

Comparison of MLWG Discussion Items with Federal Proposals

Last Updated: August 6, 2008

	MLWG Discussion Items	Final TILA Regulations 73 Fed. Reg. 44522 (2008)	H.R. 3221 (As signed by President on July 30, 2008)	Proposed RESPA Regulations 73 Fed. Reg. 14030 (2008)
(1) Preemption of State Laws	N/A	<p><i>Existing statute:</i> Federal Truth-in-Lending Act only preempts state laws that are inconsistent with the Act, and then only to the extent of the inconsistency. 18 U.S.C. § 1610(a)(1).</p> <p><i>Existing regulation:</i> A state law is inconsistent if it makes a creditor make disclosures or take action that contradicts federal law, or if the state law requires the use of the same term to represent a different amount or a different meaning than the federal law. 12 C.F.R. § 226.28(a).</p>		<p><i>Existing statute:</i> RESPA only preempts state laws concerning settlement practices that are inconsistent with RESPA. HUD may not consider any state law that gives greater protection than RESPA inconsistent with federal law. 12 U.S.C. § 2612; 24 C.F.R. § 3500.13.</p> <p><i>Existing regulation:</i> State laws that impose more stringent limitations on affiliated business arrangements are not inconsistent with federal law. 24 C.F.R. § 3500.13.</p>
(2) Applicability	<p>Provisions related to a reasonable, tangible benefit applies to all mortgage loan refinances.</p> <p>Provisions related to good faith and fair dealing relate to all residential mortgage loans.</p>	<p><i>Final regulation:</i> Applies certain protections to “higher-priced” mortgage loans, which are defined as loans that are 1.5 percentage points above average prime offer rates on comparable transactions for first-lien loans, and 3.5 percentage points for second-lien loans. (pg. 44531-44532)</p> <p><i>Final regulation:</i> Applies new definition to first-lien and subordinate-lien mortgage loans secured by the consumer’s principal dwelling – so would include home purchase loans, refinance loans, and home equity loans. (pg. 44538)</p> <p><i>Final regulation:</i> Covers only principal dwellings, not second homes. (pg. 44538)</p> <p><i>Final regulation:</i> Interest-only (non-amortizing) loans or negative amortization loans covered to the extent that their APR reaches the “higher-priced” threshold. (pg. 44538).</p> <p><i>Final regulation:</i> Does not apply to home equity lines of credit. (pg. 44538)</p>	<p><i>Enacted law:</i> The HOPE for Homeowners Program applies to voluntary refinancings on the part of homeowners and existing loan holders to insure refinanced loans for distressed borrowers to support long-term, sustainable homeownership. (Sec. 1402, pg. 395)</p>	<p><i>Existing statute:</i> RESPA applies to “all federally related mortgage loans,” which are loans (except temporary financing) that are for 1 to 4 dwelling units; <u>and</u></p> <ul style="list-style-type: none"> ▪ Are secured by a first or subordinate lien on residential real property ▪ Are made by insured depository institution ▪ Are insured or guaranteed by a federal agency ▪ Are intended to be sold to [Fannie Mae or Freddie Mac], <u>or</u> <p>Are made in whole or in part by any “creditor”...who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. 12 U.S.C. § 2602(1)</p>

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(3) Loan Comparison Forms	A model disclosure form that allows the mortgage lender and borrower to discuss the reasonable, tangible benefits when refinancing a mortgage using a “side-by-side” comparison displaying current and refinanced loan terms.	<p><i>Final regulation:</i> Transaction-specific, “early mortgage loan disclosures” required for all mortgages to provide information to the borrower on the terms of the loan (like payment schedule) to review credit terms for consistency with their understanding of the transaction and that the credit terms are affordable and meets their needs. (pg. 44591)</p> <p><i>Final regulation:</i> For <u>advertisements</u>, requires adequate disclosure of both promotional plan terms and the rates and payments that will apply over the term of the plan. (pg. 44576-44577)</p>	<p><i>Enacted law:</i> Bill adds a disclosure for residential mortgages that states in conspicuous type size and format how interest rate can affect the payment on a mortgage loan, with examples of what those adjustments may look like – requires that one example be the payment at the maximum interest rate under the contract. (Sec. 2502, pg. 544-545)</p>	<p><i>Proposed regulation:</i> Proposed changes to the good faith estimate clearly communicate a summary of the terms and costs of the loan for which the borrower applied. The changes facilitate shopping between different service providers, but do not compare the terms and costs of the new and refinanced loans. (pg. 14035-14036).</p> <p><i>Proposed regulation:</i> GFE form advises borrower on the effect of the interest rate of a proposed loan on the borrower’s settlement costs. (pg. 14038)</p>
(4) Criteria for Refinancing Loan	Reasonable tangible benefit to be based on the terms of the mortgage loan(s) currently in force, the proposed refinancing costs and terms, and the borrower’s circumstances.	<p><i>Existing statute:</i> HOEPA* loans cannot be refinanced into another HOEPA* loan within the first 12 months of origination, in a manner “that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.” 15 U.S.C. § 1639 (l)(2).</p>	N/A	N/A

