

August 24, 2008

Re: DFI's Proposed Draft No. 4 Rules for SHB 3990  
DFI's Proposed Draft No. 5 Disclosure Summary for SHB 3990

Thank you for allowing me to make additional comments.

Draft Rules:

1. "Residential mortgage loan" – Prior drafts covered primary residences and second homes only. Those words are now missing. Is there something that has change? I don't find this section very clear. Isn't there an easier way to say what is covered and excluded?
2. "Yield spread premium" – While this definition is considerably less detrimental than prior DFI definitions, a significant number of times it will be inaccurate. By using the words "...for originating a loan," it fails to address those situations where the YSP will be used to cover fees and services by third party providers. For example, in many no and low cost loans the YSP will be used to pay fees such as appraisal, underwriting, title and escrow which combined amounts may likely exceed the compensation to the broker. It is in this light that I request DFI to adopt the same language used by HUD as "compensation for goods and services performed?" Accordingly, I propose the definition be "a payment made by a lender to a mortgage broker for goods and services performed not otherwise paid by the borrower." All other verbiage should be eliminated.
3. Insert the word "originating" between "the broker or" and "lender (processing." This will eliminate the possibility of the broker having to list the fees of two parties when other originators only list those fees that accrue to their benefit.
4. I am concerned that these items are not properly addressed in the draft disclosures
5. Suggest we replace the word "initially" with "most recently", otherwise if a subsequent increase from the last previous disclosure of even \$1 could necessitate another disclosure.

Disclosure Summary:

1. Revert to prior draft: Suggest DFI revert to combining "Loan Origination Fee" and "Broker Fee" as "Loan Origination or Broker Fee" on same line item. This would assist in avoiding the incorrect

perception of many borrowers that a mortgage broker fee is in addition to what they would pay if obtaining a similar mortgage from a retail lender. (Lender's don't charge mortgage broker fees; of course brokers don't charge loan origination fees.)

2. Revert to prior draft: Insert the words "Originator / Broker" between "Other" and "Fees." Absent of which are we to list all fees? Does that only include NRCC or prepaids? If a broker credit is being applied, how is that listed? By reverting back to how it was in previous drafts we are disclosing all compensation that accrues to the originator (lender or broker), plus discount fee. When originally proposed, the purpose was to disclose what the originating party receives in compensation. This will help reveal an originator (lender or broker) from saying they are offering a zero point scenario but are charging a \$2,000.00 underwriting fee.
3. Prefer the wording "You may have to pay a penalty if you pay off your mortgage early," as not all prepayment penalties become imposed (they generally have expiration dates).
4. Prefer the wording "Your broker may receive a yield spread premium of up to \$\_\_\_\_\_." By way of this disclosure it falls in line closer with comments made by the Director of Consumer Services (when advising us to mention 'range' on GFE's), as well as until an interest rate is locked there is no way of knowing what the YSP will be. (And even once locked there are occurrences where the YSP will change, i.e. need an interest rate extension and who pays for it? And how does this affect redisclosures?)
5. YSP definition (please refer item 2 from above 'Rules' section)
6. This is a vast improvement; however, so long as DFI maintains the link <http://www.dfi.wa.gov/consumers/homeownership> on its website, it is almost identical as before. In recent conversation with DFI, I understood that this link was unrelated. Furthermore, it includes the list of referred lenders. Is DFI now recommending certain lenders over other mortgage providers? So long as DFI includes third parties or links to third party contacts on its website I feel this is in violation of the law which specifically states "...without the aid of third-party resources..."

Thank you for allowing me to express my thoughts.

With best regards,

Jeffrey Lorsch  
Designated Broker and President  
Evergreen State Mortgage

Proposed Draft No. 4 – One Page Disclosure Summary Rules

NEW SECTION

WAC 208-600-200 Residential Mortgage Loan Disclosure Summary.

