BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MEMO

DATE: April 8, 1998

TO: Committee on Consumer and Community Affairs

FROM: Griffith L. Garwood

SUBJECT: Memorandum concerning the Board's Report to the Congress on the Truth in Lending and Real Estate Settlement Procedures Acts

Attached is a memorandum discussing the approach the staff is taking in preparing the Board's Report to the Congress on the Truth in Lending and Real Estate Settlement Procedures Acts. We hope that the report will be a joint product with HUD, as envisioned by the statutory mandate, although it is likely that the agencies may have differing views on a number of issues. We plan to submit the report to the Congress in May and expect that hearings will follow shortly thereafter.

We have a Committee meeting to discuss the report scheduled for Tuesday, April 14, at 10 a.m. Should you have any questions prior to that time about the issues raised in the memo, please let me know.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MEMO

DATE: April 8, 1998

TO: Committee on Consumer and Community Affairs

FROM: Division of Consumer and Community Affairs
(Griffith L. Garwood, Dolores S. Smith and Staff*)

SUBJECT: Report to the Congress on the Truth in Lending and Real Estate Settlement Procedures Acts

The purpose of this memorandum is to obtain the Committee's concurrence on the approach the staff has taken in drafting the Board's report to the Congress on recommendations for changes to the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The full draft report will be provided to the Committee at a later date.

Section 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 directed the Board and the Department of Housing and Urban Development (HUD) to simplify and improve the disclosures given in transactions subject to TILA and RESPA. This was to be done by regulation, if possible, but if statutory changes were necessary the agencies were asked to make legislative recommendations. In early 1997, the Board concluded that meaningful change could only come through statutory amendments.

---

* A. Hurt, S. Goodman, K. Cho-Miller, J. Ahrens, J. Michaels, P. Blumenthal, N. Taylor, and M. Hentrel.

TILA and RESPA have a common purpose--to provide consumers with important cost information about their mortgage loan transactions; however, they differ in some fundamental ways. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. Implemented through the Board's Regulation Z, the act applies to all consumer credit transactions. The disclosures are intended to focus consumers' attention on certain aspects of their transactions and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. Attachment A is a typical disclosure for a mortgage loan transaction.

RESPA is both a disclosure and a price-related law. The act is implemented through HUD's Regulation X. It requires creditors to disclose all the dollar costs in a mortgage loan transaction (exclusive of interest), without regard to whether the charge is related to the credit. It therefore includes such items as a real estate transfer tax that is paid in a cash transaction. It also prohibits kickbacks and referral fees to protect consumers from unnecessarily high settlement costs.

RESPA has two basic cost disclosures, the "good faith estimate" of settlement costs and the HUD-1 settlement statement. The good faith estimate provides consumers with an estimate of the costs the consumer will pay at closing, and the settlement statement is used to record those costs at closing. Samples of these documents can be found at Attachment B.

There has been significant interest in mortgage reform for some time now. At the urging of members of the Congress, a private-sector Mortgage Reform Working Group was created. This group, which includes both industry and consumer representatives, has been meeting regularly since mid-1997 to explore the issues raised by fundamental reform of TILA and RESPA. The hope was that the Working Group would reach consensus on legislative recommendations that could then be analyzed and incorporated into the agencies' report. To date the parties have not been able to reach unanimous agreement on any of the issues.

The Board's staff has been working closely with HUD so that the report can be a joint product of the two agencies, although at this stage we do not know HUD's views on the various issues. The staff of the two agencies have met extensively with all the parties involved in this process. These meetings have given the staff important information about the current state of the mortgage loan origination industry, and about the different parties' views on how the mortgage loan process could be improved.[1]

The current disclosure scheme is quite complicated. Creditors express concern about the significant liability they face for errors in misclassifying fees for purposes of calculating the finance charge and annual percentage rate (APR) under TILA. They also question the utility of these disclosures, and many believe they are confusing to consumers. Creditors and other real estate settlement service providers, such as mortgage brokers and title companies, worry that because of unclear rules under RESPA they may face both civil

---

[1] Numerous other sources of information have been helpful as well. The Board solicited public comment twice--first in connection with any possible regulatory change and second in connection with any statutory improvements. The Board held hearings in Los Angeles, Atlanta and Washington D.C. on possible changes to the finance charge and annual percentage rate disclosures, and on abusive lending practices. It used the University of Michigan Consumer Survey to examine consumer's satisfaction with the current TILA disclosure scheme. And recently, possible changes in the disclosure format were tested in consumer focus groups.

and criminal penalties for certain business practices. Some of them believe that RESPA is impeding operational efficiencies that could streamline the mortgage process to consumer's benefit. At the same time, some of these parties fear that an easing or clarification of those rules may result in consolidation of the mortgage loan origination market into the hands of just a few large players.

Consumers and their representatives focus on two distinct issues. First, they believe that consumers should be able to get early, firm information about the rates and fees associated with different mortgage loan products; and that this information should be available at little or no cost to encourage comparison shopping. (Disclosures are now often given only after the payment of an application fee, and even then are estimates that can vary significantly from the final figures.) Many consumer advocates also acknowledge that the current calculations for the finance charge and APR may not provide consumers with the best information regarding the cost of credit. Second, consumer group representatives express serious concern about the persistence of abusive lending practices and the limited availability of protections and remedies to address them.

Using the information gathered from meetings, as well as from surveys, focus groups, and comment letters, the staff has identified four major policy issues involved in TILA/RESPA reform:

- should the finance charge and APR disclosures in TILA be eliminated, or should they be retained and modified,

- should creditors be required to provide firmer quotes for closing costs disclosed under RESPA than is now the case,

- should the timing rules for providing certain cost disclosures to consumers be changed (and should creditors be required to provide disclosures before imposing substantial fees), and

- should additional substantive consumer protections be added to the statutes?

The report analyzes these issues and makes recommendations as a starting point for Congress to consider legislative changes. The staff believes that, if adopted by the Congress, these changes to TILA and RESPA would provide consumers with better, firmer information about the costs associated with home-secured credit transactions and would provide creditors with clearer rules. Specifically, the staff recommends that the Board suggest to the Congress that TILA and RESPA be amended in the following ways:

- The definition of a finance charge should be expanded to include all costs (with limited exceptions) the consumer is required to pay in order to close the loan. (Currently many costs are excluded from the finance charge and APR.) The interest rate on the note should be added as a new disclosure for closed-end loans.

- Creditors should be required to give consumers firm and reliable quotes for closing costs disclosed under RESPA.

- Within three days of application for any home-secured loan, creditors should be required to give consumers cost disclosures. Three days prior to settlement creditors should be required to redisclose any material changes in the APR and interest rate, provide an accurate copy of the settlement statement, and for refinance transactions, provide a notice of the right to cancel.[2]

- Substantive protections should be considered that will target abusive lending practices without unduly interfering with the free flow of credit.

---

[2] Under current law consumers can rescind non-purchase home-secured transactions for three days after becoming obligated for the loans.

The staff believes that these changes strike an appropriate balance among the competing concerns of consumers, creditors, and other real estate settlement service providers. The clarification and expansion of the definition of the finance charge (and thus of the APR) would mean creditors will have to make significantly fewer judgment calls regarding whether a particular fee should be considered a finance charge. This should reduce creditors' liability concerns. It should also make the disclosures more useful for consumers.

By requiring that consumers be given firm closing cost quotes, consumers should face fewer unexpected costs at closing. Depending on the method the Congress chooses to achieve this goal, there could be significant clarification of some of the rules under RESPA for creditors.

With the timing changes, creditors would have a more consistent set of rules to follow, while consumers would get better information sooner. As a result of these changes consumers would receive important cost disclosures (including rate-related disclosures such as the APR) early-on for all home-secured transactions; currently it is given before closing only for home purchase transactions. Receiving cost disclosures prior to closing, rather than the current practice of at closing, will allow consumers to study them in an unpressured atmosphere.

A summary of the staff's analysis of the four major policy questions follows. The report itself will have a more detailed discussion of the various alternatives and the staff's analysis of those alternatives.

Should the finance charge and APR disclosures be eliminated or retained and modified?

With regard to improving and simplifying TILA, most of the attention has focused on possible changes to the finance charge and the APR. The purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act applies to both installment loans (closed-end credit) and revolving accounts (open-end plans). In designing the act, the Congress sought to provide consumers with uniform information about the total cost of credit, not simply the interest portion.

TILA requires four fundamental disclosures for closed-end credit. These disclosures are intended to tell consumers: (1) the dollar cost for borrowing the money (the finance charge), (2) the dollar cost expressed as an annualized simple-interest rate (the APR), (3) the amount of funds actually made available to the consumer (the amount financed), and (4) the total dollar cost of the transaction if all periodic payments are made as scheduled (total of payments).[3]

TILA defines the finance charge to include any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. Usually the largest part of the finance charge is the interest charged in connection with the loan, but it also includes other items such as points

[3] For open-end plans, credit costs generally depend on the extent to which the plan is accessed. At the time the account is opened, creditors must disclose the interest rate component of the finance charge--the periodic rate (annualized as an APR)--that may be applied to outstanding balances. Creditors must also itemize, as dollar costs, transaction-based finance charges (such as cash advance fees) and other fees (such as annual fees). The act requires creditors offering open-end plans to send consumers periodic statements that disclose outstanding balances, the dollar amount of finance charges assessed during the period, and an APR that reflects those finance charges in relation to the outstanding balance for the period.

and service fees. Because the finance charge is intended to reflect the cost of the credit rather than the cost of the real estate transaction, costs payable in a comparable cash transaction, such as property transfer taxes, do not meet the definition of a finance charge and therefore are not reflected in the APR.

