the common industry practice of compensating mortgage brokers for their loan origination services through the payment outside of closing by wholesale lenders of so-called “yield-spread premiums.” These back-end fees, also referred to sometimes as “yield differentials” or “servicing released premiums,” are derived from a premium, or “above par,” interest rate charged the borrower and are calculated as a cash amount according to a formula that takes into account the loan amount and the spread, or percentage difference, between the wholesale lender’s par rate quoted the mortgage broker when a loan is registered and the actual contract rate of the loan when delivered by the mortgage broker. Any such amounts derived from a yield spread above the par rate would be required to be credited to the account of the borrower at loan settlement under the Proposed Rule. Mortgage brokers would be required to disclose and directly charge their total compensation to the bor-

rower for any loan transaction, and any amounts “based on a higher interest rate” (i.e., derived from a yield spread) would be credited to the borrower on the HUD-1 settlement statement at closing to offset, in whole or in part, the mortgage broker’s direct charges to the borrower. Any such credits exceeding the amount needed to fully pay mortgage brokers’ fees would be applied as credits to offset other closing costs charged to the borrower. Except when closing according to the agreed terms of a GMPA, mortgage broker fees charged the borrower would be disclosed in the 800 series of the HUD-1 Settlement Statement on an available line from 809-811, and shown in the borrower’s column to be used in computing the totals. “Lender payments to the borrower” (i.e., lender credits) that are based on a yield spread differential would then be disclosed in the 200 series, on an available line from 204-209, and shown in the column as a credit to offset and reduce amounts the borrower is required to pay in cash at closing. Note that the form of HUD-1A Settlement Statement may not be used in transactions in which lender payments to the borrower will be credited in this manner.

When closing according to the guaranteed terms of an agreed GMPA, the Guaranteed Mortgage Package Price would be shown on the HUD-1 or 1-A Settlement Statement on line 801 (where under current practices disclosure of a lender’s origination fee is slotted) and included in the borrower’s column to be used in computing the totals. Additionally, prepaid finance charges included in the Guaranteed Mortgage Package Price needed to calculate the annual percentage rate (APR) under the federal Truth in Lending Act would be disclosed in an addendum to the HUD-1. The particular services included in the Guaranteed Mortgage Package Price (but not the dollar amounts of the particular charges) also would be itemized on the appropriate line of the HUD-1 or 1-A Settlement Statement and checkmarks entered in the appropriate columns to indicate which third-party settlement services were performed and included within the guaranteed price. Any “lender payments to the borrower” (i.e., lender credits) based on a yield spread differential similarly would be disclosed in the 200 series, on an available line from 204-209, and shown in the column as a credit to offset and reduce amounts of the Guaranteed Mortgage Package Price the borrower is required to pay in cash at closing.

#### **E. CONCLUSION: HUD’S RUSH TO JUDGMENT**

A suddenly activist Department of Housing and Urban Development has thrown down the gauntlet to the mortgage finance industry and is moving “as quickly as possible” to complete a Final Rule to fundamentally change the way that mortgage broker compensation and third-party fees are paid and disclosed under RESPA. HUD intends for its new regulations to assure that consumers, when seeking home mortgage financing, are given accurate and reliable cost information upfront that enables them to make informed decisions when engaging mortgage brokers and “shopping” for settlement services, and some form of fundamental change to accomplish these broad goals now seems certain.

Secretary Mel Martinez in particular is singularly committed to RESPA reform and likely sees this proposal for fundamental change in industry practices as the legacy of his administration at HUD. He is said to have the support of the administration for his reform efforts “all the way up to President Bush.” In a recent speech at the convention of the Mortgage Bankers Association of America just a week before the expiration of the October 28<sup>th</sup> deadline for public comment on the Proposed Rule, Secretary Martinez was unwavering in his convictions: “We are nearing the finish line. I am committed to this reform effort. Once we have read all the comments and carefully considered all of the significant issues raised, we will make any necessary revisions and, as quickly as possible, complete the Final Rule.”