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(5) Disclosure Form Written with Plain Language, Conform to Federal Form	<ul style="list-style-type: none"> ▪ Requirements consistent with federal requirements, including the provisions of the proposed HUD Good Faith Estimate (GFE) ▪ Form written in plain language. 	<p><i>Final regulation:</i> For <u>advertisements</u>, applies a "clear and conspicuous standard" to advertisements of home-equity plans with promotional rates or payments, and to Internet, television, and oral advertisements of home-equity plans. (pg. 44575)</p>	<p><i>Enacted law:</i> The Secretary of HUD must make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs. (Section 1516, pg. 459-460)</p>	<p><i>Proposed regulation:</i> Requires that page one of the good faith estimate provides a clear summary of loan terms and settlement charges; the form should be "clear and well-written...." (pg. 14033, 14101).</p>
(6) Information Used on Comparison Form	<p>Require the mortgage lender to be responsible for the accuracy of information on current loan(s) if they held the current loan(s) or locate the terms of the current loan(s) from a public record. If the terms of the current loan(s) are not available from these resources, the mortgage lender can rely on information provided by the borrower, but are responsible for ensuring the accuracy of this information to the best of their knowledge.</p>	N/A	N/A	N/A

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(7) Contents of Loan Comparison Form	<p>The form should include the following loan terms:</p> <ul style="list-style-type: none"> ▪ The initial loan balance; ▪ The loan terms, expressed in years, including the new maturity date; ▪ The initial interest rate; ▪ The initial monthly amount owed for principal, interest and mortgage insurance, if any; ▪ The rate lock period; ▪ Whether the interest rate may rise; ▪ Whether the loan balances may rise; ▪ Whether the monthly amount owed for principal, interest, and mortgage insurance, if any, may rise; ▪ The presence of a prepayment penalty; ▪ The presence of a balloon payment; ▪ The presence of monthly payments for escrow, property taxes or other obligations; ▪ The fully-amortized monthly loan payment amount, ▪ The monthly debt payment, the pre-payment penalty, and ▪ The loan to value and the debt-to-income ratio. 	N/A	N/A	<p><i>MLWG discussion item modeled on the proposed good faith estimate form found in the proposed RESPA regulations – see pg. 14095-14096.</i></p>

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(8) Recognition of Benefit	The borrower must acknowledge her or his perceived benefit from the refinancing, regardless of whether the mortgage lender believes the borrower will receive a reasonable tangible benefit. The borrower must articulate, in the borrower's own words, the perceived benefits of the new loan(s).	N/A	N/A	N/A
(9) Lender Reviews Information	The mortgage lender must acknowledge that it has exercised its best efforts to review the information, including benefits and detriments, with the borrower, that the information about the refinanced loan is accurate, and that any perceived benefits recognized by the borrower are factually consistent with the terms of the new loan(s).	N/A	N/A	<i>Proposed regulation:</i> The loan originator transmits to the settlement agent a "closing script" comparing the loan terms and settlement charges between disclosures (good faith estimate and HUD-1), describes the new loan terms, and discusses related settlement information. "Closing script" is read aloud to the borrower. (pg. 14050)

