



## Comments on Proposed RESPA Rules

CMPS Institute supports and applauds HUD's desire to bring clarity and transparency to the mortgage origination process, and we appreciate the opportunity to comment on the proposed rules. However, we believe that HUD's proposals are dangerous, costly and fail to achieve the stated goals of bringing clarity and transparency to the mortgage origination process.

The problems with HUD's proposals include:

- The requirement for the loan originator to provide a "GFE application" and an option for the consumer to lock in a rate while shopping among other lenders is neither realistic nor practical. This is like asking a stock broker to prepare a "Temporary Stock Quote" and guarantee the validity of the quote while the investor shops among other stock brokers for a lower stock price or a lower commission rate. First, stock and bond prices (including the prices of mortgage backed securities that determine mortgage interest rates) fluctuate wildly throughout the day simply due to the volatile nature of the financial markets. Second, the broker would be incurring significant costs to guarantee that price without a commitment from the consumer that they are serious about closing the transaction. The only way to assure the ability to lock a rate while the consumer continues to shop among other brokers and lenders would be to increase the cost of the loan by imposing non-refundable rate lock fees that will cover the broker/lender's interest rate risk if the consumer walks away. This has the opposite affect that HUD is seeking in trying to lower costs for consumers. Here is a better proposal:
  - Ensure that consumers understand that their rate is not locked until they decide to move forward with a particular broker/lender.
  - At the point where the consumer signs the formal loan application, they should be given the **Home Mortgage Summary Disclosure Form** created by the CMPS Institute and illustrated in Addendum A. Specifically, see *Sections 1 and 2*. This form is simple, effective, easy to understand and would bring much needed clarity to the mortgage process.

- Requiring Mortgage Brokers to break out YSP and show as a credit creates a new level of confusion for consumers and will imply that Brokers are less competitive/more expensive than other sources that are not required to disclose in such a way. We would suggest that an even playing field be created where all lending sources must disclose all compensation earned on each transaction as a way of creating maximum transparency for consumers and enable their ability to obtain the best priced loan. Therefore, a better proposal would be to:
  - Require the implementation of the **Home Mortgage Summary Disclosure Form** created by the CMPS Institute and illustrated in Addendum A. Specifically, see *Section 6*. This form is simple, effective, easy to understand and would bring much needed clarity to the mortgage process.

In summary, as an alternative to HUD's proposed rules, we recommend:

- Industry-wide adoption of the sample **Home Mortgage Summary Disclosure Form** created by the CMPS Institute and illustrated in Addendum A. This form addresses all of HUD's concerns:
  - Consumers would understand in no uncertain terms that their broker / lender is not their agent.
  - Consumers would understand in no uncertain terms that their broker/lender makes a bigger profit at the consumer's expense in terms of the higher interest rate / commissions associated with the way they have priced the loan.
  - Consumers would be advised to consult with qualified tax, legal or investment advisors for specific tax, legal or investment advice regarding the impact of this mortgage transaction on their personal financial situation.
  - The three points listed above would address the concerns voiced by HUD in terms of borrowers relying on their broker for advice.
  - The playing field would be leveled between brokers and bankers (bankers from management down to the originator have just as much incentive to make a profit on higher priced loans as brokers). This is especially important under current market conditions as the industry is rapidly shifting (and will continue to shift) towards a retail business model vs. a wholesale model with many former-brokers now starting to work for banks. In fact, mortgage broker market share vs. banks and other mortgage originators have dropped to 40% from its high of 65% a few years ago.
  - The proposed **Home Mortgage Summary Disclosure Form** (Addendum A) with specific compensation should be signed up front at point of application and again at closing so that changes can be tracked by enforcement agencies when evaluating whether a broker/banker is engaging in a pattern of deception or bait-and-switch tactics.
  - This solution is applicable throughout the entire industry in the sub-prime, Alt-A, and prime markets.
- HUD should work closely with the Federal Reserve Board in implementing the [comprehensive recommendations submitted by the CMPS Institute](#) in response to the Fed's proposed rules and amendments to regulation Z and the Truth in Lending Act.