More than 39,500 comment letters on the Proposed Rule reportedly were received by HUD by the October 28<sup>th</sup> comment deadline. Not surprisingly, the Proposed Rule met with staunch opposition by many segments of the mortgage finance industry, including notably mortgage brokers, Realtors<sup>®</sup>, and title insurance underwriters and agents who fear that the GMP safe harbor rule would lead to monopolization of the marketplace by the nation’s larger lenders and effectively allow those lenders to control the selec-

tion of all settlement service providers through their marketing of packaged settlement services directly to consumers. Comments letters to HUD on the Proposed Rule by The National Association of Mortgage Brokers (NAMB) may be found at [www.namb.org](http://www.namb.org) (Home Page, select Comment Letter), by The National Association of Realtors (NAR) at [www.realtor.org](http://www.realtor.org) (Home Page, select Federal Issues, RESPA), and by The American Land Title Association (ALTA) at [www.alta.org](http://www.alta.org) (Home Page, select RESPA Update).

But there also is qualified support among mortgage bankers for some of the underlying concepts introduced by the Proposed Rule — particularly the concept of extending safe harbor protections to packagers of settlement services that guarantee an interest rate and virtually all settlement costs. The Mortgage Bankers Association of America (MBA), perhaps the industry’s most influential trade association boasting of 2,700 member organizations engaged in all aspects of real estate finance, appears ready to endorse fundamental RESPA reform along the lines proposed by HUD. The MBA in an October 28<sup>th</sup> comment letter to HUD, which may be found at [www.mbaa.org](http://www.mbaa.org) (Home Page, select Residential Finance), characterizes itself as “[HUD’s] partner and ally in the quest to simplify and improve the mortgage shopping process” and the Proposed Rule as “an opportunity to finally effectuate the long-discussed improvements to the mortgage origination process.” Moreover, according to its current president, John Courson, in a recent speech to the Texas Mortgage Bankers Association, the MBA was instrumental in developing the concept of one-price packaging through the collaboration of *ad hoc* work groups of members in a study program dating back as far as 1996. Emphasizing that there are numerous technical corrections and clarifications still required, the MBA summarized its specific position in qualified support of the Proposed Rule as follows:

- *REFINEMENT OF GUARANTEED MORTGAGE PACKAGE CONCEPT.* “First and foremost, MBA embraces the Guaranteed Mortgage Package concept (“GMPA”). MBA believes, however, that HUD must clarify and revisit many of the proposed components – particularly the interest rate “guarantee” – before issuing any final rule. As HUD is aware, MBA has vigorously sought, but not found, a workable method to effectuate consumer protections through an interest rate index that would prevent “bait and switch” tactics by unscrupulous players. In light of the complex issues involved, MBA advises that the notion of including an interest rate “guarantee” in the final rule be further studied and analyzed. In this regard, we note that MBA agrees with HUD’s pro-consumer objectives, and pledges to continue to assist HUD in finding a workable solution to be implemented at a later date. To this end, MBA is now engaging in efforts to form working groups of industry experts to study the issue of mortgage rate indices and other alternative means of achieving HUD’s goals.”
- *DELAY OF REVISED GOOD FAITH ESTIMATE RULE.* “For numerous reasons, HUD should delay the implementation of the Revised Good Faith Estimate (“GFE”) proposals. As currently drafted these proposals are extremely complex and, in our opinion, unnecessary in light of the extraordinary pro-consumer reforms advanced under the GMPA proposal. We are, therefore, asking that changes to the GFE be delayed until after the market has had an opportunity to accommodate the packaging reforms. After a reasonable period of implementation, HUD should revisit the need for any additional changes to the current GFE system.”
- *ADOPTION OF MORTGAGE BROKER FEE AGREEMENT DISCLOSURE.* “Notwithstanding our position to delay the implementation of the Revised GFE, MBA agrees with HUD that confusion regarding mortgage broker compensation continues to be a vexing issue for consumers and that greater disclosure regarding broker fees may be necessary. MBA therefore recommends that HUD adopt the Mortgage Broker Fee Agreement Disclosure already introduced by a coalition of trade associations to HUD a few months ago, with the attendant exemption for brokers and lenders from Section 8 scrutiny. This additional disclosure would achieve HUD’s goals of full disclosure and greater consumer education.”
- *MODIFICATION OF GMPA TIMING REQUIREMENTS.* “In connection with the GMPA proposal, HUD should modify certain timing requirements, as follows:
  - » Amend the definition of application to add, in addition to the five items of information indicated in the Proposed Rule, the collection of credit report and basic asset information;
  - » Amend the open-offer period for the GMPA to five business days instead of 30 days;