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<p>(10) When to Provide Information</p>	<p>The mortgage lender must exercise its best efforts to review this information with the borrower within three business days of the initial application to refinance the existing mortgage loan(s). If there are material changes to the loan terms, the mortgage lender must also provide a new form within three business days following the change or later than three business days prior to the loan's closing, whichever occurs first.</p>	<p><i>Existing regulation:</i> If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement. 12 C.F.R. § 226.19(2).</p> <p><i>Final regulation:</i> Requires creditors to give an "early mortgage loan disclosure" [see (1), above] to a consumer no later than three business days after application and before any fee is paid, other than a fee for obtaining the consumer's credit history, such as a credit report. May not collect fees until consumer receives disclosure (pg. 44538)</p>	<p><i>Enacted law:</i> New disclosure that describes how interest rate can affect the payment on a mortgage loan must be provided not later than 3 business days before the date of consummation of the transaction, and before a consumer pays any fee to the creditor. (Sec. 2502, pg. 545-546)</p> <p><i>Enacted law:</i> Early disclosures apply to all loans, including refinances and home equity lines of credit. (Sec. 2502, pg. 543)</p> <p><i>Enacted law:</i> Consumer can waive the timing requirements of the disclosure in a bona fide personal financial emergency. (Sec. 2502, pg. 545-546)</p> <p><i>Enacted law:</i> Forms currently required by Truth-in-Lending Act must be provided at least 7 days before the loan is closed. (Sec. 2502, pg. 543)</p>	<p><i>Proposed regulation:</i> Not later than three (3) business days after a lender receives a good faith estimate application, they must provide the applicant with a good faith estimate. (pg. 14057).</p> <p><i>Proposed regulation:</i> When unforeseeable circumstances result in a change in the borrower's eligibility for the loan identified in the good faith estimate, the borrower should be notified within one (1) business day. (pg. 14041).</p> <p><i>Proposed regulation:</i> The appropriate period for which good faith estimate terms are generally to be available is 10 business days. (pg. 14037)</p>
<p>(11) Good Faith in General</p>	<p>All parties in a mortgage transaction must use principles of "good faith and fair dealing" in all communications and transactions – standard could be to look at overall fair treatment for the person for whom sales efforts are directed</p> <p>Lender must follow reasonable and lawful instructions from borrowers</p> <p>Lender must act with reasonable skill, care and diligence</p> <p>Lender must make reasonable efforts to secure a mortgage loan from lenders with whom the broker regularly does business with rates, charges and terms that are advantageous to the borrower</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

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(12) Yield Spread Premium Disclosure	Lender must disclose all front-end and back-end compensation to broker at settlement, including disclosing the actual dollar amount of yield spread premiums as part of the broker's compensation rather than a 'payment outside closing	<i>FRB withdrew a proposal that would "prohibit a creditor from paying a mortgage broker in connection with a covered transaction more than the consumer agreed in writing, in advance, that the broker would receive" because "most participants did not understand how lender payments to brokers created a financial incentive for brokers to provide loans with higher interest rates." The Board stated that it would "continue to explore available options to address unfair acts or practices associated with originator compensation arrangements such as yield spread premiums." (pg. 44564)</i>	N/A	<i>Proposed regulation:</i> Lender payments to mortgage brokers in table funded and intermediary transactions should be clearly disclosed to consumers on the GFE because "the disclosure of YSPs on the GFE and HUD-1 documents as a "payment outside closing" or "POC" proved to be of little use to consumers and such lender payments are not required to be included in the calculation of the broker's total charges for the transaction, nor are they clearly listed as an expense to the borrower." (pg. 14042)
(13) Re-disclose GFE After Material Change	Lender must re-disclose with corrected Good Faith Estimate (GFE) within 3 business days of material change in the terms of the loan (such as closing cost increase of more than \$300, APR changes, etc.)	<i>Existing regulation:</i> If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement. 12 C.F.R. § 226.19(2).	N/A	N/A
(14) False Statements	Lender may not knowingly present written statements that are materially false or conceal material information regarding the mortgage loan	N/A	N/A	N/A

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(15) Notice to Non-English Speakers	Lender must give borrower notice that informs them in their language to seek assistance if borrowers first language is not English.	<i>Final regulation:</i> For <u>advertisements</u> , prohibits advertisements for home-secured loans from providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English. (pg. 44590)	N/A	N/A
(16) Prepayment Penalty Timeframes	Restrict prepayment penalty clauses in effect longer than five years. Restrict prepayment penalty clauses that remain in force sixty days before a possible interest rate reset.	<i>Final regulation:</i> If periodic payments can change during the first four years after the loan is closed, the rule prohibits prepayment penalties for <u>higher-priced mortgage loans and HOEPA* loans</u> . For <u>all other higher-priced mortgage loans and HOEPA* loans</u> , the rule prohibits a period for prepayment penalties to the two years after the loan is closed. (pg. 44555) <i>FRB staff commentary specifically stated that the “Board does not believe that the proposed requirement that a prepayment penalty period expire at least sixty days before a potential payment increase would adequately protect consumers with loans where the increase was expected shortly” – the time limitations provided more consumer protection. (pg. 44556)</i>	<i>Enacted law:</i> For <u>refinancing loans of distressed borrowers voluntarily entered into the HOPE program</u> , all penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven. (Sec. 1402, pg. 399)	N/A