Although the Congress's intention was to provide the consumer with information about the total cost of credit, TILA has never fully achieved that goal. From the start, there have been statutory exceptions to the definition of the finance charge: (1) closing costs associated with real-estate-secured loans (appraisals, title insurance, and document preparation), (2) certain insurance premiums if the cost and other disclosures are provided (property insurance and optional credit life insurance), and (3) fees paid to government officials to record security interests (mortgage recording fees). Under the current scheme, the large number of possible fees in a real estate transaction must be sorted into finance charge and non-finance charge categories. The "some fees in, some fees out" problem is most acute in closed-end, real-estate-secured lending because this is where most of the exceptions to the definition apply. For example, even fees that meet the definition of a finance charge, such as a credit report, are excluded from the definition if the transaction is real-estate-secured. (See Attachment C for the categorization of various fees under the current scheme.)

The Board has necessarily perpetuated this "some in, some out" structure as it has interpreted the definition of a finance charge. The Board annually receives several thousand telephone calls on TILA, many of which involve questions about whether a particular fee is a finance charge. Answering these questions, which are often very fact specific, requires case-by-case determinations about how to characterize fees. For example, if a fee to appraise the property is excluded from the finance charge, how should creditors treat a fee to review the appraisal? (The review fee is excluded from the finance charge.) If a fee to inspect the property before the creditor extends credit may be excluded from the finance charge, how should inspection fees assessed periodically during the loan term be treated? (In this case, the fee is a finance charge.) In response to creditors' questions, guidance has been given on issues such as these based on the facts and circumstances of each transaction, resulting in fees being characterized as finance charges in some instances and not in others.

An error in judgment over what costs are included in the finance charge, particularly in connection with real-estate-secured lending, may leave creditors vulnerable to civil-money penalties and rescission claims for three years (or perhaps longer) after a loan closes.[4] From time to time creditors have become very concerned about class-action liability when courts have interpreted certain fees as being in the finance charge and creditors have not been including them.

The Congress effectively addressed many creditors' concerns about liability for minor finance charge classification errors with the Truth in Lending Act Amendments of 1995. These amendments clarified the treatment of several real-estate-related fees, and increased existing tolerances for errors in the calculation of the finance charge and APR. The irony of the amendments is that the Congress recognized the inherent complexities of the

[4] The normal three-day rescission right provided for non-purchase-money loans may be extended when there is a material mistake in the TILA disclosures.

"some in, some out" scheme by increasing the tolerances and providing other litigation relief, but at the same time perpetuated the scheme by excluding even more fees from the finance charge and adding in others even though they do not seem to meet the finance charge definition.

Possible changes to the finance charge and APR

As part of the 1995 Amendments, the Congress directed the Board to consider whether the finance charge could be modified to express more meaningfully the cost of consumer credit, including the feasibility of putting all costs in the finance charge. The Board submitted a preliminary report to the Congress in 1996; the final report on the finance charge will be part of the Board's current report on possible changes to TILA and RESPA.

In wrestling with how to best address the issue of the finance charge, the Board has taken public comment (both written and oral), held focus groups with consumers, conducted a consumer survey through the University of Michigan, and consulted with the Consumer Advisory Council. Analysis of the issues and of possible modifications to the finance charge and APR has been guided by the major principles used by the Congress when it enacted TILA: (1) credit costs should be fully disclosed, so that consumers know all the terms of any credit offer and are able to decide which offer to accept; (2) the cost of credit should be stated in terms that the consumer can understand, so that comparing costs among creditors is easy; and (3) the cost of credit from all creditors should be stated uniformly and comprehensively, to promote comparison shopping and competition. Some critics have argued, however, that as worthy as these goals are, they cannot be attained by a finance charge and an APR disclosure.

Broadly speaking, there are three possible approaches to dealing with the finance charge and the APR: (1) eliminate the finance charge and APR disclosures, (2) retain the disclosures and redefine the finance charge (and the corresponding APR), or (3) make no changes to the definition of the finance charge or APR.

1. <u>Eliminate the finance charge and APR disclosures</u>

Many creditors argue that the finance charge and APR should be eliminated. They say that, in their experience, most consumers do not understand the APR or use it for shopping. This belief was largely substantiated by the Board's 1996 consumer survey and more recently in focus group sessions: Consumers understand and tend to shop on interest rates; they do not understand the APR. These creditors argue that the required disclosures should consist of the interest rate, the dollar costs needed to close a loan, and the monthly payment.[5]

2. <u>Retain the APR and redefine the finance charge</u>

Consumer representatives strongly believe that the APR concept is worthwhile and that consumers can be taught to use it. Although the results of the focus groups commissioned by the Board suggested that consumers' understanding of the APR was quite limited, there was interest in the concept. For example, the current disclosure form does not include the note rate, only the APR. In the focus groups, consumers immediately assumed that the APR was in fact the note rate. When they received a model disclosure that contained both the note rate and the APR, they initially expressed confusion over the difference

---

[5] While such a disclosure scheme might be simple for most creditors, those who use notes with "add-on" and" discounted" interest would continue to have to use an APR-type calculation in order to disclose an interest rate.

between the two rates. However, once it was explained that the APR included loan costs other than just interest and that the rate could be used to comparison shop among creditors, some focus group participants seemed to believe that the APR would be useful.

To make the disclosures more useful, however, the exceptions to the finance charge definition would have to be made more rational so that the APR can become a more reliable price-tag for credit shopping. Some options for redefining the finance charge would result in more costs being included in the definition, while other options would delete costs.

Consumer representatives would like an expansive definition--one that would include all fees the consumer pays, including fees such as optional credit life insurance. While such an approach could arguably be a step toward a cleaner definition, it would not facilitate comparison shopping since creditors offer different optional services and may not know which, if any, optional services the consumer will want.

Alternatively, defining the finance charge as all fees the consumer is required to pay for the loan could provide a clear rule and retain the concept of the total cost of credit. This definition would pull in many fees currently excluded from the finance charge, such as real estate closing costs--appraisals, document preparation, property title services, and fees paid to public officials to record security interests. While this approach would provide more consistent treatment of fees, it would not totally eliminate the "some in, some out" problem. For example, there is general agreement that even though required by the creditor, the cost of hazard insurance should not be included in the finance charge for several reasons, including the fact that the consumer is receiving a benefit apart from the loan.

The difficulty in defining what goes into the finance charge and APR fuels many creditors' belief that these disclosures should be eliminated. However, if they are retained, most creditors favor a definition that would include only those costs that the creditor directly requires the consumer to pay. They worry that under a broader rule they may be liable for inaccuracies for third-party charges, such as costs imposed by settlement agents.

Another alternative would be to include only interest and interest substitutes (such as points and mortgage insurance) in the APR. The difficulty with this type of an approach is that it would require a definition of "interest substitute." For example, it is not clear how an annual fee to cover administrative costs could be distinguished from an annual fee charged simply to offset a lower interest rate.

3. Make no changes to the definition of the finance charge

A third option would be to retain the finance charge and APR disclosures without change. Advocates of this approach, including representatives of the federal financial institutions' trade associations, believe that while the current system is flawed, any change to the definition of the finance charge and APR would not materially benefit consumers and would be costly for creditors. Given this belief, these industry advocates generally believe that if the finance charge and APR are not eliminated--their preferred option--they should be left alone.

Draft Report Recommendation

The staff believes that there is value in providing the consumer with a disclosure that includes the full cost of credit, not just the interest charged in connection with the loan. At the same time, it is clear that creditors need a simple rule by which they can determine whether any particular fee should be included in the finance charge. The staff believes that by defining the finance charge to include all the costs the consumer is required to pay for the loan, creditors will have a clearer rule and consumers will get a more accurate measure for the total cost of credit. (Attachment C shows how this proposal differs from the current scheme.)

Although creditors could be liable for errors by third parties under this approach, the tolerances added by the 1995 amendments make this less of a concern than it once was.[6] Moreover, it is likely that as a result of requiring firm quotes of the fees required to close the loan (discussed in more detail below), creditors will have better information and more control over third-party fees, further decreasing the potential for civil liability.

The staff believes that the note rate should be added to the disclosure. By having both rates disclosed and the differences explained in simple language and through a consumer education effort, the staff believes that consumers will be more likely to use the APR for comparison shopping, as it was originally intended. The draft report reflects these views.

Should creditors be required to provide firmer quotes for closing costs?

The fundamental cost disclosure under RESPA is the good faith estimate (and subsequently at closing, the HUD-1 settlement statement). The good faith estimate is intended to disclose the total cost of settlement. It is a dollar disclosure; but in contrast to

[6] These tolerance rules allow creditors to understate the finance charge by up to $100 in a closed-end home-secured transaction, or overstate the finance charge by any amount. This tolerance increases in the case of rescindable transactions and decreases in the case of foreclosure.

the single dollar figure used for the finance charge under TILA, the good faith estimate is an itemization. Unlike the finance charge and the APR, for the good faith estimate there is no liability for mistakes or inaccuracies. (See Attachment B for a sample.)