- » Require that a signed GMPA be valid for at least 30 days after it is signed by the applicant, and allow the lender to set an expiration date after this period.”
- *PREEMPTION OF CONTRARY STATE LAW.* “HUD should clearly announce its intent to seek preemption of state law that conflicts with the provisions established by any final rule. HUD should also take immediate action to facilitate this preemption of state law.”
- *RESOLUTION OF CONFLICTS WITH TILA AND OTHER FEDERAL LAWS.* “HUD should address the conflicts with other federal laws that will result from this Proposed Rule. Particularly, HUD should engage the Federal Reserve Board on the implications this Proposed Rule will have with regard to the Truth in Lending Act and Regulation Z.”

Our own studied reading suggests that, far from a simplification, the Proposed Rule is highly complex and so broad sweeping in its applicability to all settlement service providers that it could be highly disruptive of the efficient workings of the national mortgage finance industry if imposed *fait accompli* without adequately considering its effect on established industry practices and procedures and conflicting state laws. Moreover, the Proposed Rule appears fraught both with new risks of liability for the mortgage finance industry associated with interest rate hedging and closing cost guarantees and with increased operational costs of retooling, reprogramming, and retraining to meet the rule’s exacting standards and procedures. Most legal observers believe, furthermore, that HUD by effectively imposing rate and price guarantees under its Proposed Rule and in other respects would be exceeding its delegated authority to interpret and implement the provisions of RESPA, and that enabling legislation by Congress first must be enacted to provide the underpinnings of such a rule and forestall a sure legal challenge by the industry over HUD’s authority to promulgate the Proposed Rule. The cooperative efforts of the joint regulatory agencies also would seem needed to harmonize the form, content and implementing procedures of consumer disclosures required under the complex federal regulatory scheme imposed variously by the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, and the Homeowners Protection Act of 1998, and to provide clear guidance regarding the rights, remedies, and obligations of mortgage lenders, mortgage brokers, and other settlement service providers under the new rules. Nevertheless, HUD appears resolute in its rush to judgment. HUD insiders are said to confide that the Secretary expects to publish a Final Rule by the end of the second quarter, 2003, with a probable effective date of January 1, 2004.

Attachments.

THIS MEMORANDUM IS PROVIDED FOR THE GENERAL INFORMATION OF THE CLIENTS AND FRIENDS OF OUR FIRM ONLY AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT PLACE RELIANCE ON THIS GENERAL INFORMATION ALONE BUT SHOULD CONSULT COUNSEL REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED IN THIS MEMORANDUM TO YOUR SPECIFIC CASE OR CIRCUMSTANCES.

**Good Faith Estimate of Settlement Costs (GFE)**

This form provides a reliable estimate of the funds that will be required from you, \_\_\_\_\_, the borrower(s) to obtain a mortgage using our company as your loan originator. This GFE covers both our charges, the charges of other settlement service providers who perform services that are required by the lender to close your mortgage loan, and applicable State and local government charges and taxes due at settlement.

The following estimate is valid for \_\_\_\_ days [30 days or greater] from the date this form is delivered or mailed to you, if you qualify for this mortgage based on your credit rating, the appraisal, and other appropriate criteria.

**THE PROPERTY:** You see to [purchase] [refinance] a residential property at (Address) \_\_\_\_\_

**I. OUR SERVICES:**

As a loan originator, we perform the services necessary to obtain and process your mortgage loan with our own funds or one or more funding sources. **We do not offer loans from all funding sources, and we cannot guarantee the lowest price or best terms available in the market. You should compare the prices in the boxes below and shop for the loan originator, mortgage product, and settlement services that best meet your financing needs.**

**II. LOAN TERMS:**

For a mortgage amount of \$ \_\_\_\_\_, at a [fixed] interest rate of \_\_\_\_%, your APR will be \_\_\_\_%, which includes \_\_\_\_% for mortgage insurance. Your loan will be [ ] years with [ ] monthly payments. Your [initial] monthly payment for principal and interest and mortgage insurance on this loan will be \$ \_\_\_\_\_. See Section V for loan terms related to adjustable rate mortgages, applicable prepayment penalties and balloon payments.