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(17) Prepayment Penalties from Same Lender	Restrict prepayment penalties that restrict refinancing to the lender of the first loan (i.e., loan 'flipping').	<i>Final regulation:</i> For both <u>higher-priced mortgage loans and HOEPA* loans</u> , prepayment penalty does not apply if the same creditor or affiliate refinances the mortgage. (pg. 44556)	<i>Enacted law:</i> <u>For refinancing loans of distressed borrowers voluntarily entered into the HOPE program</u> , all penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven. (Sec. 1402, pg. 399)	N/A
(18) Articulate Purpose of Prepayment Penalty	Require broker or banker to articulate the purpose of a prepayment penalty clause in the loan contract.	<i>FRB will undertake consumer testing to determine how to make disclosure of prepayment penalties more transparent, including disclosing the terms of a loan without a prepayment penalty.</i> (pg. 44557)	N/A	N/A
(19) Prepayment Penalties in Negative Amortization Loans	Restrict the use of prepayment penalties in negative amortization loans to 1-2 years after loan closing.	<i>Negative amortization loans would be subject to prepayment penalty restrictions if the loan could be considered a "higher-priced mortgage loan" or a HOEPA loan. See item (2), above.</i>	<i>Enacted law:</i> <u>For refinancing loans of distressed borrowers voluntarily entered into the HOPE program</u> , all penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven. (Sec. 1402, pg. 399)	N/A
(20) Enforcement – Single Violations	Give DCBS the authority to take license action for single, willful violations	<i>Existing statute:</i> A HOEPA mortgage that contained a prepayment penalty clause prohibited by TILA was considered a failure to provide required disclosures under the Act, which gives a consumer the right to rescind the contract. 16 U.S.C. §§ 1635, 1639 <i>Final regulation:</i> A creditor may not make a <u>higher-priced mortgages or a HOEPA loan</u> without regard to the borrower's ability to pay. See item (21), below. (pg. 44543)	<i>Enacted law:</i> If a state does not have a licensing system for loan originators, HUD can create a backup system; enforcement authority <u>under the backup system</u> includes examining the licensees, issuing cease-and-desist orders, prohibiting persons from serving as loan originators, and assessing money penalties. (Sec. 1514, pg. 451-458) <i>Enacted law:</i> Truth-in-Lending statutory penalties increased from a range of \$200 to \$2,000 to a range of \$400 to \$4,000. (Sec. 2502, pg. 547)	<i>HUD proposed that in seeking legislative changes to RESPA, it would ask for authority to carry out additional injunctive and equitable remedies for violations of RESPA.</i> (pg. 14033).

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(21) Enforcement – “Pattern or Practice”	Repeated violations over any span of time might be considered a pattern or practice; could lead to license suspension/revocation & civil penalties	<p><i>Final regulations:</i> Final rules prohibit a creditor from extending <u>either a HOEPA loan or a higher-priced mortgage loan</u> based on collateral without regard to repayment ability.</p> <p><i>Final regulations:</i> Removed the previous qualification that the creditor violated TILA by engaging in a “pattern or practice” of making HOEPA loans without regard to repayment ability. See item (20), above. (pg. 44543)</p>	N/A	N/A
(22) Enforcement – “Known or Should Have Known”	License action or civil penalties if the lender or loan originator knew or should have known that the refinance would not provide a reasonable, tangible benefit to the borrower; and	N/A	N/A	N/A
(23) Enforcement – Restitution	Allow DCBS access to a licensee’s surety bond for restitution, if no homeowners have made claims against the bond	N/A	N/A	N/A