**About CMPS®:**

CMPS Institute administers the Certified Mortgage Planning Specialist (CMPS®) designation for financial professionals who provide mortgage and real estate equity advice. The certification is administered through live training, self-study, examination, and annual continuing education requirements. Over 4,000 mortgage bankers and brokers have voluntarily embraced the CMPS® certification and adhere to our professional standards of practice and code of ethics. For further comments or consideration of these and other related topics, please contact:

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Respectfully submitted,

CMPS Institute

[ADDENDUM A]



# Home Mortgage Summary Disclosure Form (SAMPLE)

## #1 – General Mortgage Terms

[example]

	%	\$
<b>Mortgage Balance</b>		<b>\$200,000</b>
<b>Mortgage Interest Rate*</b>	<b>6.500%*</b>	
Points	(2.000%)	(\$4,000)
Other Closing Costs (Appraisal, title insurance, etc.)	(1.600%)	(\$3,200)
<b>Total Points and Costs*</b>	<b>(3.600%)*</b>	<b>(\$7,200)*</b>
Total Prepaid Items (Escrows, Taxes, etc.)		(\$4,000)
<b>Monthly Mortgage Payment**</b>		<b>(\$1,083)**</b>
Monthly Taxes and Insurance		(\$400)
<b>Total Monthly Housing Expense</b>		<b>(\$1,483)</b>

\*  The interest rate and costs can change based on the information contained below [check if loan is not locked, has a variable interest rate or the initial payments are not fully amortized]

\*\*  These payments can change based on the information contained below [check if loan is not locked, has a variable interest rate or the initial payments are not fully amortized]

## #2 - Interest Rate Information

Fixed – mortgage rate is fixed for the entire term of the loan and will never change. If I am unable to afford my mortgage payments, I might lose my home through the foreclosure process.

- Variable - mortgage rate is variable and will change periodically
- Initial interest rate will last for \_\_\_\_\_ months before changing
  - When the rate changes in month # \_\_\_\_\_, my payments will also change. At that time:
    - The interest rate on the mortgage would be determined by adding my margin of \_\_\_\_\_ to the \_\_\_\_\_ index

- The current value of the index is \_\_\_\_\_; so if the interest rate on my home loan were to adjust today, my fully indexed mortgage rate would be \_\_\_\_\_. However, this index does fluctuate frequently and it could be higher or lower in month #\_\_\_\_\_ when my interest rate adjusts for the first time.
  - \_\_\_\_\_ Index (this number fluctuates)
  - + \_\_\_\_\_ Margin (this number does not change)
  - = \_\_\_\_\_ Fully Indexed Mortgage Interest Rate
- The worst case scenario for the first adjustment is that in month #\_\_\_\_\_ my interest rate would be \_\_\_\_\_ and my monthly payment would be \_\_\_\_\_. If I am unable to refinance or afford my new higher mortgage payments, I might lose my home through the foreclosure process.
- In month # \_\_\_\_\_, when my interest rate changes, it will remain at that level for \_\_\_\_\_ months before changing again.
- At every subsequent interest rate adjustment, the interest rate would be determined by adding my margin of \_\_\_\_\_ to the \_\_\_\_\_ index as demonstrated above, subject to the following caps:
  - \_\_\_\_\_ first cap – my interest rate will never fluctuate more than \_\_\_\_\_% above my initial rate at the first adjustment. Therefore, my interest rate at the first adjustment will not be higher than \_\_\_\_\_%.
  - \_\_\_\_\_ periodic cap – my interest rate can never fluctuate more than \_\_\_\_\_ % up or down per every adjustment after the first adjustment
  - \_\_\_\_\_ lifetime cap – my interest rate will never fluctuate more than \_\_\_\_\_% above my initial rate throughout the entire life of the loan. Therefore, my interest rate will never be higher than \_\_\_\_\_%

Locked – interest rate is locked until \_\_\_\_\_ [date]. My loan must fund by this date in order for my interest rate to remain valid. If my loan fails to fund by this date, I understand that my interest rate and payments can change based on the market interest rates available at that time.

Floating – interest rate is floating and is not currently locked. I understand that my interest rate and payments can change before closing based on the market interest rates available at that time.

### **#3 – Amortization and Payment Type:**

**Amortized** – mortgage balance will decrease slightly with each payment I make as each payment includes both principal and interest

**Interest Only** - mortgage balance will remain the same throughout the interest only period unless I choose to make extra principal payments

- Initial interest only payments are allowed for \_\_\_\_\_ months

- My payments will increase in month # \_\_\_\_\_ to include both principal and interest payments.

**Deferred Interest** – mortgage balance can increase if I choose to make the minimum monthly payment of \$\_\_\_\_\_ because the minimum payment may not cover all the interest is being accrued on the loan.