**III. SETTLEMENT COSTS:**

If you choose a different mortgage product or you do not lock your interest rate, some of the estimates listed below may change. The following costs will have to be paid at or before loan closing.

**A. Origination Charges (HUD-1 800 Series)\*** \$ \_\_\_\_\_

*See Attachment 1-A listing origination charge subtotals for the lender and the broker.*

**B. Interest Rate Dependent Payment (200, 900) \*\*\*** \$ \_\_\_\_\_

Until you lock in your interest rate these payments may change.

(1) (+) Borrower Payment to Lender for Lower Interest Rate: \$ \_\_\_\_\_

(2) (-) Lender Payment to Borrower for Higher Interest Rate: \$ \_\_\_\_\_

**NET LOAN ORIGATION CHARGE DUE FROM BORROWER (Sum of A and B):** \$ \_\_\_\_\_

**C. Lender Required and Selected Third Party Services (800, 1300)\*** \$ \_\_\_\_\_

These are third party services that are required and selected by the Lender, these services must be disclosed to you. See Attachment A-1 itemizing these services.

**D. Title Services and Title Insurance (1100)** \$ \_\_\_\_\_

(1) \_\_\_\_\_ lender selected\*

(2) \_\_\_\_\_ borrower selected\*\*

**E. Shoppable Lender Required Third Party Services (800, 1300)\*\*** \$ \_\_\_\_\_

These are third party services that are required by the lender, but you may shop for (other than title services and title insurance). See Attachment A-1 itemizing these services.

**F. Government Charges – Taxes, State and Local (1200)\*** \$ \_\_\_\_\_

Government charges due at the time of settlement assuming a closing on \_\_\_\_\_.

**G. Reserves/Escrow, (if required) (1000)\*\*** \$ \_\_\_\_\_

**H. Per Diem Interest (900) \*\*\*** \$ \_\_\_\_\_

Per Diem Daily Rate \$ \_\_\_\_ at \_\_\_\_ days with an estimate settlement date of \_\_\_\_\_.

**I. Hazard Insurance (900)\*\*\*** \$ \_\_\_\_\_

**J. Optional Owner's Title Insurance (1100)\*\*\*** \$ \_\_\_\_\_

**TOTAL SETTLEMENT COSTS DUE FROM BORROWER (Sum of A-J):** \$ \_\_\_\_\_

\* The charges listed in A, C, D (if selected by the lender), F, and H (daily rate) will not vary except in unforeseeable and extraordinary circumstances as prescribed by federal relation.

\*\* The charges listed in D (if selected by the borrower), E, and G must not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances, except when a borrower chooses to purchase a more expensive service.

\*\*\*The charges listed in B, H, I, and J are not subject to a tolerance, therefore these charges may vary.

**IV. OPTIONS TO PAY SETTLEMENT COSTS AND LOWER YOUR INTEREST RATE:**

- A. Cash Payment at Settlement:** You may pay all or part of your required settlement costs at settlement using your available funds.
- B. Borrowing Additional Funds To Pay Settlement Costs:** You may be able to pay all or part of your settlement costs by borrowing the needed funds as part of your mortgage loan principal. If you chose this option, your monthly payment will increase.
- C. Pay Settlement Costs Through a Higher Interest Rate:**  
You may be able to lower your settlement costs in exchange for paying a higher interest rate on your mortgage loan. This higher interest rate will increase your monthly payments.
- D. You May Lower Your Interest Rate:**  
You may be able to lower the interest rate on your loan by paying additional funds at closing, commonly referred to as “discount points.” The reduced interest rate will lower your monthly payments.

The following table will show you how higher and lower interest rates affect your loan and loan payments.