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(24) Private Right of Action	<p>Allow homeowners to bring suit against licensee. The degree of intentional conduct and/or knowledge by the licensee that would trigger liability is still under discussion. Options for award of attorney's fees could be to the plaintiff only, or the prevailing party.</p>	<p><i>Existing statute:</i> Consumers who bring timely action against creditors for violations ability to recover "(i) actual damages; (ii) statutory damages in an individual action of up to \$2,000 or, in a class action, total statutory damages for the class of up to \$500,000 or one percent of the creditor's net worth, whichever is less; (iii) special statutory damages equal to the sum of all finance charges and fees paid by the consumer; and (iv) court costs and attorney fees." 15 U.S.C. § 1640(a)</p> <p><i>Existing statute:</i> Creditors have 60 days after discovering an error to notify the borrower and make any adjustments necessary to keep the borrower from paying more than was disclosed. If issue fixed, creditor is not liable for damages. 15 U.S.C. § 1640(b)</p> <p><i>Existing statute:</i> Unintentional violations and bona fide errors, like clerical, calculation, computer malfunction and programming, and printing errors (proven by a preponderance of the evidence) are not grounds for civil liability under TILA. 15 U.S.C. § 1640(c)</p> <p><i>Existing statute:</i> No provision ... imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the [FRB]. 15 U.S.C. § 1640(f)</p>	N/A	N/A

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<p>(25) Ability to Pay</p>	<p><i>Issue is identified for further discussion in a subcommittee setting.</i></p> <p><i>Final regulation:</i> Prohibits any HOEPA* loan or higher-priced mortgage loan from being extended based on the collateral without regard to repayment ability, including the consumer's current and expected income, current obligations, and employment. Does not require proof of any pattern or practice. (pg. 44543)</p> <p><i>Final regulation:</i> For higher-priced mortgage loans, creditor must verify income and assets using reliable third party documents; cannot relying only on income statements from the applicants.</p> <ul style="list-style-type: none"> ▪ Creditor must assess the consumer's ability to pay loan principal and interest and property taxes, homeowners insurance, and similar mortgage-related expenses ▪ Creditor is responsible for assessing repayment ability as of the time the loan is closed ▪ Lender can rely on expected income and employment, but expectations for improvements in employment or income must be reasonable and verified with third party documents. <p>Creditor must consider the consumer's current other obligations as well as mortgage-related obligations such as expected property tax and required insurance. (pg. 44543)</p>	<p><i>Enacted law:</i> <u>For refinancing loans of distressed borrowers voluntarily entered into the HOPE program:</u></p> <ul style="list-style-type: none"> ▪ The mortgagee under the mortgage shall document and verify the income of the mortgagor by procuring an Internal Revenue Service transcript of the income tax returns of the mortgagor for the 2 most recent years for which the filing deadline for such years has passed and by any other method establish by regulation. ▪ The [FHA] shall establish a reasonable limitation on origination fees for refinanced eligible mortgages (Section 1402, pg. 388). ▪ The principal obligation amount of the refinanced eligible mortgage shall be determined by the reasonable ability of the mortgagor to make his or her own mortgage payments (Section 1402, pg. 399). ▪ The refinanced eligible mortgage to be insured shall bear interest at a single rate that is fixed for the entire term of the mortgage and have a maturity of not less than 30 years from the date of the beginning of amortization (Section 1402, pg. 401-403). 	<p><i>Proposed regulation:</i> During final underwriting, originator <u>may</u> verify the information in and developed from the good faith estimate application, including employment and income information, ascertain the value of the property to secure the loan, update the credit analysis, and analyze any relevant information on the borrower's assets and liabilities. (pg. 14035).</p>

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(26) Surety Bond Increases	<i>Issue is identified for further discussion in a subcommittee setting.</i>	N/A	N/A	N/A
(27) Consumer Education / Financial Literacy	<i>Issue is identified for further discussion in a subcommittee setting.</i>	N/A	<p><i>Enacted law:</i> Secretary of Treasury authorized to make grants to organizations to provide a range of financial education and counseling services to prospective homebuyers (Sec. 1132, pg. 193-194)</p> <p><i>Enacted law:</i> Goal of financial education and counseling is meant, in part, to increase the financial knowledge and decision making capabilities of prospective homebuyers. (Sec. 1132, pg. 193-194)</p>	N/A
(28) Loan Originator Education	<i>Issue is identified for further discussion in a subcommittee setting.</i>	N/A	<p><i>Enacted law:</i> State-licensed loan originators must complete at least 20 hours of pre-licensing education. Requires training on ethics, federal law, and lending standards for nontraditional mortgage products. (Sec. 1505, pg. 436)</p> <p><i>Enacted law:</i> State-licensed loan originators must complete at least 8 hours of continuing education. Requires training on ethics, federal law, and lending standards for nontraditional mortgage products. (Sec. 1506, pg. 439-440)</p>	N/A