The good faith estimate does not suffer from the problems associated with the finance charge and APR. Because the costs are expressed as individual dollar amounts, consumers understand the good faith estimate (although not necessarily what services the costs represent, for example, a "title binder"). Since all fees that are typically charged must be disclosed, creditors do not have to guess whether a certain cost needs to be included, unlike what they must do in determining whether something is a finance charge. Therefore, from the creditor's standpoint, nothing needs to be done to simplify or improve the good faith estimate as a disclosure, although there may be other reasons for change, as discussed below.

From the consumer's perspective, however, there is much that could be improved. While in many instances the amounts disclosed on the good faith estimate are the same as or slightly higher than the actual costs imposed at closing, this is not always the case. Consumers and consumer representatives report many instances in which the amounts disclosed on the good faith estimate were significantly lower than the amounts actually charged at closing. In addition, they report instances in which fees were completely left off the good faith estimate but then charged at closing. A few of these fees may be items not known precisely at the time the disclosure was prepared, but many of the fees can be known, disclosed, and controlled by the creditor, such as the underwriting or appraisal fees.

There are various ways in which the good faith estimate could be improved to be made more reliable.

1. Guaranteed Costs

The option that has received the most attention within the Mortgage Reform Working Group would require the creditor to guarantee costs. Under this approach, the creditor would set a price for the cost of most items associated with the loan and would be held to this figure. No itemization would be provided.

The creditor could use any method it chose for arriving at the guaranteed amount. For example, the creditor could review its settlement statements for preceding years and base its price on an analysis of past transactions and current trends in the market. Alternatively, the creditor could contact the different service providers it plans to use in a particular transaction, get a price from each, add in some overhead and margin for error, and quote the total for the services as its price to the consumer. Other creditors might chose to enter into contracts with service providers for set prices either per transaction or per time period (for example, they could contract to have XYZ Appraisal Company do all of the creditor's appraisals for the next six months at a set price). The creditor could then use those contract prices as the basis for the guaranteed cost.

Regardless of the method the creditor used for arriving at the guaranteed cost, the bottom line would be the same--the creditor could not exceed the quoted amount. If the creditor did charge more at the closing, the consumer could choose not to complete the transaction (or, in the case of a refinancing, could be allowed to rescind the transaction). In addition, actual and statutory damages could be imposed for underdisclosure.

This option is being advocated by many of the largest mortgage creditors who are willing to guarantee costs in exchange for relief from certain RESPA restrictions, discussed below. These creditors all envision entering into volume-based contracts with affiliated and other service providers and "bundling" the costs into a single amount. These creditors say that by doing so they will be able to secure discounts that could ultimately be passed on to the consumer. They suggest that consumers will benefit from this arrangement because it will induce competition in the settlement services area (that is, the services needed to originate and close the loan). Advocates of this approach say that consumers do not shop for individual settlement services and that, in fact, in many instances consumers cannot shop because the creditor dictates who the service provider will be. However, these advocates say consumers do shop over-all price; and if they have only one number to compare for settlement services, consumers will shop for this package of services and thereby induce competition.

In order to bundle, creditors perceive the need for certain relief from the anti-kickback provisions of RESPA. RESPA prohibits anyone from paying or receiving a thing of value in connection with the referral of settlement service business, except for actual services beyond the referral. The provisions of the act are very broad; nearly anyone who does anything associated with the origination of a mortgage loan is considered to be in the settlement service business. While the act prohibits HUD from setting prices for settlement services, it provides no guidance on how to determine when a payment is for goods or services rendered (which is permissible) or for a referral (which is illegal and subject to criminal sanctions). In particular, it is unclear whether under RESPA receiving a volume-based discount would be considered payment of a thing of value in connection with the referral of business. The act also prohibits settlement service providers from requiring the use of an affiliated settlement service provider except in limited circumstances.

To avoid such issues and obtain certainty, advocates of bundling seek a statutory exemption from Section 8 of RESPA (the anti-kickback provisions) for all services and costs that go into making up the guaranteed costs. Such an exemption could apply regardless of whether the creditor actually used volume-based discounts, so long as the creditor guaranteed costs. Advocates say that the competition induced by providing a guaranteed amount that consumers can use to comparison shop, along with the ability to pass along volume-based discounts, will keep costs down more effectively than the anti-kick provisions currently do.

Opponents of guaranteed costs cite two major concerns. First, they believe that the only way a creditor or other settlement service provider could guarantee costs and compete is by bundling. They express serious concern about the ability of smaller, unaffiliated institutions to obtain bundled services and compete in such an environment. Second, they believe that rather than keeping prices down, such a system will drive prices up and unduly restrict consumer choice. These parties, which include small creditors and independent settlement service providers such as appraisers and title agents, assert that consumers do shop for settlement services, that prices for these services are currently competitive, and that lifting the Section 8 restrictions will ultimately harm rather than help the consumer. In essence they fear the market power of the larger players if they are freed of the Section 8 restrictions.

There is one other concern associated with the guaranteed cost approach. Consumers would receive a single aggregate cost figure rather than an itemization of charges. Although what is included in the amount may be seen as irrelevant to some advocates of this approach, other parties may see this a backwards step for consumer disclosure. Attachment D is a model disclosure statement that could be provided under this approach.

2. Adding a Tolerance to the Good Faith Estimate

Imposing an accuracy standard for "good faith" with a tolerance is another option for making the good faith estimate more reliable. The tolerance could be based on a percentage of the loan amount or the total estimated closing costs, or could be a specific dollar amount. Under this standard, if the creditor charged more than a certain amount above the estimated costs, the disclosure would be presumed not to have been made in good faith.[7] The creditor would be liable unless it could be proven that there was a legitimate reason for the additional amount. In any case, because the amounts would be estimates rather than guaranteed, there would be no relief from Section 8 liability.

The potential liability for exceeding the tolerance would have to provide creditors with sufficient incentive to give accurate estimates, but not be so severe as to effectively require a guarantee of costs. Additional liability could be imposed on creditors that engage in a pattern or practice of making inaccurate estimates. Keeping the good faith estimate would retain the item-by-item disclosure. Attachment E is a model disclosure statement that would be provided under this approach.

---

[7] Certain costs would be exempt from the tolerance (or guarantee if that method were chosen) such as points and per diem interest since the interest rate may not be set at the time the disclosure is provided.

3. Dual Disclosure System

A third option would be to allow both types of disclosure schemes to co-exist. Creditors could choose between guaranteeing costs and thereby getting Section 8 relief, or estimating within a tolerance, in which case no Section 8 relief would be available. Under such a system there would clearly be an incentive to guarantee costs, but creditors that could not guarantee costs or that chose not to do so could still do business.

The difficulty with this system is that consumers would be left to compare guaranteed costs from one creditor with estimates from another, without any real assurance of which would be the better deal in the end. For example, a consumer comparing a guaranteed cost of $3,500 with an estimated cost of $3,000 might choose the $3,000 believing it to be a better deal (or, even factoring in a margin for error of $500, at least no worse than the guarantee). However, in the end the loan with the estimated price could end up even higher than the $3,500. To avoid harm to the consumer, the penalties for exceeding the estimate would have to be sufficiently severe that the consumer would not have to pay more than $3,500. If that were the case, however, then a tolerance becomes tantamount to a guarantee, but without the benefit for the creditor of Section 8 relief.

Another problem is that under the guaranteed cost approach, a single figure would be disclosed, whereas the estimate with a tolerance approach would require an itemization (because the individual amounts would remain subject to Section 8 scrutiny.) Thus, different creditors might present two quite different disclosures. Nevertheless the dual system has the appeal of allowing creditors who want to bundle to do so without concerns about Section 8 liability, while not disadvantaging smaller creditors who may not want to bundle or otherwise guarantee costs.

Draft Report Recommendation

The Board has avoided making recommendations concerning RESPA in the past. This is particularly the case for issues related to the anti-kickback provisions of the statute. But it is more difficult for the Board to avoid taking a position on RESPA disclosure issues given the Board's expertise in consumer credit disclosure laws. The current issue, which is related to disclosure but also has clear implications for the anti-kickback provisions, therefore is a difficult one.

The Congress may expect the Board to have an opinion with regard to the disclosure issue. The staff believes that creditors should be required to provide consumers with firm quotes of the costs required to close the loan (with limited exceptions). Such a change would improve the current disclosure scheme by reducing the instances in which consumers may incur additional costs at closing. It would also improve the finance charge and APR disclosures since many of the costs that go into those disclosures would now be firm.

Given the significant Section 8 issues raised in the different choices for how costs could be made more firm, the staff believes the Board should not recommend one approach over the other. Accordingly, the draft report discusses each of the approaches but states no opinion about a preferred option. HUD, however, may take a position on the issue.

Should the Timing Rules For Providing Certain Cost Disclosures Be Changed?

Consumers need to have firm, timely information--at relatively low cost--to compare the products of one creditor or settlement service provider with another. If consumers receive firm information but it comes too late in the loan process, they will not have the opportunity to shop. If they must pay a significant fee to obtain the information, consumers may be disinclined to seek information from multiple sources.

The congressional mandate requires the agencies to simplify and improve the timing of the disclosures under the two laws. Generally, there are two basic ways to accomplish this: reduce the number of instances in which different disclosures must be given, and ensure that disclosures are given when they will be useful to consumers. The chart on the next page describes when the various disclosures are required by the statutes. (A description of the various disclosures can be found in Attachment F.)

