

Congress of the United States

Washington, DC 20515

August 7, 2008

The Honorable Steven Preston
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Dear Secretary Preston:

We appreciate your efforts to simplify and improve disclosures under the Real Estate Settlement Procedures Act (RESPA) and the Department of Housing and Urban Development's (HUD) recent decision to extend by an additional 30 days the public comment period for its proposed RESPA rule. However, this extension was not sufficient to address the concerns that we and the public have regarding the proposed rule's complexity, contentious provisions, incongruity with related federal agency efforts, and potential costs to consumers.

In light of these concerns, we request that HUD withdraw its proposed RESPA rule and immediately commence a joint rulemaking process with the Federal Reserve Board (Board) to produce more simplified mortgage and real estate settlement cost disclosure forms. To expedite this process, we also ask that you discard the hundreds of pages of HUD's current proposed RESPA rule that have not previously been the subject of public comment and cover a number of subjects beyond disclosures.

The concept of a joint HUD-Board rulemaking is not new. In 1996, Congress requested that HUD and the Board collaborate on a joint RESPA-Truth in Lending Act (TILA) rule. In 1998, HUD and the Board issued a report to Congress confirming that the agencies should jointly produce mortgage disclosure forms. On June 13th, 2008, the Board sent a letter to HUD encouraging such a coordinated effort that includes adequate consumer testing and specifically requested that the two federal regulatory bodies avoid conflicts as they work to modernize disclosures required by RESPA and TILA.

In the July 1, 2008, issue of *American Banker*, Sandra Braunstein, the Board's Director of the Division of Consumer and Community Affairs, said:

"Any effort to hasten adoption of new mortgage loan disclosures without adequate testing and development could, in the long run, hurt consumers more than help them, especially if consumers receive inconsistent disclosures under different legal regimes . . . A single, integrated form, which creditors may use to satisfy the requirements of both laws, would mitigate the problem of 'information overload'."

We couldn't agree more.

As HUD proceeds with RESPA reform in concert with the Board, we also encourage you to ensure that any final proposal focuses on disclosures and enjoys the consensus of industry and consumer groups. Following HUD's withdrawal of the last RESPA regulation in 2004, then-Secretary Jackson told the National Association of Realtors Midyear Legislative Meetings & Trade Expo:

"If you want a bill [regulation] you have to have consensus . . . Therefore, next time we will sit at a table, as we did at negotiated rulemaking. We will talk with the groups. If we have 75 percent or 80 percent agreement we will have a bill [regulation]."

Unfortunately, HUD's current RESPA proposal does not reflect this consensus. And, again, RESPA stakeholders have not previously vetted -- nor reached any agreement on -- numerous provisions within HUD's proposed RESPA rule. We encourage you to honor HUD's commitment and work with stakeholders to promulgate a new rule that receives broad support.

Finally, we ask that you work to produce a RESPA rule that takes into consideration its impact on small businesses and especially consumers. The current proposal, which to our knowledge has not undergone extensive consumer testing, promises to be more confusing and costly to both small businesses and consumers.

On June 11, 2008, Small Business Administration (SBA) Chief Counsel for Advocacy Thomas Sullivan and Assistant Chief Counsel for Economic Regulation and Banking Jennifer Smith sent a letter to HUD Assistant Secretary for Housing-Federal Housing Commissioner Brian Montgomery expressing "concerns with the potential economic impact of the proposal" on small businesses.

Given these concerns and the thousands of others raised by our constituents and industry stakeholders, we are profoundly concerned that HUD's proposed RESPA rule will hinder rather than help the recovery of the housing market. It is critically important for consumers that any revision to RESPA achieve the following goals: simplify, clarify, and reduce the cost of the mortgage and real estate settlement processes.

For these reasons, it is vital that HUD take a new and important step toward positive reform by immediately withdrawing its current proposal and, working with the Board, embark on a joint rulemaking process to improve RESPA and TILA disclosures.

Sincerely,

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Member of Congress

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