	<u>GFE Terms You Selected</u>	<u>Higher Interest Rate</u>	<u>Lower Interest Rate</u>
<b>New Loan Balance</b>	\$100,000	\$100,000	\$100,000
<b>Interest Rate</b>	7.00%	7.25%	6.75%
<b>Monthly Principal &amp; Interest &amp; PMI</b>	\$700.30	\$717.18	\$683.60
<b>Credit</b>	\$100	\$1,100	N.A.
<b>Discount Points</b>	N.A.	N.A.	\$900
<b>Change in Cash to Close from GFE Terms You Selected</b>		\$1,000 less	\$1,000 more
<b>Change in Monthly P&amp;I from GFE Terms You Selected</b>		\$16.88 more	\$16.70 less

**V. ADDITIONAL LOAN TERMS:**

- This mortgage IS subject to Prepayment Penalty.
- This mortgage IS NOT subject to Prepayment Penalty.
- This mortgage HAS a balloon payment of \_\_\_\_\_, which will be due at the conclusion of the loan term.
- This mortgage DOES NOT HAVE a balloon payment.

**Adjustable Rate Mortgage (ARM) Loans**

- This is an Adjustable Rate Mortgage (ARM) Loan.** The initial interest rate for this ARM loan is \_\_\_\_\_. The first adjustment will occur after \_\_\_\_\_ months/years and every \_\_\_\_\_ months/years thereafter for a period of \_\_\_\_\_ months/years. The interest rate is based on the \_\_\_\_\_ index and may increase by a margin of \_\_\_\_\_ percent over this index with each adjustment. The maximum rate increase adjustment per period is \_\_\_\_\_ and the maximum interest rate that can ever apply to this loan is \_\_\_\_\_.

**Attachment A-1 Instructions**

Attachment A-1. “Required Use” and Shoppable Third Party Providers.

A. The loan originator must itemize on this form any services that may be independently obtained by the borrower and the estimated cost (based on local market averages for the area where the property is located). The loan originator must also indicate (by checking the appropriate box) any lender-required, lender selected services, along with the estimated charge (based on local market averages for the area where the property is located), and name of the provider.

B. In reporting subtotals for mortgage broker/lender and title agent/title insurance, the loan originator must indicate the names of the service providers and the subtotals of all their charges and fees.

**Attachment A-1**

**A. “Required Use” and Shoppable Third Party Providers**

Federal regulation 3500.7(f) requires that if a lender requires the use of a particular provider of a settlement service, other than the lender’s own employees, and also requires the borrower to pay any portion of the cost of such service, then the good faith estimate must: (1) state that the particular provider is required; (2) state the provider’s name; and (3) state the estimated charge. These services are marked as “required use.”

The services marked as “shoppable” on this list that are also required by us to close your loan, however, unlike the “required use” services, we do not require that you use a particular provider. You may want to shop for these services on your own to find the best price and service to meet your needs. However, if you chose to use a company that is more expensive than our selection, then the excess over our estimate below is excluded from the 10% limit on the closing cost estimate given by us. The following lists the services and companies used by us and price estimates for those services.

Req. Use	Shoppable	Service	Provider	Estimate

**B. Loan Origination and Title Services Subtotals**

Federal regulation 3500.7(c) requires that this Attachment indicate the subtotals of the lender and mortgage broker origination charges; the subtotals of all the charges for title and settlement agent services, including any commissions for title insurance; and the subtotal for the title insurance premium.

Service	Subtotal
Mortgage Broker Charges (HUD-1 line 800)	
Lender Charges (800)	
Title Agent Charges (1101)	
Title Insurance Premium (1108)	

**Guaranteed Mortgage Package Agreement**

This **GUARANTEED MORTGAGE PACKAGE AGREEMENT** commits us, \_\_\_\_\_, the **PACKAGER**, to provide you, \_\_\_\_\_, the **BORROWER(S)**, upon your acceptance and payment of a \$ \_\_\_\_\_ fee within \_\_\_\_\_ days [30 days or greater] of the date this form is delivered or mailed to you: (1) a mortgage loan on the property described below at a **GUARANTEED INTEREST RATE**; (2) a **GUARANTEED MORTGAGE PACKAGE PRICE** for settlement services required by the lender; (3) a firm estimate (within 10%) of the amount of **OTHER REQUIRED SETTLEMENT COSTS** you will pay at or before settlement; and (4) a sum of the **TOTAL ESTIMATED SETTLEMENT COSTS** that you will be required to pay at or before settlement to obtain your mortgage.