Timing	TILA	RESPA
At or before referral		▸Affiliated business arrangement disclosure
At or before application	▸Home-secured lines of credit (HELOC) booklet & disclosure ▸Adjustable rate mortgage (ARM) booklet & disclosure	▸Initial transfer of servicing disclosure
Within three days of application	▸TILA disclosure (home-purchase loans only)	▸HUD Special information booklet (home-purchase loans only) ▸Good faith estimate
Three days before closing/ consummation	▸HOEPA loan disclosure ▸Reverse mortgage loan disclosure	
One day before closing/ consummation		▸HUD-1 settlement statement (if requested)
At closing/consummation	▸TILA disclosure (for all transactions except home-purchase; for home-purchase if change in terms) ▸Rescission notice	▸HUD-1 settlement statement ▸Initial escrow account statement (within 45 days of closing)
Post closing/consummation	▸ARM notice of rate & payment changes	▸Annual escrow statement ▸Transfer of servicing notice

There are several ways in which the timing of the disclosures could be changed to simplify or improve the disclosure scheme. For example, the HUD special information booklet, which provides consumers with basic information about home-buying and financing, is now given within three days of application. The timing for providing the booklet could be moved to application, when the ARM booklet (describing adjustable rate mortgage loans) and the HELOC booklet (describing open-end home-secured lines of credit) are given. This change would improve the disclosure scheme by providing useful general information to consumers earlier in the process. Moreover, the information in the HUD and ARM booklets could be combined into a single publication.

However, the most significant changes--from both the consumer's and the creditor's perspective--can come from modifications to the timing of the loan-specific cost disclosures, as described below.

Initial Cost Disclosures

Under the current scheme, consumers receive two pre-consummation cost disclosures for most closed-end mortgage loans: the good faith estimate and the TILA disclosures.[8] Although these disclosures have similar purposes--to inform the consumer about the cost of the transaction and to help the consumer shop--they are sometimes given at different times. For refinance and subordinate lien transactions, the good faith estimate must be given within three days of application, and the TILA disclosure may be provided any time before consummation, typically at loan closing. For a home-purchase loan, both the good faith estimate and TILA disclosures must be given within three days of application.

Given that these disclosures share a common purpose--to provide consumers with information that they can use to shop--they should have the same timing, regardless of the type of loan and whether it is the RESPA or TILA disclosure. Moreover, the timing

[8] There is a third cost disclosure for reverse mortgage transactions. The proposed changes in timing for the initial disclosures would apply to this disclosure as well.

should be early enough that consumers can use the initial cost disclosures to compare different products, whether from the same or different creditors.

There are several possibilities for the timing of these disclosures: prior to or at application; within a specified number of days after application; or upon the completion of some event, such as underwriting by the creditor or the payment of a fee by the consumer. Because of the way in which mortgage loans are priced, however, there is a trade-off amongst the alternatives: The earlier the information is provided, the less likely it is to contain firm costs, and specifically, the less likely it is to contain a firm interest rate offer.

1. Prior to or at application

Any disclosure provided to the consumer prior to application would be generic since the consumer would not yet have provided the creditor with information necessary for a transaction-specific disclosure. To receive a more specific disclosure, the consumer would have to give the creditor certain information about the property, requested loan amount and perhaps some financial information.

If disclosures were required at application, creditors who bundle could likely provide the guaranteed amount for loan closing costs, since that amount would be the result of pre-arranged contracts with the service providers. For many creditors who do not bundle, however, requiring a firm quote of costs at application could be burdensome. These creditors may not know prior to reviewing the application which services they will require in making the loan, much less which service providers will be available or the prices that they will charge.

This would be particularly true if the creditor does not make many mortgage loans, as is the case with many small institutions. These creditors will not know precisely what the costs are likely to be and indeed may not have the technology to generate loan-specific disclosures automatically. Thus for these creditors, it may take some period of time after they have received an application to determine what the cost of the associated services would be and to prepare the disclosure.

To give consumers a firm interest rate offer, creditors have to evaluate specific information relating to the consumer. Determining what interest rate a consumer qualifies for can take anywhere from hours (for creditors who rely solely on automated underwriting or the amount of equity in the home), to days or weeks for creditors who underwrite manually. As a general matter, therefore, the best interest rate information many creditors could provide prior to or at application would be a quote of prevailing rates.

2. Within three days of application

The disclosures could be provided within three days of application, the timeframe currently required for the good faith estimate, and for the TILA in home-purchase (but not other home-secured) transactions. Even with firm closing costs, it is likely that all creditors could provide this information within three days without significant additional burden. As with disclosures at application, however, it does not seem likely that all creditors would be able to provide a firm interest rate offer within three days of application because of the time needed to underwrite the loan.

From discussions with industry representatives it appears that most creditors offering both purchase-money and refinance or subordinate-lien loans provide the good faith estimate and the TILA disclosures within three days of application for all types of transactions, although they are only required to do so for purchase-money loans. For these creditors, requiring the initial cost disclosure to be provided for all loans within three days of application would result in no change in procedures. Creditors that do not make purchase-money loans generally provide the good faith estimate within three days of application, but the TILA disclosures at closing. Thus, for these creditors a requirement that the initial cost disclosures be provided within three days of application would increase compliance burden.

Requiring that the initial cost disclosures be provided within three days of application would parallel--and improve on--the existing rules. For rate-related and other information about loan terms, all consumers would receive disclosures within three days of application. This would significantly benefit consumers applying for refinance or home-equity loans; they typically now receive the TILA disclosures at the closing table. For closing cost information, consumers would receive disclosures at the same time as they do now, but the information would be reliable.

This timing takes into account the operational issues faced by small, less automated creditors while recognizing the needs of consumers. Firm loan closing costs and estimated rate-related information--for all loans--within three days of application would give consumers much of the information they need to comparison shop at a time when they can use it--one of the primary goals of TILA and RESPA.

3. Before payment of a fee

Regardless of when disclosures are provided, if the consumer has to pay a substantial amount of money before getting them, the ability to comparison shop will be seriously curtailed for many, if not most, consumers. While practices vary widely, some creditors charge substantial application fees ($200 is not uncommon in some markets) prior to providing either the good faith estimate or the TILA disclosures. Therefore, consumers typically do not submit an application until after they have chosen a creditor; they then review the disclosures to learn about the details of the transaction, but do not use them for shopping purposes.

There are several ways to address the fee issue--each restricts, to varying degrees, a creditor's ability to collect fees before providing a disclosure about the costs and terms of the transaction. For example, there could be a prohibition on collecting any fees prior to providing the disclosures, or prior to the consumer's agreeing to commit to any particular creditor. Were this the rule, creditors would have to incur some expense, without expectation of reimbursement, to gather and evaluate the information needed to complete the disclosure.

An alternative approach would be to make refundable any fee collected by the creditor prior to providing the disclosures. Under this approach, many creditors could still require consumers to pay a substantial application fee, but the fee would be returned if the consumer ultimately chose not to use the creditor. The difficulty with this approach is that consumers would have to pay multiple fees if they wanted to comparison shop, and even though refundable, the need to pay in advance may discourage many consumers.

Another approach would be to allow creditors and intermediaries to only collect fees paid to third-parties that would be incurred in preparing the disclosure, such as the cost for the credit report. The benefit of this approach is that it would allow creditors to recoup some actual expenses, without significantly discouraging consumers from shopping. In addition it would address, to a certain extent, creditors' concerns about the expense incurred in preparing disclosures when it is uncertain how seriously the consumer is shopping. Presumably only serious shoppers will be willing to pay even a small fee.

Given the Board's historic reluctance to impose substantive regulations on the market, however, the report makes no recommendation on the fee problem. It does, however, discuss the dilemma and these possibilities.

Subsequent disclosures

Besides enabling consumers to shop, accurate early disclosures also help consumers avoid unexpected costs at closing. Even if creditors guarantee certain costs, however, early disclosures will always contain some estimates. For example, interest rates are often estimates because underwriting will not be complete by the time the disclosure is provided and because rates that are not locked-in will move with the market. Similarly, taxes and per diem interest are estimates because the actual closing date will not be set when the disclosure is given.

Under the current scheme, the consumer has the right to request a copy of the settlement statement one day prior to settlement. Thus, RESPA attempts to diminish the likelihood of unexpected costs at closing. This right falls short of its goal, however, because few consumers know about it, and because the settlement statement need only provide as much information as the settlement agent has at the time of the request. With only one day's notice, it may be difficult for the consumer to take the appropriate action if the amounts shown on the settlement statement significantly exceed the early estimates. The right to one-day advance disclosure does not extend to the TILA disclosures; any required redisclosure of cost information typically is given at closing.

Several changes could be made to harmonize the timing and improve the disclosures under TILA and RESPA. The time for providing the HUD-1 could be moved from one to three days prior to settlement. In addition, if there were material changes requiring redisclosure, the TILA disclosures could be provided at this time as well. The three-day rule would track the current timeframe for providing the disclosures required under the Home Equity Protection Act (HOEPA) amendments to TILA.[9] This would allow consumers to have the information far enough in advance so that they can both study it prior to closing and make any necessary arrangements if the terms of the transaction are different from had been previously disclosed. Also, the HUD-1 settlement statement would be provided automatically, rather than upon request, eliminating the concern that consumers do not know about their right to the information. The content of the disclosures could be improved by having them be based on the best information available.