- Under no circumstance will my mortgage balance exceed \_\_\_\_% of the original loan amount or \$\_\_\_\_\_
- Once my mortgage balance reaches the cap of \$\_\_\_\_\_, I will no longer be eligible to make the low minimum payments and the loan will “recast.” Recasting means that my minimum monthly payments will increase dramatically as I begin paying back the mortgage principal over the remaining term of the loan. For example, if the loan recasts in month number \_\_\_\_\_, I will need to repay the mortgage based on a \_\_\_\_\_ month amortization schedule. At that time, if my loan balance is \$\_\_\_\_\_ and the fully indexed interest rate on my loan is \_\_\_\_\_%, my mortgage payments would increase to \$\_\_\_\_\_. However, the payments could even be higher at that time if I have a variable interest rate. If the mortgage balance does not reach \$\_\_\_\_\_ before month #\_\_\_\_\_, my loan will automatically recast at that time.

#### **#4 – Prepayment Penalties:**

Lenders sometimes charge pre-payment penalties if extra principal payments are made. Loans with pre-payment penalties typically carry interest rates that may be lower than loans without pre-payment penalties. Under no circumstance do I have to accept a pre-payment penalty, and I hereby certify that the mortgage lender did give me the option of choosing a loan without a prepayment penalty.

I am choosing a loan that DOES NOT carry a prepayment penalty. There will be no pre-payment penalties if I make extra principal payments, refinance the mortgage or sell my home.

I am choosing a loan that DOES carry a prepayment penalty. There will be a pre-payment penalty if I:

- Make principal payments that exceed \_\_\_\_% of my mortgage balance in given year
- Refinance the mortgage
- Sell my home

The penalty will expire in month # \_\_\_\_\_. Otherwise, the penalty will work as follows:

- Year #1 \_\_\_\_\_% of the mortgage balance or \$\_\_\_\_\_
- Year #2 \_\_\_\_\_% of the mortgage balance or \$\_\_\_\_\_
- Year #3 \_\_\_\_\_% of the mortgage balance or \$\_\_\_\_\_

## **#5 – Affordability Disclosure:**

In lending me money, the mortgage lender relied on my representations that I will be able to afford my payments and repay the mortgage according to the terms outlined above. If I am unable to afford the mortgage payments, I understand that I could lose my home through the foreclosure process.

**Full Documentation** – I fully documented all the income and assets that the lender relied on in making their decision to lend me money. If I have only documented my assets, the lender is counting on my being able to afford the mortgage payments based on the assets that I have verified. I understand that making a false statement on a loan application is a federal offense. I have an obligation to report such misconduct to the federal government if my lender/broker coerced me to make false statements on a loan application. I hereby certify that the lender/broker did not coerce me to overstate my income or assets for purposes of qualifying for the mortgage loan. I also certify that the information in my loan application is true and accurate to the best of my knowledge and I did not deceive the lender, make false statements on my loan application or falsify any income or asset verifications.

**Partial or No Documentation** – I partially documented the income and assets that the lender relied upon in making their decision to lend me money. If I have only documented my assets, the lender is counting on my being able to afford the mortgage payments based on the assets that I have verified. I understand that making a false statement on a loan application is a federal offense. I have an obligation to report such misconduct to the federal government if my lender/broker coerced me to make false statements on a loan application. I hereby certify that the lender/broker did not coerce me to overstate my income or assets for purposes of qualifying for the mortgage loan. I also certify that the information in my loan application is true and accurate to the best of my knowledge and I did not deceive the lender, make false statements on my loan application or falsify any income or asset verifications.

Additionally, I fully recognize that the interest rate and terms of my loan could be better if I fully documented my income and asset information. I am choosing not to do so for purposes that could include privacy and/or complexity of my personal financial situation and the lender is respecting my wishes while charging me a higher interest rate and/or higher costs on my loan.

## **#6 – Compensation / No Agency Disclosure:**

My banker or broker is not my agent or representative. They are in the business of making loans for a profit and are not legally obligated to give me the lowest interest rate or costs. Further, my banker or broker is not legally obligated to give me objective financial or mortgage advice. I hereby certify that I have been advised to consult with a qualified tax, legal or investment advisor for specific tax, legal or investment advice regarding the impact of this mortgage transaction on my personal financial situation. Additionally, my banker or broker made me aware of certain options available through their firm, and I have willingly

