

5 June 2005

## Reforming the Home Mortgage Market: Attacking the Problem Rather Than Its Symptoms

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This paper is motivated by two recent developments. One is the demise of HUD's proposals for RESPA reform. The other is the efforts currently underway to have the Federal government preempt all the state and municipal laws directed to predatory lending in order to have one nationwide set of rules. Any new rules should directly confront the causes of market failure, which neither the HUD proposals nor the efforts of states and municipalities have done.

Sections I-III identify and analyze the core problem across the entire market: multiple prices faced by borrowers combined with the referral power of lenders.

Section IV argues that RESPA is an exercise in misguided futility because it sanctions multiple prices while discouraging market initiatives to bundle services and prices. In addition, it makes referral fees illegal but leaves referral power unscathed, which results in widespread evasion and costly efforts to legitimize referral fees.

Section V examines the shortcomings of HUD's aborted proposals for reforming RESPA, and state and local laws directed toward predatory lending.

Section VI proposes eliminating the system of multiple prices by adopting a "fixed-charge rule" where lenders pay all costs except a single uniform charge to borrowers.

Sections VII and VIII show that this rule would realize the HUD reform objectives in the mainstream market, and the objectives of states and municipalities in the sub-prime market.

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Section IX explains why it would be easy to enforce the fixed-charge rule.

Section X compares the simplicity of the fixed-charge rule with the complexity of bundling under HUD's proposal.

Section XI considers how the fixed-charge should be determined.

Section XII explains how to deal with lock abuses, which are closely related to abuses that arise out of multiple prices.

## I Identifying The Problems

The United States has the best housing finance system in the world; also the worst. In using secondary mortgage markets to find investors who require the lowest possible interest rate, the US is unsurpassed. Its system for originating mortgages, in contrast, would be unworthy of a banana republic.

If automobiles had to be shopped in the same way as mortgages, a conversation between a shopper and a dealer might go something like this:

*Shopper:* How much is this car?

*Dealer:* The chassis and motor alone are \$3500 upfront and \$400 a month for 5 years. Of course, that does not include tires, electrical system, muffler and painting.

*Shopper:* Don't you do the painting?

*Dealer:* I do, and I will give you an estimate of what it will cost, but you can't hold me to it because I don't know exactly how much paint it will require. I'll give you the exact figure on the day we close the deal.

*Shopper:* Where do I get tires, an electrical system and muffler?

*Dealer:* Jones, Smith and Brown have been approved by me as third party component providers (TPCPs).

*Shopper:* How do I know their prices?

*Dealer:* I'm required by law to give you a good faith estimate. As with my paint job, you'll know the exact prices when we close.

*Shopper:* Can I shop other TPCPs to get better prices?

*Dealer:* You would be wasting your time, they all charge the same.

*Shopper (disgusted):* Is that because you get kickbacks from these approved TPCPs?

*Dealer:* Certainly not, kickbacks would violate the Automobile Dealers Settlement Procedures Act (ADSPA). Any benefits we receive from our relationships with Jones, Smith and Brown are in full compliance with ADSPA.

As absurd as this exchange sounds when applied to cars, it accurately mirrors conditions in the home mortgage market. Ordinarily, a loan provider will quote two components of the price, the interest rate and points. (Points are an upfront fee expressed as a percent of the loan). Other lender services provided in connection with the loan usually are not priced until some time later, and not known by the borrower with certainty until closing. While at some point in the process the lender will "lock" the rate and points at the borrower's request, only a small number of lenders lock their other fees.

Third party services such as title insurance, appraisals, and credit report are paid for by the borrower, but the vendor is usually selected by the lender. The final price of these services, which are another part of the loan price, is also not known with certainty until closing.

We have lived with this practice so long that it seems the natural state of affairs, but in fact there is nothing natural about it. The practice is a historical relic of usury laws limiting the interest rates lenders could charge. When lenders could not raise interest rates to cover their costs, it seemed reasonable to law makers to allow them to pass costs through to borrowers. This generated the problem of multiple prices, which makes it extremely difficult to shop, and referral power, which raises the prices of all third party services.

## II Multiple Prices

Mortgages in the US have at least 4 price components: interest rate, points, other lender fees which are usually fixed in amount, and third party fees. Adjustable rate mortgages have many more, of course, but I will save that for another day.