Right of rescission--As an incentive to provide accurate information in non-purchase home-secured transactions, the rescission rules could be changed. For rescindable transactions, the cooling-off period could begin three days prior to closing and end at closing. (Currently, the three-day period begins at closing after the consumer is obligated on the loan.) If there were no material changes in the disclosures at closing, the loan could be funded immediately; there would no longer be the three-day post-consummation right to

---

[9] This disclosure is provided for loans with rates or fees above a certain amount. The disclosure provides consumers with information about their APR, payments, and the fact that they could lose their home if they do not make their payments.

rescind. If, during the three-day cooling-off period the consumer chose not to complete the loan, all fees would be refunded (as is currently the case).[10]

Currently there is a similar cooling-off period for loans subject to HOEPA. In those transactions, however, if there is a material change (or mistake) in the disclosures new disclosures must be given and the closing must be delayed for three more days. This requirement has proved troublesome for consumers and creditors alike. To avoid the problem under the new timing rules, creditors could be allowed to close transactions even if material changes occurred between the time disclosures were provided and closing. However, to ensure that the consumer did not lose the three-day cooling-off right--that is, three days to consider the transaction based on accurate disclosures--the consumer would have a three-day right to rescind (post-closing) as is the case today. In all instances, the three-year right to rescind would remain for undetected material errors.

Draft Report Recommendation

Ideally, shopping for a mortgage loan should be like shopping for other products (such as groceries or clothing). Consumers could find a loan that suits their needs and immediately know <u>exactly</u> what they will have to pay for the loan. In reality, determining the price of a loan, both the interest rate and the closing costs, is generally much more difficult than, for example, determining the price of a loaf of bread. To determine the interest rate, the creditor must assess the consumer's credit risk; to determine the closing

[10] Creditors and some consumers have complained about the three-day period extending beyond closing. For example, consumers complain that in a refinancing they are often charged interest on both the new and the old loan during the three day period. This proposal would largely cure that problem.

costs, the creditor must determine what services are needed and the price of those services. Technology has made, and will continue to make, these determinations easier. However, much of the mortgage loan origination industry is not yet at the point where all of these determinations can be made instantaneously.

Consequently, the staff believes that the early cost disclosures--including the costs to close the loan, rate-related and other information about loan terms--should be provided within three days of application for all mortgage loan transactions.[11] To further reduce the possibility of unexpected costs at closing, three days prior to closing consumers should be provided with a copy of the settlement statement, any necessary redisclosure of TILA information, and (if applicable) a cooling-off notice. In transactions subject to rescission (where the cooling-off notice has been provided), the loan could be immediately funded if the consumer chooses to complete the transaction and there are no material changes at closing. If at closing there are material changes in the transaction that make the disclosures provided three days earlier inaccurate, closing can still occur but the consumer must be given a three-day rescission period (post-closing).

Revised Disclosure Scheme

The congressional mandate requires the agencies to improve the disclosure scheme, including the timing of disclosures. Overall, the staff believes that the changes discussed above will result in consumers' getting more and better information early in the

[11] The staff further recommends that the reverse mortgage disclosure, which is also a cost disclosure designed for shopping, be provided within three days of application for both open and closed-end (rather than its current timing of three days prior to closing). There is currently no redisclosure requirement for the reverse mortgage disclosure and none would be added.

transaction. These changes will also allow consumers an opportunity to study important disclosure documents prior to closing. Finally, the changes will allow all home-secured transactions to close and be funded (subject to state law) without delay so long as the consumer has received accurate disclosures prior to closing. The draft report reflects these views. Attachment G reflects the proposed new timing requirements.

Should any substantive consumer protections be added to the statutes?

The first part of the draft report focuses on the benefits of simplifying TILA and RESPA disclosures. Consumer advocates agree that early, simplified cost disclosures will help some consumers comparison shop, and in a competitive market can help them avoid the most expensive loans. They do not believe, however, that improved disclosures alone can adequately protect consumers from unscrupulous creditors who engage in deceptive and abusive practices.[12]

Accordingly, in connection with any simplification effort, consumer representatives favor enacting new protections aimed at preventing predatory lending practices. There are three primary ways to target abusive lending practices:

- Address specific abuses or practices where possible through precisely tailored rules, such as amendments to HOEPA, without creating unnecessary burden on legitimate mortgage creditors or narrowing consumers' credit options.
- Enhance both private and public law enforcement efforts.

---

[12] Moreover, they worry that reform will mean that the right of rescission--which can be extended for up to three years (or possibly longer) if the creditor makes material errors in the disclosures--will be functionally eliminated as a litigation device, because under a simplified disclosure scheme there will be fewer errors. Without the ability to rescind transactions, consumer advocates say, they will not be able to get consumers out of abusive transactions.

- Improve the information available to consumers through counseling and education, so that they can better weigh risks and costs, make more informed decisions and avoid unnecessary foreclosures.

The draft report discusses each of these areas in some detail, focusing on the different types of abusive lending practices and the various solutions raised during hearings, in comment letters, and in meetings with the Mortgage Reform Working Group. The draft report discusses various options but does not, however, make any recommendations on which specific remedies should be adopted. The following is a summary of the major ideas addressed in the draft report.

1. Possible amendments to HOEPA

While TILA is primarily a disclosure statute, it has always contained some substantive consumer protections, such as the right to cancel certain home-secured loans. In 1994, the Congress amended TILA by enacting the Home Ownership Equity Protection Act (HOEPA), which included additional substantive rules aimed at protecting consumers from abusive lending practices. The Board was required under the provisions of the act to hold hearings concerning the implementation and effectiveness of the HOEPA amendments. The TILA/RESPA report provides an opportunity to summarize for the Congress the findings of those hearings, which were held last June.

Background on HOEPA

HOEPA was a response to evidence of abusive practices involving elderly and often unsophisticated homeowners who used the substantial equity in their homes as security for loans which typically carried high interest rates and fees. Closing costs and other creditor charges were usually added to the loan amount, reducing the homeowner's equity and increasing the monthly payment to an amount which, in some cases, the consumer could not afford to repay.

HOEPA seeks to protect these homeowners from entering into loan agreements that portend a likely, if not inevitable, default and the loss of their homes. The act does not prohibit creditors from making any home-secured loan, nor does it limit the rates that creditors may charge. Instead, the act supplies an additional regulatory scheme for "high-cost" loans that layers some new disclosures onto the disclosures required in other transactions and prohibits creditors from including certain terms in their loans agreements, such as certain balloon payments.

<u>Expand the HOEPA trigger</u>

The disclosure rules and other HOEPA restrictions apply to "high-cost" home-equity loans that have APRs or fees above a specified amount.[13] Consumer representatives believe that the rates and fees that trigger HOEPA coverage are too high and should be lowered. They would also add a separate trigger that measures the affordability of the loan for each individual consumer. This trigger would be based on calculating the ratio of a consumer's total monthly debts (including the loan payment) to the consumer's monthly gross income. If a home equity loan would cause the consumer's debt-to-income ratio to exceed a specified amount, the HOEPA protections would apply to that loan.

---

[13] HOEPA covers loans that have (1) an APR that exceeds, by more than 10 percentage points, the yield on Treasury securities having a comparable maturity period, or (2) total points and closing fees in excess of 8% of the loan amount or $400 adjusted annually ($435 for 1998), whichever is greater.

Consumer groups say that since the law's enactment, some creditors have avoided the act's restrictions by making loans with rates and fees that are just below the existing triggers. These loans include significant up-front costs and repayment schedules that cannot be met given the consumer's income. Each refinancing results in substantial new fees being added to the loan amount that reduce the homeowner's equity. By adding the debt-to-income trigger, consumer advocates hope to make it more difficult for creditors to deny a consumer the HOEPA protections by simply charging a few dollars less than the amount that would trigger coverage.

Creditors have concerns about this approach. They are uncertain about their ability to determine a consumer's debt-to-income ratio with sufficient accuracy to avoid liability for compliance errors. They note that the accuracy depends in part on information supplied to them by the consumer and that the ratio is subject to change between the time of application and loan closing. Although creditors commonly use these ratios to underwrite loans, that process does not require the same level of accuracy that would be needed to assure compliance with new triggers. These were among the concerns that led the Congress to reject the idea of a debt-to-income ratio test when the law was enacted.

Restrict closing cost practices for HOEPA loans

Consumer advocates have testified that homeowners' equity is stripped when high-cost loans are repeatedly refinanced. This occurs because the loans typically involve high up-front fees that consumers cannot afford to pay at closing. These fees are added to the new loan amount, which raises the loan-to-value ratio. Various suggestions have been made about restricting the manner in which closing costs are collected in high-cost loans in order to address this problem.

One suggestion is to restrict the amount of closing costs that may be added to the loan amount in a refinancing. Homeowners would have the option of paying these costs in cash at closing or through an increased interest rate. This approach might prevent some abusive refinancings by making it too expensive for the consumer to get the loan, either because the consumer does not have the cash to close or the ability to qualify at a higher interest rate. More significantly, creditors would not be able to use excessive up-front fees to strip homeowners' equity at the outset of the transaction.

An alternative would be to require creditors to pro-rate closing costs over the full loan term and then require a rebate for any unearned portion if the loan is refinanced within a short period of time. The practical difficulty with this approach is that it does not assure creditors that they will be able to recover their up-front costs, particularly if combined with a rule that prohibits prepayment penalties, as has also been suggested. To offset this risk, creditors would probably include these costs in higher interest rates.

