

# Summary — MBA Options for RESPA Reform



## Introduction

The Mortgage Bankers Association (MBA) is asking its members to comment on three options for Real Estate Settlement Procedures Act (RESPA) reform. These options were developed by a task force representing a cross section of MBA members under the leadership of MBA Chairman Regina Lowrie, in response to indications that the Department of Housing and Urban Development (HUD) intends to go forward with RESPA reform.

## Threshold Determination

The threshold determination for consideration by HUD is whether it should go forward with reform at all through rulemaking or let the market proceed as it has been in reforming itself. MBA has long supported improvement in the mortgage process for consumers. However, MBA believes there are compelling cost and other considerations, also in the interests of consumers, that might lead HUD to conclude that it should forego RESPA reform through rulemaking. HUD would then let the market continue to operate, innovate and simplify the mortgage process under the current rules.

If HUD chooses to revise the current rules, it could pursue one or more of the following options. These options, though costly to implement, would serve the interests of making the mortgage process more transparent and efficient and foster innovation to lower costs for consumers. Under MBA's proposal, HUD could choose to implement Option 1 — revising the forms and attendant requirements — without implementing the other two options. If HUD seeks broader reform — including the imposition of tolerances — it could implement Option 1 along with Option 2, or Option 1 along with both Options 2 and 3. The options are summarized below.

### Option 1 — Improving the Forms and Making Related Changes in the Rules.

HUD would establish a new standard Good Faith Estimate (GFE) form to be given to all borrowers at the time of mortgage application and a revised HUD-1 to be given to all borrowers at settlement. This option would:

- Establish the GFE as a standard one-page form to disclose the settlement costs for a mortgage to a consumer along

with relevant rate and loan characteristics so that the consumer can effectively shop among mortgage products for the best deal;

- Disclose to the borrower on the GFE payments from lenders to mortgage brokers in a manner that would inform the borrower of such payments but not confuse the borrower and undermine competition;
- Make both the GFE and HUD-1 easily comparable to each other to allow a consumer to easily compare the estimated charges that are provided at time of application with the final charges at settlement;
- Make necessary rules changes to disclose costs to consumers on both forms in nine major cost categories including lender, mortgage broker, third party and title charges, as well as identifying charges that are included in and excluded from the finance charge for purposes of computing the Annual Percentage Rate (APR) under the Truth in Lending Act (TILA), rather than itemizing the cost of each and every settlement service; and
- By changing the disclosures as described, stem “junk fees,” increase market competition to lower costs, and facilitate computation of the APR under TILA.

### Option 2 — Establishing Tolerances for Lender and Broker Charges and Making All Categories of Charges More Realistic Estimates.

In addition to implementing Option 1, HUD would establish reasonable tolerances to limit increases in lender and mortgage broker charges to a 2 percent increase from the time a consumer applies for a mortgage through settlement. As both a practical and legal necessity to establish the tolerances and to make them workable, HUD would exercise its exemption authority to permit average-cost pricing and to provide an exemption from Section 8(b) of RESPA concerning mark-ups of third-party costs as long as the charges in each cost category are disclosed on the new GFE and HUD-1 and the tolerances are satisfied. HUD would also establish new implementing rules including an opportunity to cure any violations. These changes would make costs more predictable for both lenders and consumers as well as more transparent. Transparency and competition lower costs more effectively than regulation.

**Option 3 – Establishing Tolerances for All Major Settlement Charges Except Government Charges and Pre-Paid Items to Provide Even Better Estimates.**

In addition to implementing Options 1 and 2, HUD would establish reasonable tolerances to limit increases in third-party and title charges to a 10 percent increase overall. Also, to make these additional tolerances workable, HUD would exercise its exemption authority to permit volume discounts along with providing the exemptions for average-cost pricing and from Section 8(b). These changes would result in even greater cost predictability as well as transparency and competition lowering costs to consumers.

**Implementation**

Adoption of any of these options should be accompanied by a reasonable implementation period of at least one year. This recognizes the need of the industry to make systems changes as well as the time required to revise the *HUD Special Information Booklet*, consult with the Federal Reserve to coordinate its TILA guidance and, as necessary, preempt conflicting state laws.



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