In principle, a borrower could incorporate all the price components into an internal rate of return (IRR) over his time horizon, and make a decision based on that. But borrowers don't know how to do that, and even if they did, they typically make a decision before they have firm data on lender fees and third party fees.

Truth in Lending does require that an IRR be disclosed to the borrower. It is called the Annual Percentage Rate or APR. However, the APR is calculated over the term of the loan rather than over the borrower's horizon, and it does not include third party fees. Furthermore, while the APR does include all lender fees, there is no requirement that the APR be locked when the rate and points are locked, which means that lender fees can mount after the lock date, right up until closing.

Multiple prices are not the only reason borrowers have enormous difficulty shopping effectively in this market. The market has three other features that compound the difficulties:

- Market nichification: prices depend on so many transaction features that virtually every deal is unique. Nichification is the opposite of commoditization.
- Price sequentiality: the different price components "harden" at different points in the process.
- Volatility: the "true" market price varies from day to day, and sometimes within the day.

But if there were only one price, these other problems would all become manageable.

### III Referral Power and Abuse

The long-standing practice of having borrowers pay for services required by lenders while the service providers are selected by the lenders or someone

else involved in the process, is a sure-fire recipe for market failure. Service providers have no incentive to cut prices to borrowers, since the borrowers don't select them. Rather, the service providers compete for the favor of the referrers, which raises their costs and prices.

We see this in connection with mortgage insurance and title insurance. The borrower pays the premiums in both cases, and both types of policies protect the lender. The mortgage insurance carrier is almost always selected by the lender. The title insurance carrier usually is selected by the lender if the loan is a refinance, by a Realtor if the transaction is the sale of an existing house, or by a builder if it is the sale of a new house. As a result, both types of insurance are over-priced relative to what they would be if they were purchased by lenders.

#### IV The RESPA "Remedy"

The Real Estate Settlements and Procedures Act (RESPA) is a case history of how not to fix a problem. RESPA deals with both multiple prices and referral power. The "remedies" it fashions are completely ineffective in themselves, but quite effective in blocking market-based remedies that otherwise might have arisen.

RESPA requires lenders to provide borrowers with a list of all the charges connected to the transaction on a "Good Faith Estimate" (GFE). The list is not due until after the borrower applies for a loan, however, and the lender can't be held to any of the numbers on it – they are all estimates subject to change until the 12<sup>th</sup> hour, including the lender's own fees! Hence, it does not help borrowers shop, and it does not protect them against price chicanery on the way to a closing.

The GFE provides legal sanction to the system of multiple prices, and even encourages lenders to discover new fees – the form is completely open-ended. And if a lender is bold enough to pay a third party itself, say for an appraisal or credit report, instead of charging the borrower for it, the item must still be shown on the GFE!

RESPA deals with referral power by prohibiting the payment of referral fees. Small players often ignore the rule because HUD cannot police all the ways in which one party can transfer something of value to another. Large

lenders circumvent RESPA through circuitous but legal devices, such as reinsurance affiliates that share the insurance premiums paid by borrowers.

The only ones who benefit from the prohibition are lawyers. Class action lawyers look for violations of the anti-referral fee law, and corporate lawyers look for legal ways their clients can continue to exercise their referral power without being sued by class action lawyers.

But much the heaviest cost imposed by the RESPA restriction on referral fees is the damper it imposes on market initiatives to bundle services and price them as a package – steps in the direction of the type of bundling we take for granted in the automobile market. As noted above, RESPA requires lenders to itemize the settlement services borrowers will require, even if the lender pays for it. But in addition, RESPA imposes a legal burden of proof on lenders that any bundling activity is not a smokescreen for illegal referral fees.

In the early 90s, RESPA was revised to exempt home equity lines of credit (HELOCs) that complied with Truth in Lending. HELOCs are adjustable rate mortgage loans that are usually but not always second liens. The distinguishing feature that exempts them from RESPA is that borrowers can draw down the loan up to some maximum amount at their discretion, rather than taking it all at once. But they can take it all at once if they want to, and an increasing number have been doing just that.

One reason is that HELOCs today are widely available with zero or negligible settlement costs. In competing for HELOCs, lenders learned that borrowers were extremely receptive to the lure of “no cost”, and freed from the strictures of RESPA, they responded accordingly.<sup>2</sup> In the process, lenders learned that they could do without some of the services they routinely required when borrowers paid for them.