Other Reforms

Some of the proposals, while they would be particularly helpful for consumers who obtain HOEPA loans, could have more general applicability--such as foreclosure protection, enhanced enforcement, counseling and consumer education.

Foreclosure Protection

One potential consumer protection that could have broad applicability would be a set of minimum standards that creditors could be required to follow as part of the foreclosure process. The goal would be to avoid unnecessary foreclosures by maximizing consumers' opportunity to cure a delinquency or arrange other financing. For the most part, the procedures that a creditor must follow for foreclosure are governed by state law, local practice, and contract terms. In every state, a consumer is entitled to some notice of a pending foreclosure, although the timing and contents of the notice may vary. In some states a judicial process is followed; the creditor must file a lawsuit and obtain a judgment in order to obtain permission to sell the property. Other states allow the use of a non-judicial process, where the creditor merely notifies the borrower that the home will be advertised and sold, thereby placing the burden on the homeowner to take legal action to prevent the sale, if possible.

Many states allow consumers some opportunity to "cure" a delinquency and avoid foreclosure by bringing the obligation "current." Even after the time to cure the delinquency has passed, most states (but not all) also allow homeowners to "redeem" the home prior to the foreclosure sale by paying off the full amount of the mortgage plus any fees and expenses related to foreclosure. This is sometimes possible through a refinancing or private sale of the property.

Consumer advocates believe that some federal rules are necessary in this area. A set of federal minimum foreclosure standards would not have to preempt states' ability to create their own foreclosure laws. Instead they could simply provide certain minimum notice requirements. For example, the requirement might be that prior to any foreclosure sale, consumers must have first received in a written notice (1) an explanation of whatever legal rights they have to cure the delinquency or redeem the property and information about how they may do so, including the amounts that must be paid; (2) an explanation of how the foreclosure will proceed if they do not exercise those rights; (3) an explanation of any other rights they may have under any federal mortgage program, if applicable; and (4) information about the availability of third-party credit counseling.

2. Enhanced enforcement

The effectiveness of protections against abusive practices depends on adequate enforcement. At the Board's HOEPA hearings, there was general agreement that stronger enforcement efforts are needed at both the state and federal level. Abusive mortgage loans are not generally a problem, however, within supervised financial institutions that are subject to regular examination by federal and state banking agencies. The problem seems mostly to be confined to mortgage creditors and brokers that are not subject to such direct supervision. For most of these entities, enforcement authority under TILA (and the federal Consumer Credit Protection Act in general) rests with the Federal Trade Commission. In addition, TILA expressly authorizes state attorney generals to enforce the substantive rules added by HOEPA. States may also enforce their own consumer protection statutes or prosecute cases involving consumer fraud, or use their licensing authority as a basis for investigating creditor practices.

The traditional approach for enhancing law enforcement is the commitment of additional funds to increase the number of cases investigated and prosecuted. A different approach would be to increase and improve the information about creditors' practices that is available to law enforcement agencies. In other words, even in the absence of the type of direct oversight performed by bank examiners, it might be possible to equip law enforcement agencies with more detailed of information that would enable them to focus their enforcement efforts in a more efficient and effective manner.

One way to do this would be to impose specific data reporting requirements on unsupervised creditors who regularly engage in higher risk transactions. Covered creditors would then be required to operate under increased scrutiny or otherwise face severe penalties for failure to preserve or report the required information. In cases where covered creditors ignored the reporting requirements they would then subject themselves to prosecution on that basis alone, eliminating the need to prove other consumer law violations.

Additional data reporting requirements that burden broad segments of the mortgage lending industry are not warranted and would not be useful. They would not only add to the cost of credit, but would generate excessive amounts of information that would not be helpful in focusing law enforcement efforts where they are most needed. The focus, therefore, should be on collecting data from unsupervised creditors who regularly engage in certain high-risk transactions that are more likely to involve abusive practices. For example, creditors who made more than a certain number or dollar-volume of HOEPA loans might be required to report the number of loans they made that involved credit insurance, high debt-to-income ratios, or frequent refinancings by the same consumer. Requiring these creditors to maintain or report this sort of aggregate data might enable enforcement agencies to focus investigative efforts on those creditors whose loan terms deviate most significantly from other creditors offering similar products in a particular area.

3. Counseling and consumer education

In appropriate circumstances, providing consumers with counseling about the credit options that are available could help consumers avoid some of the consequences that can follow uninformed credit decisions, such as foreclosure. Some transactions are currently thought to be sufficiently complicated that pre-loan counseling is required under federal law before the extension of credit will be made; reverse mortgages are an example. In other situations, such as default on an FHA-insured loan, consumers must be informed about the availability of counselors, but are not required to consult one.

Either approach could be expanded and coupled with consumer education. For example, an aggressive approach could be adopted requiring counseling prior to consumers' getting a HOEPA loan. Alternatively, a more moderate approach could be taken to provide notice about the availability of counseling to consumers entering into certain transactions, for example, HOEPA loans or first-time home-purchase loans. To be effective, however, there would have to be additional resources to expand and improve on the existing base of housing counselors.[14]

[14] Currently HUD helps provide funding and training for a nationwide network of independent counseling agencies who provide consumers with information on a variety of topics. For example, under HUD's reverse mortgage loan program consumers must complete a counseling session which includes information on topics such as the financial implications of entering into a reverse mortgage, possible tax implications, and the availability of other financing methods

A consumer education campaign designed to provide consumers with the tools they need to navigate what is an inherently complex transaction could reduce consumer anxiety and increase understanding of the loan process. Moreover, informed consumers are likely to make better decisions, and consumers who understand the mortgage shopping process and obtain information from a variety of sources--either by comparison shopping or consulting public information resources--are less likely to be victims of abuse.

Draft Report Recommendation

The general conclusion from the HOEPA hearings was that it is too soon to determine precisely how effective the HOEPA provisions are in deterring abusive lending practices. It is clear, however, that abusive practices continue to exist. The staff believes that the Congress should consider adopting substantive protections that will target abusive lending practices without unduly restricting credit. Given the Board's traditional reluctance to support substantive limitations on market behavior, the draft report discusses various options but does not advocate any particular approach to addressing these problems.

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
8.19 %	$ 218,365	$ 129,103	$ 347,468

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☐ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
360	$ 965.18	Monthly beginning April 1, 1998

Insurance
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. ______ Signature
Credit Disability		I want credit disability insurance. ______ Signature
Credit Life and Disability		I want credit life and disability insurance. ______ Signature

You may obtain property insurance from anyone you want that is acceptable to (creditor). If you get the insurance from (creditor), you will pay $______.

Security: You are giving a security interest in:
☒ the goods or property being purchased.
☐ (brief description of other property).

Filing fees $ ______ **Non-filing insurance $** ______

Late Charge: If a payment is late, you will be charged $______/______% of the payment.

Prepayment: If you pay off early, you
☐ may ☒ will not have to pay a penalty.
☐ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

e means an estimate

Attachment B

GOOD FAITH ESTIMATE

PRELIMINARY MORTGAGE LOAN DISCLOSURE STATEMENT

This list gives an estimate of most of the charges you will have to pay at settlement of your loan. The figures shown are estimates and are subject to change. The figures shown are computed based on a sales price of $ 155,000 and a proposed mortgage amount of $ 135,000 as stated on your loan application.

ESTIMATED SETTLEMENT CHARGES

801	Loan Origination Fee (.5 %)	675	1101	Settlement Fee	
802	Loan Discount (1 %)	1350	1102	Title Search	200
803	Appraisal	250	1103	Title Exam	50
804	Credit Report	35	1104	Title Binder	50
805	Inspection Fee		1105	Doc. Prep. Fee	175
806	VA Funding Fee		1106	Notary Fee	15
807	Assumption Fee		1107	Attorney Fee	375
808	Application Fee	100		To:	
809	Mortgage Broker	675	1108	Title Insurance	350
810			1111	Flood Certification	25
811			1112	Tax Certification	25
901	Interest 30 days @ 27.74 / day	$ 832	1113		
902	Private Mortgage Insurance ___%	255	1201	Recording Fees	
902	FHA MIP Insurance		1202	City/County Stamps	
903	Hazard Insurance $	500	1203	State Stamps	
904			1204		
905			1205		
1001	Hazard Insurance Resv.		1301	Survey	175
1002	Mortgage Insurance Resv.		1302	Pest Inspection	50
1003	Tax Reserve ___ Months		1303	Courier Fee	35
1004	Tax Reserve ___ Months		1304	Property Inspection	200
1005	Assessments		1305		
1006	Taxes	1000			
1007					
1008			1400	TOTAL LOAN COSTS & RESERVES	$ 7397

HUD-1 Settlement Statement

A. Settlement Statement

U.S. Department of Housing and Urban Development

B. Type of Loan	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.			

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

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender

G. Property Location	H. Settlement Agent	
	Place of Settlement	I. Settlement Date

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		**400. Gross Amount Due To Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower		**420. Gross Amount Due To Seller**	
200. Amounts Paid By Or In Behalf Of Borrower		**500. Reductions In Amount Due To Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash At Settlement From/To Borrower		**600. Cash At Settlement To/From Seller**	
301. Gross Amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amt. due seller (line 520)	( )
303. Cash ☐ From ☐ To Borrower		**603. Cash** ☐ To ☐ From Seller	

