

Industry Meeting

Points RE: HUD 2008 RESPA Proposal

- **HUD's proposal does not simplify or clarify the mortgage shopping process for consumers. The provisions of the proposed rule would increase paperwork for all settlement service providers, and introduce new confusion for consumers. The proposed Good Faith Estimate:**
 - Replaces current one-page form with a four-page document that contains a complicated disclosure format.
 - Includes burdensome "Loan Comparison Chart"
 - Includes a series of interest rate, and loan term-related disclosures that are duplicative of (and in some instances inconsistent with) existing TILA items.
 - Requires that YSPs and discount points be disclosed as a "credit or charge for the specific rate chosen" without further explanation. This terminology will likely confuse consumers rather than help them understand YSPs.
 - The proposed GFE omits some charges and bundles others, which will prevent a full understanding of costs and clear cost comparisons.

- **HUD's proposed rule contains problematic mandates, some being extremely difficult to implement, and others being imprecise in meaning and application.**
 - Proposed rule requires that lenders keep "offers" for settlement costs open for 10 business days. In effect, this requires that lenders virtually guarantee third party costs over which it has no legal control. Pricing will have to reflect this hedge cost.
 - HUD's proposal introduces a new term, "originator," that differs from existing regulatory terms of "lender," "mortgage broker," or "creditor." Such lumping of regulatory concepts creates for confusion, uncertain implementation, and unnecessary risk.
 - The proposed rule is restructuring the YSP disclosures, and redefining existing terms that have identified and distinguished "lenders" from "brokers." Such regulatory rearrangements will call into question existing HUD informal opinions that now serve as clear legal guidance for lenders which must ensure full compliance with RESPA.
 - The HUD proposal will require every lender in the country to redesign and reformat their GFE, HUD-1 and other settlement forms and conduct retraining programs, incurring costs significantly underestimated by HUD.
 - HUD's proposal requires that a closing script be read aloud to consumers at closing. This will lead to great delays at closing, and HUD has significantly underestimated its costs for all parties involved.

- **The proposed rule exceeds RESPA statutory authority as follows:**
 - The rule requires that lenders keep offers for settlement costs open for 10 business days, and for some settlement costs, imposes either a 0% or a 10% "tolerance."
 - The rule requires a "GFE Application," which in short, amounts to a request for a price quote.
 - The rule requires that if a borrower is rejected for a loan, the borrower must be notified of the rejection within one business day, and a new GFE must be provided if another loan is available under different loan terms.

- The rule requires a set of disclosures identifying potential for “negative amortization” and maximum loan balance.
- The rule requires that a closing script be read aloud to consumers at closing.
- **The proposed rule overlaps, and at times conflicts, with other disclosures mandated under federal law, and has not been coordinated with the Fed’s efforts to reform TILA.**
 - Interest Rate Disclosure: The rule requires a “GFE Application,” that amounts to a request for a price quote, and an interest rate (contract rate) quotation. (Interest rate disclosures fall under TILA.)
 - HUD’s proposal requires that if a borrower is rejected for a loan, the borrower must be notified of the denial within one business day, and a new GFE must be provided if another loan is available under different loan terms. This requirement clashes with existing denial and counteroffer regulations under ECOA, HMDA and FCRA.
 - HUD proposal requires a disclosure of “loan amount” and TILA requires a disclosure “amount financed.”
 - TILA requires a disclosure of “APR”; the HUD proposal requires disclosure of “initial interest rate.”
 - TILA requires a payment schedule that reflects payments over the life of the loan; HUD’s proposal requires disclosure of initial monthly payment.
 - TILA requires disclosure of prepayment penalties; HUD’s proposal requires disclosure of the penalty and of the maximum amount of the penalty.
 - TILA requires disclosure of balloon payments; HUD’s proposal requires a separate balloon payment disclosure.
 - HUD’s proposed rule requires a set of disclosures—potential for negative amortization and maximum loan balance—that is confusingly similar on TILA’s Consumer Handbook for Adjustable Rate Mortgages, and ARM program disclosures.
 - The Board of Governors of the Federal Reserve has issued proposed new rules under TILA and HOEPA and has announced it is undertaking further reform efforts concerning TILA disclosures. Very recently enacted amendments to TILA under the Housing and Economic Recovery Act (HERA) also necessitate additional implementation by the Board. More than 240 Congressmen, FRB staff, the FTC and a host of commenters including key industry groups urged HUD to combine its disclosure reform efforts with those of the Federal Reserve, to achieve complete reform and to avoid unnecessary costs and confusion for industry and consumers alike. Notwithstanding, HUD has chosen to ignore these thoughtful and extensive comments and to go forward on its own to finalize this rule.
- **The proposed rule will ultimately lead to higher costs for all consumers.**
 - High implementation expenses
 - More voluminous disclosures
 - Substantial costs in establishing new compliance controls
 - Higher legal risks
- **All affected constituencies—industry, consumers, and government—have expressed opposition to this proposed rule.**
 - FRB staff has filed comments that recommend further testing, coordinated disclosures and that HUD not finalize these rules.
 - Consumer groups have raised objections to the rule, as written.