## V Recent Attempts at Reform

*HUD on Reforming RESPA.* In recent years, efforts to reform the home mortgage market have followed two separate paths. In the mainstream market, HUD has attempted to enact major changes in RESPA designed to

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<sup>2</sup> Other factors may well be involved, I have not dug into this with the care it deserves.

reduce settlement costs and facilitate loan shopping.<sup>3</sup> I supported these proposals, but I was disturbed by their complexity and their relatively high potential for “unintended consequences”. These provided abundant ammunition for the industry groups that opposed the proposals, which ended up including every major group. The result was that HUD was forced to withdraw.

With the benefit of a little hindsight, I have since concluded that the HUD proposals were much more complicated -- and therefore more difficult to assess -- than they had to be. The basic problem is that they left the multiple price structure intact while attempting to reduce the number of prices and weaken the disincentive to bundle. This made for a complex set of revisions to an already complex law. The much simpler and more effective approach is to get rid of multiple prices altogether, as explained later.

*States and Municipalities on Curbing Predatory Lending.* The second approach to reform has been directed to predatory practices in the sub-prime market, and limited so far to states and municipalities. This approach is abuse-directed. An abuse is identified and a remedy is fashioned.

One type of remedy is prohibition of a tool used in executing the abuse. The problem is that the tools singled out as being used for abusive purposes, mainly prepayment penalties, balloon payments and negative amortization, also have legitimate purposes. This makes the “remedy” clumsy and costly.

A second type of remedy is to prohibit the behavior underlying the abuse. Since some predatory lenders make loans the borrowers cannot possibly repay, some states require that lenders only lend to borrowers with demonstrated repayment capacity. For example, in Wisconsin “*no lender may make covered loans to customers based on the customer’s collateral without regard to the customer’s ability to repay, including the customer’s current or expected income, current obligations, and employment.*”

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<sup>3</sup> The HUD proposals would a) encourage the creation of mortgage packages that include a guaranteed rate plus other services at a fixed total price; b) replace the existing Good Faith Estimate with one having fewer cost items and strict limits on the extent to which actual charges could diverge from estimated ones; and c) require mortgage brokers to disclose compensation received from lenders.

The problem is that this rule outlaws special documentation requirements devised for the self-employed, recent immigrants, and others who have difficulty documenting their repayment capacity. A widely used alternative documentation, for example, is “stated income” under which the lender accepts the borrower’s declaration of income without verification. Such documentation is inconsistent with the Wisconsin rule cited above.

An additional problem is that the behavior rules are so (unavoidably) vague that they expose lenders to future liability, which is an added cost that borrowers ultimately have to pay. What exactly must a lender do to prove that account was taken of the “customer’s ability to repay?” An even murkier rule in Illinois and some other states says that lenders are not allowed to refinance a loan within 12 months of the original loan date “unless the refinancing results in a *tangible net benefit* to the borrower.” The italics are mine.

As I explain below, none of the predatory practices that have led to this ill-conceived legislation would survive a conversion from a multiple-price system to a one-price system.

## VI The Fixed-Charge Rule

The central rule should be that lenders are obliged to quote an interest rate on each loan program at zero points, plus a fixed-dollar charge to the borrower, which is the same for all loans and all lenders. All other costs must be paid by the lender, and will be reflected in the interest rate. This rule would eliminate multiple prices and referral power from the shopping process.

In addition to the fixed-charge quote at zero points, lenders could offer any number of rate/point combinations for borrowers who want to pay points for a lower rate, or pay a higher rate for negative points (rebate). These options would not prejudice the one-price rule.

This is not a revolutionary idea. In Denmark, borrowers pay mortgage banks upfront fees equal to 1/10 of 1 percent of the loan amount plus a fixed charge equivalent (at current exchange rates) to about \$350. On a \$150,000 loan, therefore, the borrower would pay about \$500. Lenders absorb all other costs.

This is price-fixing by Government, usually anathema to economists, but the standard arguments against Government price fixing don't apply.

Economists always assume there is one price and if the government fixes it too low, the supply offered will drop. In the mortgage market, however, there are multiple prices, and fixing all but that one will allow the market to work in the way that competitive markets with one price are supposed to work.