L. Settlement Charges	Paid From Borrowers Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price $ @ % =		
Division of Commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at Settlement		
704.		
800. Items Payable In Connection With Loan		
801. Loan Origination Fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Fee to		
807. Assumption Fee		
808.		
809.		
810.		
811.		
900. Items Required By Lender To Be Paid In Advance		
901. Interest from to @$ /day		
902. Mortgage Insurance Premium for months to		
903. Hazard Insurance Premium for years to		
904. years to		
905.		
1000. Reserves Deposited With Lender		
1001. Hazard insurance months@$ per month		
1002. Mortgage insurance months@$ per month		
1003. City property taxes months@$ per month		
1004. County property taxes months@$ per month		
1005. Annual assessments months@$ per month		
1006. months@$ per month		
1007. months@$ per month		
1008. months@$ per month		
1100. Title Charges		
1101. Settlement or closing fee to		
1102. Abstract or title search to		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to		
(includes above items numbers:)		
1108. Title insurance to		
(includes above items numbers:)		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. Government Recording and Transfer Charges		
1201. Recording fees: Deed $; Mortgage $; Releases $		
1202. City/county tax/stamps: Deed $; Mortgage $		
1203. State tax/stamps: Deed $; Mortgage $		
1204.		
1205.		
1300. Additional Settlement Charges		
1301. Survey to		
1302. Pest inspection to		
1303.		
1304.		
1305.		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		

Characterization of costs as finance charges[1]

	Current TILA	Required-cost test
Loan origination fee	√	√
Loan discount	√	√
Per diem interest	√	√
Mortgage broker ("creditor") fee paid by borrower	√	√
Application fee	˜	√
Real estate commission	N	N
Credit report	N	√
Appraisal fee	N	√
Lender's inspection fee (pre-consummation)	N	√
Survey	N	√
Pest inspection	N	√
Tax certification	N	√
Tax service (life of loan)	√	√
Flood certification	N	√
Flood service (life of loan)	√	√
Assumption fee (pre-consummation)	√	√
Document preparation (loan-related - 4(c)(7))	N	√
Document preparation (deed)	N	N
VA application fee	√	√
Mortgage insurance premium	√	√
Hazard insurance premium	N	N (special exception)
Credit life/disability insurance (optional)	N	N

[1]All approaches exclude from the finance charge costs payable in a comparable cash transaction. The legend for the table is:
√ = treated as a finance charge under this approach
N = excluded from the finance charge under this approach
˜ = treatment depends on circumstances

	Current TILA	Required-cost test
Credit life/disability insurance (required)	√	√
Reserves to be Deposited with Lender		
City property taxes	N	N
County property taxes	N	N
Annual assessments	N	N
Title Charges		
Settlement or closing fee	~	√
Abstract or title search/title examination	N	√
Title insurance binder	N	√
Title insurance - lender's coverage	N	√
Title insurance - owner's coverage	N	N
Notary fees (for mortgage)	N	√
Attorney's fees (consumer)	N	N
Attorney's fees (lender)	~	√
Government Recording and Transfer Charges		
Recording fees: mortgage, release	N	√
State/city/county tax/stamps: mortgage	N	√
Recording fees: deed	N	N
State/city/county tax/stamps: deed	N	N
Transfer tax	N	N
Miscellaneous Fees		
Conversion option	√	√
Amortization schedule (optional)	N	N
Courier fees - third parties	√	√
Courier fees - settlement agent	~	~
Lock-in fee	√	√
Late payment charges	N	N
Verification fees	~	√

Combined Federal Initial Disclosure Statement for Home-Secured Loans

BORROWERS: Mary and James Focus

LENDER: LOAN NO. 145

PROPERTY ADDRESS: 3 Group Lane, Homeloan, MD 20790

DATE February 25, 1998

Rate Information	Loan Amount	Finance Charge	Total Loan Cost
The overall cost of financing the loan expressed as a rate is 8.19% APR. Your note rate is 7.5%.	You are borrowing $135,000. The amount of credit available to you after certain fees are subtracted is $129,103.	Dollar amount of the cost of financing the amount you are borrowing $218,365.	$347,468

☐ Estimated amounts

LOAN COSTS DUE AT CLOSING:

Fixed Closing Costs: This is the maximum amount you will pay for those closing costs that are fixed $3,715
(The services included in this amount are listed on the next page.)

Other Required Costs (estimated): This costs will vary depending on the tax rate in your jurisdiction, how much insurance you obtain, and when you close your loan .... + $2,332 est

Taxes $1,000
Property Insurance .... $ 500
Per Diem ($27.74 for 30 days) .... $ 832
(daily interest from closing until the end of the month)

Discount Points: This is the amount you pay to get the interest rate shown. Each point equals 1% of your loan amount .... + $1,350

TOTAL .... = $7,397 est

PAYMENT SCHEDULE

Number of payments	Amount of payments	When payments are due
360	$965 est*	Monthly beginning April 1, 1998

Optional Costs (estimated): These costs are for services you may choose to obtain. You are not required to purchase any of these services to get this loan. These amounts may vary depending on who you choose to provide the service(s) and/or the level of service you choose .... $ 635 est

Owner's title insurance .... $ 100
Borrower's attorney .... $ 500
Credit life/disability insurance .... $ 35 (per mo. for 12 mos.)

est means estimated
* This amount only includes principal, interest and mortgage insurance, if required (does not include taxes and property insurance).

FIXED CLOSING COSTS: The following items are included in your Fixed Closing Costs. The total amount can change only under [one] condition[s]—if you choose someone other than someone on our list to provide title work and conduct the closing.

Attorney	Document preparation	Mortgage insurance	Tax certification
Application	Flood certification	Notary	Title Search
Appraisal	Lender's title insurance	Pest inspection	Title Exam
Courier	Loan origination	Property inspection	Title Binder
Credit Report	Mortgage broker	Survey	

You may choose from the following list who will perform the title work and who will conduct the closing:

1. ABC Title
2. XYZ Title
3. A title agent of your choice, subject to our approval. If you do so, you will receive a credit of $350 off of your guaranteed maximum costs. If your actual costs exceed this credit you must pay the difference.

Variable Rate Feature:

☒ Not Applicable
☐ My loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier.

Prepayment Penalty: If you pay your loan off early, you

☐ may ☐ will not be charged a penalty.
☐ may ☒ will not be entitled to a refund of part of the [interest].

Transfer of Servicing: We may assign, sell or transfer the servicing of your loan (the right to collect payments from you).

Late Charge: If a payment is late, you will be charged $25.00.

Security: Your HOME is the security for this loan. If you do not make your payments, YOU MAY LOSE YOUR HOME.

Assumption: Someone buying your home

☒ may, subject to conditions, be allowed to assume your loan.
☐ will not be allowed to assume your loan.

[Demand Feature: ☐ If checked, this obligation has a demand feature.]

[Required Deposit: ☐ If checked, we require you to maintain a deposit as a condition of this transaction.]

Combined Federal Initial Disclosure Statement for Home-Secured Loans

BORROWERS: Mary and James Focus

LENDER: LOAN NO. 145

PROPERTY ADDRESS: 3 Group Lane, Homeloan, MD 20790

DATE February 25, 1998

Rate Information	Loan Amount	Finance Charge	Total Loan Cost
The overall cost of financing the loan expressed as a rate is 8.19% APR. Your note rate is 7.5%.	You are borrowing $135,000. The amount of credit available to you after certain fees are subtracted is $129,103.	Dollar amount of the cost of financing the amount you are borrowing $218,365.	$347,468

☐ Estimated amounts

Itemization of Fees. The information below reflects **estimates** of the charges that you are likely to incur in connection with the settlement of your loan. The actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers beside each item correspond to the number lines contained in the HUD-1 or HUD-1A settlement statement you will be receiving at settlement. The settlement statement will show you the actual cost for items paid at settlement.

HUD no.	Required Costs	Charge
801	Loan Origination Fee (.5 %)	675
802	Appraisal	250
803	Credit Report	35
804	Inspection Fee	
805	VA Funding Fee	
806	Assumption Fee	
807	Application Fee	100
808	Mortgage Broker	675
809		
810		
901	Private Mortgage Insurance ____%	255
902	FHA MIP Insurance	
903		
904		
1001	Hazard Insurance Resv.	
1002	Mortgage Insurance Resv.	
1003	Tax Reserve ____ Months	
1004	Tax Reserve ____ Months	
1005	Assessments	
1006		
1007		
1101	Settlement Fee	
1102	Title Search	150
1103	Title Exam	50
1104	Title Binder	50
1105	Doc. Prep. Fee	175
1106	Notary Fee	15
1107	Attorney Fee To:	375
1108	Title Insurance	350
1109	Flood Certification	25
1110	Tax Certification	25
1111		
1201	Recording Fees	50
1202	City/County Stamps	
1203	State Stamps	
1204		
1205		
1301	Survey	175
1302	Pest Inspection	50
1303	Courier Fee	35
1304	Property Inspection	200
	Subtotal	$ 3,715

HUD no.	Other Costs	Charge
1401	Loan Discount (1 %)	1350
1402	Interest 30 days @ 27.74 / day	832
1403	Hazard Insurance (12 mos.)	500
1404	Taxes	1,000
	TOTAL COSTS TO CLOSE	$ 7,397

HUD no.	Optional Costs (estimated)	Charge
1501	Owner's title insurance	100
1502	Borrower's attorney	500
1503	Credit life/disability insurance (per mo. for 12 mos.)	35

Your payment schedule will be:

Number of payments	Amount of payments	When payments are due
360	$965.19	Monthly beginning April 1, 1998

'ariable Rate Feature:

☒ Not Applicable
☐ My loan contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier.