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Items covered by the final Truth-in-Lending Act regulations not covered by the Mortgage Lending Work Group

- Escrows for Taxes and Insurance: The final Truth-in-Lending Act regulations prohibit creditors from making a higher-priced consumer mortgage loan without escrowing property taxes, homeowners' insurance, and other insurance obligations required by the creditor. Consumers can cancel the escrow one year (or later) after the loan is closed (pg. 213)
- Coercion of Appraisers: The final Truth-in-Lending Act regulations prevent pressuring appraisers by creditors and mortgage brokers in order to misstate the value of a consumer's principal dwelling in any transaction secured by a consumer's principal dwelling (pg. 244)
- Servicing Abuses: The final Truth-in-Lending Act regulations prohibit three servicing practices related to any transaction secured by a consumer's principal dwelling
 - Prohibits servicers from failing to credit a payment to a consumer's account as of the date received
 - Prohibits "pyramiding" of late fees by prohibiting a servicer from imposing a late fee on a consumer for making a payment that constitutes the full amount due and is timely, but for a previously assessed late fee
 - Prohibits a servicer from failing to provide, within a reasonable time after receiving a request, an accurate statement of the amount currently required to pay the obligation in full, often referred to as a payoff statement (pg. 259)
- Evasion through 'Spurious' Open-Ended Credit: The final Truth-in-Lending Act regulations prohibit creditors from structuring closed-end loan transactions as a home equity line of credit to evade the new requirements placed on higher-priced mortgage loans (pg. 227-230)
- Advertising Changes: The final Truth-in-Lending Act regulations prohibit seven deceptive or misleading practices in advertisements for closed-end mortgage loans (pg. 272-340)
 - Advertisements that state "fixed" rates or payments for loans whose rates or payments can vary without adequately disclosing that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan
 - Advertisements that compare an actual or hypothetical rate or payment obligation to the rates or payments that would apply if the consumer obtains the advertised product unless the advertisement states the rates or payments that will apply over the full term of the loan
 - *Advertisements that characterize the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or -sponsored loans [Recently addressed by Oregon administrative rules on mortgage advertising]*
 - *Advertisements, such as solicitation letters, that display the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender [Recently addressed by Oregon administrative rules on mortgage advertising]*
 - Advertisements that make claims of debt elimination if the product advertised would merely replace one debt obligation with another
 - Advertisements that create a false impression that the mortgage broker or lender is a "counselor" for the consumer
 - Foreign-language advertisements in which certain information, such as a low introductory "teaser" rate, is provided in a foreign language, while required disclosures are provided only in English

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Items covered by the final Real Estate Settlement Procedures Act regulations not covered by the Mortgage Lending Work Group

- Pre-Application Application
 - The proposed RESPA regulations created a preliminary “good faith estimate” application. This application gathers just enough information needed for the originator to make a preliminary credit decision (pg. 14035)
- Federal Good Faith Estimate Changes:
 - If a borrower is rejected for a loan for which the GFE has been issued, and another loan is available to the borrower, the loan originator must provide a revised GFE. In addition, the rejected borrower must be notified with the appropriate notice requirements, within one day of his/her status (pg. 14035)
 - If a lender requires the use of a particular provider other than its own employees, and requires the borrower to pay any portion of such service, the lender must identify on the GFE the service, and the estimated cost or range of charges for the service (pg. 14038)
 - The estimate of all other charges for all other settlement services shall be available within 10 business from the day that the GFE is provided, though the interest rate, some origination charges related to the interest rate, the per diem interest, and the monthly payment estimate are subject to change until the interest rate is locked (pg. 14037)
 - The proposed regulation groups and consolidates all fees into major settlement cost categories, to reduce any incentive for loan originators to establish a myriad of “junk fees” (pg. 14037)
- Allowable Tolerances in Closing Cost Changes: For several types of charges, the proposed RESPA regulations would prohibit the charging borrowers more than they were quoted, except for unforeseen adjustments of up to 10%. Charges include service charges, adjusted origination charges, and government recording and transfer charges (pg. 14038)
- Eliminate “Exclusive Agent” for YSP Disclosures: The proposed RESPA regulations remove the definition of “exclusive agent” of a lender, so that all persons performing mortgage broker services (as defined by 24 C.F.R. Part 3500) would be subject to the new yield spread premium disclosure requirements listed above
- Changes to HUD-1 Form: The proposed RESPA regulations called for changing the HUD-1 to make comparisons easier between the good faith estimate and the charges at closing (pg. 14049)
- Average Cost Pricing and Negotiated Discounts: The proposed RESPA regulations allow charges for third-party services to be calculated using average cost pricing mechanisms based on appropriate methods established by HUD. The proposed RESPA regulations would also allow certain volume-based discounts. The proposed RESPA regulations would also clarify that settlement service providers could negotiate discounts in the prices for settlement services, as long as the borrower was not charged more than the discounted price (pg. 14050)
- Strengthen Prohibition Against Requiring Use of Affiliates: The proposed RESPA regulations suggest changing the definition of “required use” (i.e., a person must use a particular provider of a settlement service in order to have access to some distinct service or property), so that consumers would be more likely to shop around for better loans