While a legitimate question arises as to where exactly the Government should fix that price, I don't view this as a critical issue because it can always be changed. What is critical is that with their other costs fixed, borrowers can shop for the lowest interest rate. Cost differences between lenders, types of loan programs and geographical areas will be reflected in corresponding differences in interest rates. Section XI discusses factors to be considered in setting the fixed charge.

The fixed-charge quote assumes that the lender charges neither points nor fixed-dollar fees other than the specified charge, and pays third party charges including mortgage insurance premiums and lender title policies. The no-cost quote also assumes no prepayment penalties. I turn next to how this simple rule would transform the market for the better.

## VII Impact of the Fixed-Price Rule

A convenient way to examine the impact of a fixed-price rule is to consider how it would impact the objectives underlying HUD's aborted proposals for RESPA reform, and the objectives of the state and municipal legislation targeting predatory practices. The HUD objectives are considered here, the state and local objectives in Section VIII.

*Making it Easier For Borrowers to Shop Alternatives:* Under the one-price rule, borrowers could shop for fixed-rate mortgages (FRMs)<sup>4</sup> by seeking the lowest rate at specified points, or the lowest points for a specified rate.<sup>5</sup> The borrower must specify his desired lock period, but only one price has to be shopped.

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<sup>4</sup> Adjustable rate mortgages (ARMs) have more price dimensions and are therefore more difficult to shop. The HUD proposals were silent on this problem, and I am also leaving it for another day.

<sup>5</sup> Under current market practice, the second will be easier because most lenders quote rates in even 1/8% increments and allow points to be odd decimals.

For example, the borrower who wants a 60-day lock finds a zero-point rate of 7% with lender A. If he wants 6.5%, he asks A "How many points for 6.5%?" He can then ask the same question of lenders B and C. If he needs a rebate, he can ask "What is your rebate for 7.5%?"

This is simpler than shopping under the HUD proposals. HUD's proposed mortgage package would involve two prices, and its revised Good Faith Estimate (GFE) would involve even more.

One-price shopping does not protect against low-ball quotes, designed to capture the customer, from which the lender retreats at the time the price is locked. This is discussed in XII below.

*Reducing Third Party Settlement Costs.* The prevailing practice of having borrowers pay third party settlement costs while the lender selects the service provider generates perverse competition. Third party service providers compete for the favor of lenders in ways that raise their costs, which are passed on to borrowers. Lenders are indifferent to the price because they don't pay it.

Mortgage insurance is a good example. Lenders select the insurer but the borrower pays the premium. Direct premium kickbacks to the lender are not legal under RESPA, but it is legal for a lender to have a reinsurance affiliate which shares the premiums and (theoretically) the risk. As a result, mortgage insurance is over-priced.<sup>6</sup>

If lenders paid the premiums, they would be included in the rate but would cost borrowers less. Competition by insurers to sell lenders would force the premiums down, and rate competition by lenders would force them to pass the savings on to borrowers.

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<sup>6</sup> Having the borrower pay for insurance that serves to protect the lender has another costly consequence for the borrower. The lender has no incentive to remove the insurance when the loan balance has been paid down to the point where it is no longer needed. To deal with this, Congress in 1999 passed legislation requiring automatic termination under certain conditions. The process is very complicated and trouble-prone for the borrower. If lenders paid for mortgage insurance, the problem would disappear because lenders would terminate when they felt the risk no longer justified the premium.

Indeed, the prices of all third party settlement services required by lenders would drop if lenders were required to pay for them.<sup>7</sup> This result is much more certain than under HUD's proposal to give a RESPA safe harbor to lenders and others offering a package of loan and settlement services at a fixed price. The fixed-charge rule would apply to all lenders where the impact of the HUD proposal depends on how many lenders and others elect to offer the packages.

*Eliminating Settlement Cost Abuse.* Because settlement costs, including the lender's own fees, are never locked – costs shown on the GFE are “estimates” – the borrower is vulnerable to 12th hour larceny at the closing table. HUD would have dealt with this by imposing limits on the extent to which the estimates on the GFE can be exceeded at closing.<sup>8</sup>

Under a fixed-charge rule, the problem disappears completely. Aside from the one fixed charge, borrowers pay only transaction-based taxes, escrows and per diem interest, which are calculated by established formula, and homeowners and owners title insurance, which they purchase themselves from third parties.