'roperty Insurance: Property Hazard Insurance from an insurer acceptable to Lender is REQUIRED. You may obtain property nsurance from anyone you want that is acceptable to this institution. If you get the insurance from ______ 'ou will pay $ 500 for a term of 12 mos. .

'repayment: If you pay off early, you ☐ may ☐ will not have to pay a penalty.
☐ may ☒ will not be entitled to a refund of part of the finance charge.

)ptional Credit Life Insurance and Credit Disability Insurance: These costs are for services you may choose to obtain. YOU ARE NOT REQUIRED TO PURCHASE ANY OF THESE SERVICES TO GET THIS LOAN. These amounts may vary depending on who you choose to provide the service(s) and/or the level of service you choose.

Credit life/disability insurance .... $ 35 (per mo. for 12 mos.)

Security: You are giving a security interest in:

☒ the goods or property being purchased.
☐ ______
(brief description of other property)

Late Charge: If a payment is late, you will be charged $ 25.00 / ______%

Assumption: Someone buying your house ☒ may, ☐ may not, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

Transfer of Servicing: We may assign, sell or transfer the servicing of your loan (the right to collect payments from you).

See your contract documents for any additional information about nonpayment, default, any required prepayment in full before the scheduled date, and prepayment refunds and penalties.

SUMMARY OF DISCLOSURES REQUIRED UNDER TILA AND RESPA

I. TILA

Home-equity line of credit brochure and disclosures: Consumers contemplating a home-equity line of credit (HELOC) receive an educational brochure and generic disclosures when they apply for the credit line. The brochure informs consumers about typical costs associated with home-equity credit lines, discusses the difference between a credit line and a traditional second mortgage loan, and contains a glossary of terms. The generic disclosures inform consumers about payment terms and fees imposed under the creditor's plan. For variable-rate plans, information is provided about the index used to determine the rate together with a fifteen-year history of changes in the index values.

Adjustable-rate mortgage (ARM) brochure and disclosures: Consumers who use their primary home as security for a variable-rate loan receive an educational brochure and generic disclosures when they apply for the loan. The brochure explains how the rate is affected by discounts or margins, and discusses possible ramifications such as negative amortization. The ARM disclosures are similar to those provided for HELOCs, and discuss limits on the amount of rate or payment changes. Creditors may state "the interest rate may vary significantly" in lieu of a fifteen-year history of changes in the index values.

Early TILA disclosure: Attachment A illustrates the "TILA disclosure." Creditors must provide these disclosures within three days after receiving an application from consumers applying for a loan to purchase their primary home. Many of the cost disclosures are marked as estimates.

TILA disclosure: Consumers entering into closed-end (installment) transactions must receive the information illustrated in Attachment A before they become obligated on the transaction; typically, the disclosures are provided along with the note, mortgage, and other closing documents. Creditors that provided an "early TILA" to consumers seeking home-purchase loans must deliver an updated disclosure if term have changed.

HOEPA disclosure: Consumers must receive an abbreviated disclosure three days before they become obligated on a HOEPA-covered loan.[1] The disclosures inform consumers that they are not obligated to complete the loan, remind them that they could lose their home if they fail to make payments, and state a few key cost disclosures including the APR, the regular payment, and for variable-rate loans, a "worst case payment" if rates increase as high and quickly as possible under the loan agreement.

HOEPA is triggered if (1) the APR exceeds the yield on Treasury securities of comparable loan maturity plus 10 percentage points, as of the fifteenth day of the month before the month in which the application is received, or (2) fees paid at or before closing exceed 8 percent of the loan amount or $400, adjusted annually (it is $435 in 1998).

Reverse mortgage disclosure: TILA's reverse mortgage disclosure is modeled after the matrix disclosure currently used by HUD in its Home Equity Conversion Mortgage program.[2] The disclosures must be given at least three days before loan consummation. Creditors must disclose the projected total cost of the credit, expressed as a rate (the "total annual loan cost" rate or "TALC").[3] Creditors must disclose the TALC rates based on at least three home appreciation rates (0%, 4%, and 8%) and loan periods (short-term, life-expectancy, and long-term). Along with the rate disclosures, creditors must furnish a notice to consumers that receiving disclosures or applying for the loan does not obligate the consumer to complete the transaction and a brief narrative that helps consumers to interpret the TALC rates.

Notice of payment or rate changes affecting ARMs: Consumers with ARM loans may receive disclosures throughout the life of the loan. Creditors must send a notice at least once a year if the rate changes but the payment does not. If a rate change results in a payment adjustment, consumers must receive disclosures at least 25 (but not more than 120) days before the new payment amount is due. The disclosures inform consumers about the effect of a rate increase on their obligation, stating, for example, current and prior interest rates; the amount of the new payment, if applicable; the loan balance; and if the payment would not fully amortize the loan, the amount of the payment that would be required to do so.

II. RESPA

Affiliated business arrangement disclosures: Persons that refer consumers to certain settlement service providers may avoid liability under § 8 of the RESPA if the person recommending the provider discloses to the consumer the person's relationship to the settlement services provider, the likely cost for the services, and the fact that the consumer is not required to use the recommended service provider.

A reverse mortgage transaction is defined as a loan that is secured by the consumer's principal dwelling; that ties repayment to the homeowner's death, or permanent move from or sale of the home; and that discharges any liability against the homeowner or the estate for amounts owed in excess of the value of the home.

The projected total cost takes account of any equity or shared appreciation that the homeowner will owe the creditor contractually and all charges and costs, including the cost of an annuity the consumer purchases (if any). This amount is netted with the benefits received, including the payments received from an annuity purchased from the loan proceeds (in lieu of the cost of the annuity premium) and any limitations on the homeowner's liability to the creditor.

Initial transfer of servicing disclosure: Consumers applying for closed-end first-lien loans must be informed about the likelihood that their mortgage servicing will be transferred. The disclosure must be given to (and acknowledged by) consumers when they apply for the loan.

HUD special information booklet: The HUD special information booklet is an educational brochure that generally describes the mortgage process. It must be provided to consumers applying for home-purchase loans within three days after the application is received.

Good faith estimate (GFE) of settlement costs: GFEs, illustrated in Attachment B, identify the type and amount settlement costs that consumers are likely to pay. The disclosure must be provided within three days after the application is received.

HUD-1 settlement statement: The HUD-1 (also in Attachment B) reflects both the underlying property sale and the credit transaction for home-purchase loans. (The HUD-1A is designed for credit transactions, such as refinancings.) The settlement statement identifies costs associated with the sale of the property, such as the allocation of heating oil, and other costs imposed on the consumer to obtain the credit. The settlement statement must be provided at loan closing. Consumers may request the statement one business day prior to closing; the settlement agent must disclose items known to the agent at the time the consumer inspects the statement.

Initial escrow accounting statement: Mortgage servicers must provide consumers with an initial escrow accounting statement that discloses the amount of the borrower's monthly payment to be placed in the escrow account and estimates both the amount of taxes and insurance that must be collected and the disbursement dates for those charges. This statement may be included as a part of the consumer's HUD-1 or may be provided separately. It must be provided at settlement or within 45 days after the escrow account is established.

Annual escrow accounting statement: Mortgage servicers must provide consumers with a statement concerning their mortgage escrow account each year. The statement must reflect the account activity for the previous year, project payments for the coming year, and explain how surpluses or shortfalls will be handled.

Transfer of servicing disclosure: Mortgage servicers must provide at least fifteen days' advance notice about a transfer of mortgage servicing.

Timing Rules for Real-estate-secured Loans

Timing	Current	Proposed
At or before or referral	▸Affiliated business arrangement disclosure	▸Affiliated business arrangement disclosure
At or before application	▸Initial transfer of servicing disclosure ▸Home-secured line of credit (HELOC) booklet & disclosures ▸Adjustable rate mortgage (ARM) booklet & disclosure	▸*Moved later & combined* ▸HELOC booklet and disclosures ▸ARM booklet & disclosure ▸HUD Special information booklet (all closed-end loans)
Within three days of application	▸HUD Special information booklet (home-purchase loans only) ▸Good faith estimate (GFE) ▸TILA disclosure (only home-purchase loans)	▸*Moved earlier & expanded* ▸*Combined* GFE/TILA & transfer of servicing disclosure (*all* closed-end loans) ▸Reverse mortgage disclosure
Three days before closing/consummation	▸HOEPA disclosure ▸Reverse mortgage loan disclosure	▸*Eliminated* ▸*Moved earlier* ▸*Combined* TILA/GFE, only if change in terms ▸HUD-1 settlement statement ▸Notice of cooling-off period ▸Initial escrow account statement (within 45 days of closing)
One day before closing/settlement	▸HUD-1 settlement statement (if requested)	▸*Eliminated*
At closing/consummation	▸HUD-1 settlement statement ▸TILA disclosure (for all transactions except home purchase; for home purchase only if change in terms ▸Rescission notice ▸Initial escrow account statement (within 45 days of closing)	▸*Moved eariler* ▸*Moved earlier* ▸*Moved earlier* ▸*Moved earlier*
Post closing/consummation	▸ARM notice of rate & payment changes ▸Annual escrow statement ▸Transfer of servicing disclosure	▸ARM notice of rate & payment changes ▸Annual escrow statement ▸Transfer of servicing disclosure