This Agreement is subject to verification of your credit rating, final property appraisal, and other appropriate underwriting criteria. **Other providers offer similar packages, or alternative approaches to mortgage origination. You should shop to find the best packager or originator and mortgage product to meet your needs.**

**THE PROPERTY:** You see to [purchase][refinance] a residential property at (Address) \_\_\_\_\_

**I. INTEREST RATE GUARANTEE:**

We guarantee to provide you an [initial] interest rate of \_\_\_\_\_ on a [fixed note] [adjustable] mortgage of \$ \_\_\_\_\_ for [ ] years with [ ] monthly payments. Your [initial] payment for principal and interest and monthly mortgage insurance on this loan will be \$ \_\_\_\_\_. Your APR will be \_\_\_\_\_%, which includes \_\_\_\_\_% for mortgage insurance.

This interest rate is guaranteed through settlement if you accept and sign this agreement now, and lock in this rate by [insert date/time]. If you choose not to accept by this time, we guarantee that the interest rate will not exceed \_\_\_\_\_% [over] [under] the [prime] [index] rate for \_\_\_\_\_ days [30 days or greater]. If you do not accept within this period, the offer will expire. If you accept this agreement, but elect not to lock in the rate the time of acceptance, we further guarantee that your interest rate will not exceed \_\_\_\_\_% [over][under] the [prime][index] rate or other standard measurement in lieu of an index when you do lock in.

**II. GUARANTEED MORTGAGE PACKAGE:**

We will provide you a **GUARANTEED MORTGAGE PACKAGE** for all settlement services and charges required to complete your mortgage, except those specifically set forth in Section IV below, at a **GUARANTEED MORTGAGE PACKAGE PRICE**. You will pay this **GUARANTEED PRICE** in addition to the **OTHER REQUIRED SETTLEMENT COSTS** itemized in Section III. The precise services for each transaction may vary. See Attachment A-1 for an indication of whether we anticipate pest inspection, lender's title insurance and property appraisal services being included in your guaranteed mortgage package.

**This guaranteed mortgage price may include a maximum mortgage insurance premium based upon your assertion of the value of the property and loan amount needed. The mortgage insurance premium may decrease or be removed after full underwriting.**

**GUARANTEED MORTGAGE PACKAGE PRICE**

\$ _____
----------

**III. OTHER REQUIRED SETTLEMENT COSTS:**

In addition to the **GUARANTEED MORTGAGE PACKAGE PRICE**, you are or may be required to pay advanced mortgage and hazard insurance premium, and to establish escrow reserves at settlement. Some of these costs may vary depending on when your loan costs and how much insurance you are required to obtain. **No cost may be imposed on you at settlement that is not specifically itemized and estimated in this Section other than the Guaranteed Mortgage Package Price.**

- A. **Per Diem Interest (HUD-1 900 Series)** \$ \_\_\_\_\_  
Per Diem at \$ \_\_\_\_ @ \_\_\_\_ days with an estimate settlement date of \_\_\_\_\_.
- B. **Reserves/Escrow, (if required) (1000)\*** \$ \_\_\_\_\_
- C. **Hazard Insurance (900)** \$ \_\_\_\_\_

**IV. OPTIONAL OWNER'S TITLE INSURANCE: (1100)**

**TOTAL ESTIMATED SETTLEMENT COSTS (SUM OF SEC. III, IV, AND V):**

\$ _____
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\* Generally, pursuant to federal regulations, the amount stated in line B may not be exceeded at settlement by more than 10% absent unforeseeable and extraordinary circumstances.



**ATTACHMENT A-1 INSTRUCTIONS**

Attachment A-1. The packager shall indicate in the chart (either yes or no) whether specific services are anticipated to be included in the guaranteed mortgage package price, such as the pest inspection, lender's title insurance, appraisal, and credit report.

**Attachment A-1**

This list indicates whether we anticipate specific services being included in your guaranteed mortgage package. Upon request, you are entitled to receive a copy of the reports generated by any of the services listed below that are included in your package.

<b>Service</b>	<b>Anticipated (Y/N)</b>
Pest Inspection (HUD-1 line 1302)	
Lender's Title Insurance (HUD line 1109)	
Property Appraisal (HUD-1 line 803)	
Credit Report	

R  
R  
O  
P  
O  
S  
E  
D