(1) Purpose and scope of rule. This rule is the result of legislation recommended by the Washington State Task Force on Homeowner Security. The legislation was enacted by the Washington state legislature, at chapter 108, Laws of 2008, and codified at chapter 19.144 RCW. The stated intent of the law is to enhance responsible mortgage lending, protect borrowers, and preserve access to credit in the residential real estate market. The law requires disclosure of certain material terms of residential mortgage loans. The law also provides the Department of Financial Institutions with the discretionary regulatory authority to require disclosure of additional information, to clarify material terms, and to otherwise protect borrowers as needed in the residential mortgage loan market. The law mandates the one page disclosure summary in RCW 19.144.020(2), and authorizes DFI, under RCW 19.144.020(3), to require additional disclosures for the purpose of protecting borrowers.

(2) Definitions. For the purposes of this section, the following definitions apply:

(a) “Application” means the same as in RESPA’s Regulation X, at 24 CFR 3500.2(b).

(b) “Business day” means any day of the week except Sunday and federally recognized bank holidays.

(c) “Closing” means the signing of the loan documents.

(d) “Discount points” or “points” refer to a fee paid by the borrower to the lender at the loan closing to reduce the interest rate. The points are expressed as a percent of the loan amount. The higher the points paid, the lower the interest rate.

(e) “Finance charge” means the same as in Truth in Lending’s Regulation Z, at 12 CFR 226.4 excluding prepaid finance charges.

(f) the "fully indexed rate" is (1) the current value of the rate index used by a particular adjustable rate mortgage ("ARM") *plus* (2) a margin applied to that ARM which may vary from one transaction to another but stays the same throughout the life of that particular ARM.

(g) the “maximum interest rate” is the highest interest rate allowed under your loan agreement. It is not the default rate.

(h) “Reduced documentation” or “stated income” loan means a loan for which the lender may charge more because the borrower does not provide full documentation of income or assets.

(i) “Residential mortgage loan” means an extension of credit secured by residential real property located in this state upon which is constructed or intended to be constructed, a single-family dwelling or multiple-family dwelling of four or less units. It does not include a reverse mortgage or a borrower credit transaction that is secured by rental property. It does not include a bridge loan. It does not include loans to individuals making or acquiring a residential mortgage

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loan solely with his or her own funds for his or her own investment. For purposes of this subsection, a "bridge loan" is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

A residential mortgage loan does not include an extension of credit secured by residential real property located in this state for business, commercial, or agricultural purposes, or an extension of credit secured by residential real property located in this state for the primary purpose of financing income or investment property.

A residential mortgage loan does not include an extension of credit secured by residential real property located in this state for an open or closed-end home equity line of credit (HELOC).

A residential mortgage loan does not include an extension of credit secured by residential real property located in this state offered to a borrower by an individual making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to sell the residential mortgage loan.

(h) For purposes of this disclosure, "yield spread premium" or "YSP" means a payment to a broker by a lender for originating a mortgage loan. The YSP should be used to reduce the fees normally charged the borrower for a market rate loan. A YSP is separate from a mortgage broker fee.

**(3) Do I have to provide borrowers with a disclosure summary in addition to all other required disclosures at loan application?** Yes. State law now requires a clear, brief (one page) summary to help borrowers understand their loan terms. See RCW 19.144.020.

**(4) What information must be provided in the disclosure summary?** The disclosure summary must provide at a minimum the following material terms:

- (a) Loan fees that are charged and retained by the broker or lender processing or underwriting fees)
- (b) Discount points the borrower will pay to reduce the interest rate
- (c) Interest rates (initial, adjusting, cap, maximum)
- (d) Mortgage broker fee or lender origination fee
- (e) Broker yield spread premium, expressed as a dollar amount
- (f) Whether the loan contains a prepayment penalty
- (g) Whether the loan contains a balloon payment
- (h) Whether the property taxes and property insurance are included (escrowed) in the loan payment
- (i) Amount of the initial loan payment
- (j) Fully indexed loan payment amount
- (k) Whether the loan cost or rate is based on reduced documentation
- (l) Principal amount of the loan

(5) **How must I provide the disclosure summary to the borrower?** The disclosure summary must be separate from any other documents and must use clear, simple, plain-language terms that are reasonably understandable to the average person.

(6) **When must I provide the disclosure summary?**

(a) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a completed loan application.