Comparison of MLWG Subcommittee Proposals with Federal Proposals

Last Updated: August 6, 2008

- [Most of H.R. 3221 dealt with matters outside the scope of the MLWG, so below is an abbreviated version of the summary the House Financial Services Committee released on July 22, 2008. Selected provisions discuss mortgage-related matters.]
- Government-Sponsored Enterprise (GSE) Changes:
 - The bill establishes an independent agency, to oversee Fannie Mae, Freddie Mac and the Federal Home Loan Banks and gives the agency broad supervisory and regulatory powers over the operations, activities, corporate governance, safety and soundness, and mission of the GSEs
 - The bill allows the Treasury Dept. to buy stock or debt in Freddie Mac, Fannie Mae, and the Federal Home Loan Banks for 18 months
 - The bill raises the GSE loan limits in high cost areas (to 115% of the local area median home price, not to exceed a nationwide loan ceiling of \$625,500), and establishes an affordable housing fund
- Federal Home Loan Banks: Transfers responsibility to oversee federal home loan banks to the new federal agency
- HOPE Program: The bill establishes the “Hope for Homeowners Program” to enable the Federal Housing Administration (FHA) to refinance the mortgages of at-risk borrowers living in their only home
- S.A.F.E. Mortgage Licensing Act: The bill establishes and sets minimum standards for a nationwide mortgage licensing and registration system for mortgage brokers and bank loan officers
- FHA Modernization Act of 2008:
 - Raises FHA loan limits in high cost areas, by setting the limit in such areas at 115% of the local area median home price, not to exceed a nationwide loan ceiling of \$625,500 (150% of the GSE conforming loan limit)
 - Creates a higher, nationwide uniform loan limit equal to \$625,500, reduces and caps the maximum fee lenders can charge seniors for FHA reverse mortgage loans, establishes protections to prohibit requiring seniors to purchase other financial products in conjunction with FHA reverse mortgage loans, and authorizes reverse mortgage loans for the first to be eligible for home purchase
 - Raises manufactured loan program loan limits to keep up with inflation, restructures the program to make loans more securitizable in the secondary market, and requires HUD to revise underwrite standards to make the program fiscally sound
 - Includes a one-year moratorium on FHA risk-based pricing, effective October 1st, and eliminates the FHA seller-funding Gift Downpayment Program, effective October 1st
- Mortgage Foreclosure Protections for Servicemembers: Temporarily increases the maximum loan guaranty amount for certain VA loans, provides for counseling on mortgage foreclosures for members of the Armed Forces returning from service abroad, and enhances protections for servicemembers relating to mortgages and mortgage foreclosures
- Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes: Provides for \$4 billion in emergency assistance to states and cities for the redevelopment of abandoned and foreclosed homes, including \$80 million for pre-foreclosure counseling
- Housing Counseling Resources: Provides for \$100 million to the Neighborhood Reinvestment Corporation to remain available until December 31, 2008, for foreclosure mitigation activities and at-risk borrower outreach
- Veterans Housing Matters: Permits the Secretary of Defense to provide home improvements and structural alterations for permanently disabled members of the Armed Forces before being discharged or release from the Armed Forces; specifically adapted housing assistance for individuals with severe burn injuries; and other provisions
- ‘Energy-Efficient’ Mortgages: requires HUD, in conjunction with the Department of Energy and EPA, to develop recommendations within 180 days of enactment to eliminate barriers to increasing availability of energy efficient mortgages. Requires a report to Congress by HUD. Requires HUD, in consultation and coordination with the Department of Energy, EPA, and state energy and housing finance directors, to carry out an education and outreach campaign