*Eliminating Rebate Abuse.* Mortgage brokers sometimes conceal their fee by quoting a rate high enough to command a rebate from the lender, which the broker pockets. Loan officers sometimes do the same thing. It is called a “yield spread premium” when brokers do it, an “overage” when loan officers employed by lenders do it. They can get away with it because of the great difficulty borrowers have in comparison-shopping when there are 3 prices to contend with. With one price – the rate at zero points plus a standard charge – the potential for abuse would be substantially reduced.

Even in the current market, borrowers shopping brokers for a no-cost loan pay substantially less than others. According to a recent study by Susan

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<sup>7</sup> This includes title insurance, since a title policy covering the loan is required by the lender. However, a separate title policy covering the owner is often required on a purchase transaction, and in most such cases the title company is selected by the builder or the Realtor involved. This generates the same kind of perverse competition as when lenders select third party service providers, and the appropriate remedy may be the same: require that the builder or Realtor pay for the title policy.

<sup>8</sup> It is worth noting that the Federal Reserve could also eliminate settlement cost abuse covering charges included in the APR by requiring that when lenders lock a loan, they lock the APR as well as the rate and points.

Woodward, the rebate they paid to cover settlement costs (including broker fees) on average was \$1500 less per transaction than the total settlement costs paid by other borrowers. Woodward attributes this to the greater effectiveness of shopping when there is only one price involved!<sup>9</sup>

HUD proposed dealing with this problem by requiring brokers to disclose any rebate from lenders. This might work, depending on how well the disclosure requirement is structured. At best, however, it leaves the comparable practice by loan officers untouched.<sup>10</sup> In contrast, the fixed-charge rule would impact brokers and loan officers in exactly the same way.

### VIII Curbing Predatory Practices

The most widely cited predatory practices are price gouging, loan flipping, making loans that don't benefit the borrower, and making loans borrowers can't repay. These practices would all become unprofitable under a fixed-charge rule.

*Price Gouging* means charging higher rates, points and fees than borrowers would command if they could shop effectively. A common feature of gouging is the inclusion of large fees in the loan balance, often without any recognition by borrowers.

Under the fixed-charge rule, borrowers could be charged only the one set fee, and they could be charged points only in exchange for a rate below the posted zero-point rate. This would limit, though not eliminate the practice of loading fees into the loan balance. A case could be made for restricting the financing of points. Any gouging would then have to be in the interest rate, and even unsophisticated borrowers understand the difference between 7% and 12%.

*Loan Flipping* refers to successive refinances, with the borrower taking cash-out each time, until the equity in the house is gone. Equity is depleted by the cash withdrawn by the borrower, and by the fees included in the balance, which are sometimes larger.

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<sup>9</sup> My surmise is that much if not all of the \$1500 is attributable to lower broker fees, though Woodward's data do not show the breakdown. See Susan E. Woodward, Consumer Confusion in the Mortgage Market, June 18, 2003, unpublished manuscript.

<sup>10</sup> This presumed inequity is why the mortgage broker industry was universally hostile toward the HUD proposals.

Under the fixed-charge rule, the reduction in equity would be limited to the cash withdrawn plus the one fixed fee, which would largely eliminate flipping. With no other fees allowed, lenders would be obliged to raise the interest rate as equity declined. With the true cost of the refinance no longer concealed by fees embedded in the balance, borrowers would be forced to confront the rising cost of their cash withdrawals.

*Making Loans That Don't Benefit the Borrower* is not a lender objective, but it happens because predatory lenders don't care whether the loan is in the borrower's interest or not. The only issue is whether they can make money out of the loan. Dealing with this by imposing a legal duty on the lender is counter-productive, for reasons I indicated earlier.

Under a fixed-charge rule, the ability of borrowers to make their own decision in a rational and sensible way would be substantially enhanced. They are no longer vulnerable to the confusion created by multiple prices. At the same time, elimination of the ability to load fees into the balance reduces the range of circumstances under which lenders can make money by sticking the borrower with a bad loan.

*Making Loans Borrowers Can't Repay* can be a lender objective. If the lender loads heavy fees in the balance, which are amply covered by the borrower's equity in the home, the gain from recovering the fees early can more than offset the costs of foreclosure.

The fixed-charge rule should eliminate this practice. Without the capacity to load fees in the balance, there is no profit in making loans that can't be repaid.