(b) You must re-disclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(c) For purposes of this disclosure, “provide” includes placing the disclosure in the United State mail to the borrower’s address within the statutory time frames.

(7) **What type of change in a material term triggers redisclosure?** You must redisclose any significant change in a material term. A “significant change” is any change which results in an increase in the borrower’s loan amount or fees as follows:

(a) Any increase in the principal loan amount by five percent (5%) or more from the initially disclosed loan amount;

(b) Any increase in the initial interest rate greater than one-eighth of one percent (0.125%);

(c) A change in the loan type (fixed to adjustable or adjustable to fixed);

(b) Any increase in the broker’s yield spread premium, the loan origination fee, discount point fees, or any other fees considered finance charges under the Truth in Lending Act, by seven hundred fifty dollars (\$750.00) or more;

(c) A “significant change” also means any change in the following:

(i) Whether the loan contains a prepayment penalty

(ii) Whether the loan contains a balloon payment

(iii) Whether the property taxes and property insurance are included (escrowed) in the loan payment

(iv) Whether the loan cost or rate is based on reduced documentation.

(8) **Will the department create a form I can use?** Yes. The Department of Financial Institutions will make a model form available to you. However, you may choose to use a form that you design, as long as it is clear, accurate, contains all of the material terms, uses simple language, and fits on one page.

(9) **Can I provide the disclosure summary electronically?** Yes. You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 CFR Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. sec. 7001 et. seq.

(10) **Do I have to provide borrowers with the disclosure summary if their loan application is denied within three days of being taken?** No. If the borrower’s loan application is cancelled, withdrawn, or denied within three days of being taken, you do not have to provide the disclosure summary.



PROPOSED DRAFT NO. 5

(Lender/Broker name & address or Letterhead)

DISCLOSURE SUMMARY – FIXED RATE LOAN

(This is not a loan commitment. The information below reflects estimates.)

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Initial  Revised

Borrower(s): \_\_\_\_\_

Property: \_\_\_\_\_

Mortgage Term: \_\_\_\_\_

Loan Amount: \$ \_\_\_\_\_

Interest Rate: \_\_\_\_\_ %

Principal & Interest Payment: \$ \_\_\_\_\_ per month

Monthly Reserves:

Are	Are not	added for
<input type="checkbox"/>	<input type="checkbox"/>	Real Estate Taxes
<input type="checkbox"/>	<input type="checkbox"/>	Homeowners / Hazard Insurance
<input type="checkbox"/>	<input type="checkbox"/>	Mortgage Insurance
<input type="checkbox"/>	<input type="checkbox"/>	Homeowner Association Dues

Originator/Broker/Discount Fees:

① Loan Origination Fee: \$ \_\_\_\_\_

Broker Fee: \$ \_\_\_\_\_

② Loan Discount Fee (Points: \_\_\_\_\_ %): \$ \_\_\_\_\_

Other Fees: \$ \_\_\_\_\_

Other conditions of your loan:

	Yes	No	
③	<input type="checkbox"/>	<input type="checkbox"/>	Your loan has a penalty if you pay off your mortgage early.
	<input type="checkbox"/>	<input type="checkbox"/>	Your loan has a balloon payment if you only make the minimum monthly payment.
	<input type="checkbox"/>	<input type="checkbox"/>	Your interest rate is locked.
	<input type="checkbox"/>	<input type="checkbox"/>	Your interest rate or fees are higher because documentation is reduced.
④	<input type="checkbox"/>	<input type="checkbox"/>	Your broker will receive a "yield spread premium" of \$ _____*.

⑤ \*For purposes of this disclosure, "yield spread premium" or "YSP" means a payment to a broker by a lender for originating a mortgage loan. The YSP should be used to reduce the fees normally charged the borrower for a market rate loan. A YSP is separate from a mortgage broker fee.

⑥ AFTER SPEAKING WITH THE BROKER OR LENDER, IF YOU STILL NEED HELP UNDERSTANDING YOUR LOAN, CONTACT DFI AT 1-877-746-4334  
<http://www.dfi.wa.gov/consumers/education/home.htm>

Field Code Changed