- Congress, through HERA, has opined that HUD should engage in a full study of RESPA's disclosure system, and then recommend wholesale legislative fixes to improve the existing disclosure system.

RESPA Comment Letters

Selected Excerpts from Government Agencies

Board of Governors of the Federal Reserve Staff Comments (June 13, 2008)

- Board staff believes that the agencies should continue to pursue ways to harmonize TILA and RESPA consistent with the Congressional mandate. (page 2)
- HUD's proposal, however, departs from the approach of a single, integrated disclosure form with little rationale. (page 2)
- We believe that the inconsistencies and other differences between the proposed GFE and TILA disclosure are likely to confuse consumers and, undermine consumers' ability to make informed shopping decisions and avoid unnecessarily high settlement costs. (page 4)
- It does not appear that HUD's testing focused on how consumers understood the specific terms being disclosed on the revised GFE or whether they understood the multiplicity of terms represented in the different loan choices in the side-by-side comparison. (page 4)
- Additional work is needed to test and develop a better disclosure. (page 5)

Federal Deposit Insurance Corporation (undated)

- We have concerns about the length of the proposed GFE and the fact that it does not contain important information about certain loan costs. (page 1)
- We are concerned about whether the proposed GFE truly provides information that consumers need in an easily understandable format. (page 2)
- Additional information often makes a form less useful because the basic concepts are overlooked, and that items of interest to policy experts often do not convey information that consumers use. (page 2)
- At four pages, the proposed GFE may be too long and provide too much information for it to be understood and appropriately used by consumers. (page 2)
- We are not aware of an appropriate means of evaluating whether overall consumer costs would decline as a result of average cost pricing. (page 4)

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FTC and Bureau of Consumer Protection Staff Comments (June 11, 2008)

- FTC staff supports the development of a single mortgage disclosure document, rather than separate disclosures under RESPA and TILA, so that consumers shopping for a mortgage loan would not need to consult several different disclosure documents to obtain a fuller picture of the loan terms. (page 3)
- The staff recommends that HUD collaborate with the Board of governors of the Federal Reserve System (Federal Reserve Board) to consolidate and reform federal mortgage disclosures. (page 3)
- [P]roposals may have the unintended consequences of further complicating the already complex mortgage lending process, thus causing more consumer confusion than clarity. (page 3)
- FTC staff encourages HUD to consider whether pricing restrictions on the re-sale of settlement service components and prohibitions on referral fees may inadvertently decrease competition and efficiency in the settlement service market. (page 5)

Small Business Administration Office of Advocacy (June 11, 2008)

- Advocacy is concerned that HUD may have underestimated the costs of the proposal and created a potential uneven playing field for some small entities. Moreover, there may be less costly alternatives that achieve HUD's stated goals. (page 2)
- Advocacy urges HUD to give full consideration to the economic information and alternatives suggested by small entities prior to going forward with the final rule. (page 6)
- We respectfully advise HUD to document the additional costs to small entities and consider harmonizing the GFE with the HUD-1 as well as clarifying the provision on tolerances. (page 6)
- Office of Advocacy supports HUD moving forward without the closing script requirement, the volume discount language, and the YSP classification. (page 6)