Title Chat

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Changes To RESPA Rules Proposed by The Department of Housing and Urban Development (HUD) on July 29, 2002 ("The Proposed Rule")

You may have heard that HUD has proposed changes to the rules governing RESPA that will significantly impact everyone in the residential real estate loan origination and settlement areas. The Proposed Rule was published in the *Federal Register* on July 29, 2002, and can be found at *Vol. 67 No. 145*. This *Chat* summarizes the reasons given and the intended benefits that are set forth in the introduction to the Proposed Rule.

There reference is made to five principles that the Secretary of HUD has established to guide HUD's RESPA reform and enforcement efforts. They are:

1. Borrowers should receive settlement cost information early enough in the process to allow them to shop for the mortgage product and settlement services that best meet their needs;
2. Disclosure should be as firm as possible to avoid surprise costs at settlement;
3. Regulatory amendments should be utilized to remove unintended barriers to marketing new products, competition, and technological innovations that could lower settlement costs;
4. Many of the current system's problems derive from the complexity of the process, and with simplification of disclosures and better borrower education, the loan origination process can be improved; and
5. RESPA should be vigorously enforced to protect borrowers and ensure that honest industry providers have a level, competitive playing field.

The introduction continues by stating that there will be three benefits derived from the Proposed Rule.

First, it will change the way in which mortgage broker compensation is to be reported in the Good Faith Estimate (the GFE) and the HUD 1/1A.

Second, the GFE would receive a new format which would inform borrowers that (i) since loan originators do not necessarily offer loans from all funding sources, the terms in the GFE may not be the lowest or best terms available in the market, (ii) would explain to the borrower the option of paying settlement costs through the use of lender payments on higher interest rates or reducing the interest rate by paying the lender additional amounts at closing, (iii) would disclose originator's fees, including the mortgage broker's and lender's total charges, and (iv) would require, in transactions originated by mortgage brokers, that all payments from a lender other than for the par value of the loan (including "yield spread premiums" servicing release premiums, and all other payments from lenders), be reported on the GFE and the HUD 1/1A.

Third, the Proposed Rule would remove regulatory barriers to allow packages of settlement services and mortgage loans to be made available to borrowers.

The public was invited to make written comments to the Proposed Rule by October 28, 2002. The American Land Title Association filed its written comments to the Proposed Rule, which included a counter proposal on the issue of "packaging." If you may wish to view this paper, it is available on ALTA's website at http://www.alta.org/. The National Association of Realtors also filed comments, seeking among other things an extension of the time for comment.

It is the *third* benefit that seems to be the most controversial. As things develop on the Proposed Rule, we will Chat again.

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