## IX Enforcement

Law-makers sometimes give little consideration to whether, and at what cost, the rules they promulgate can be enforced. This is certainly true of the RESPA rule against referral fees, which couldn't be effectively enforced with an army of examiners. State laws barring loans that don't benefit the borrower, or that borrowers can't repay, present similar enforcement problems.

In contrast, the fixed-charge rule would be virtually self-enforcing, because every borrower would be a potential enforcement agent. Borrowers would know what the allowable charge was, and the closing documents would reveal whether or not the lender was in compliance.

### X Complexity and Cost

The fixed-charge rule is much simpler, and therefore possibly less costly than HUD's proposal to allow lenders and others to bundle services at one overall price.

Under bundling, the buyer still pays for the bundle, which raises some knotty questions. When they are not the same entity, is the packager or the service provider responsible for the proper fulfillment of the service? How much information about the components of the bundle needs to be disclosed to the borrower?

If the lender is responsible for all the services that the lender requires as a condition for the extension of the loan, there is no ambiguity about responsibility. Disclosure is also minimized, since for the most part the borrower doesn't care about services purchased and paid for by the lender.

### XII Factors Involved in Setting the Fixed-Charge

Within reasonable limits, the exact amount of the fixed charge is not important, provided the charge is the same for every lender and every loan. It is the variability in these costs from lender to lender and loan to loan, and the uncertainty this creates as to what the cost will be in any given case, that causes problems.

Nonetheless, because the fixed-charge proposal is so simple, implementation is likely to result in the exact amount becoming the focus of intense interest. It is important, therefore, to establish some principles to guide the process of setting the amount. It is also important to understand the kinds of modifications in the rule that are consistent, and those that are inconsistent, with a one-price market.

*The fixed-charge should be below any lender's cost of originating a loan.*  
Being able to profit from the origination alone encourages abusive practices.

*The one-price regime will work best where there are no restrictions on prepayment penalties. A low fixed-charge increases lender's prepayment risk, which is not a problem so long as lenders can purchase prepayment penalties with a lower rate. If restrictions on prepayment penalties prevent this, however, the fixed cost will have to be higher.*<sup>11</sup>

*Modifications in the fixed-charge rule are consistent with a one-price market if any borrower can learn what the cost is before contacting a lender. This implies, for example, that the fixed-charge could be indexed without causing any problems. It also implies that the fixed-charge could vary by state, or even county, although I think that such variability is a bad idea for other reasons.*<sup>12</sup> In a similar vein, the fixed-charge could be higher on purchase than on refinance transactions without undercutting a one-price market.

## XII A Related Reform

Multiple prices are the main problem mortgage borrowers face, but not the only problem. I don't want to make this a treatise on needed reforms, but one other is so closely related to multiple prices that it needs mentioning. This is the problem of low-ball price quotes designed to capture the customer, from which the lender retreats at the time the price is locked.

Because the market is so volatile, borrowers are rarely positioned to contest a loan provider's statement that market rates increased more, or decreased less, than they did in fact. One-price shopping does not protect against low-ball price quotes.

Full protection against this common tactic requires another rule that I call the "twin sibling rule." It says that lenders must lock at the same rate that they would quote to the borrower's twin who is shopping at the same time. HUD's packaging proposal would also require this rule, which would be relatively easy to enforce.

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<sup>11</sup> The higher the fixed-charge, the smaller the value of prepayment penalties.

<sup>12</sup> With a uniform national charge, the interest rate will adjust to different cost levels so we will (at long last) have a clear and continuing measure of area cost differences. It will all be in the rate. If lenders in areas that are presumed to have higher costs are allowed to charge a higher fee, information on area cost differences will be obscured, and market pressures to reduce costs in high-cost areas will be reduced.

### XIII Concluding Comment

This paper has argued that to make the market work for borrowers requires that they be able to shop one price; and that this could be accomplished by allowing lenders to impose only one charge on borrowers. All other costs must be borne by the lender, and will be reflected in the interest rate.

Is it politically feasible? One astute observer who read my paper said the simplicity of the proposal was its strength, but would also be its undoing, since the market “thrives on complexity” and is “driven by commissions at every level.” True enough, but HUD failed in its attempt to make complicated revisions to an already complex law. Perhaps the time has come to unfurl a banner of simplicity “to which honest men can repair”?

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