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Rules Docket Clerk
Office of General Counsel
Department of Housing and Urban Development
Room 10276
451 Seventh Street, SW
Washington, DC 20410-0500

Re: Docket No. FR-4727-P-01; Department of Housing and Urban Development; Real Estate Settlement Procedures Act ("RESPA"); Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers; 24 CFR Part 3500; 67 Federal Register 49133, July 29, 2002

Dear Sir or Madam:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Department of Housing and Urban Development's ("HUD") proposed rule designed to "simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers." In its attempt to meet this objective HUD significantly restructures the Good Faith Estimate ("GFE") and creates a new Guaranteed Mortgage Package ("GMP") arrangement. The American Bankers Association brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

The ABA applauds HUD's goals of improving and simplifying the process of obtaining mortgages to reduce settlement costs to consumers. ABA shares those goals and we want to continue to work with the Department in meeting them. Given the myriad number and variety of participants in the mortgage market, and the ambitious nature of HUD's proposed rule, ABA strongly urges the Department to carefully review all comments submitted, to revise the proposed rule, and to re-propose the rule. Doing so will give all participants in the mortgage markets a fair chance to respond and, ultimately, to adjust to any new system which is enacted.

The proposed rule seeks to replace the current mortgage process with two alternatives - the revised Good Faith Estimate process, and the Guaranteed Mortgage Package process. The revised GFE attempts to refine the current process, while the GMP creates an entirely new alternative for lenders, borrowers and settlement service providers. Both may well have merit, but both raise very serious issues of workability, consumer confusion, cost, and the ability of all types of lenders to compete fully in the changed marketplace. While unanimous agreement is unlikely in such a complex area, ABA believes it is critical that a broad-based consensus be achieved among participants in the mortgage process, or the reform effort is unlikely to be successful. ABA details its concerns and suggestions in the following pages.

Background

HUD issued this proposed rule in the context of extensive public discussion and review of issues relating to mortgage lending and the settlement process. HUD's discussion and intensive analysis of the role of mortgage brokers during the 1995-1996 negotiated rulemaking on mortgage broker fees and disclosures laid the groundwork for the mortgage broker component of this proposed rule. This was followed by HUD's 1999 and 2001 Statements of Policy clarifying the legality of lender payments to mortgage brokers. HUD and the Federal Reserve Board issued a joint report on reforming RESPA in 1998, which provided the basis for some of the concepts contained in this proposed rule. Also, HUD closely monitored the activities of an informal organization known as the Mortgage Reform Working Group consisting of representatives from lenders, mortgage brokers, other settlement service providers, and consumer groups. Although the group never reached a mortgage reform consensus, it did provide a forum for open discussion of mortgage reform concepts. The ABA actively participated in all of the above efforts to reform RESPA.

In terms of an overview of the proposed rule, HUD seeks to clarify the compensation and role of mortgage brokers and the role of loan originators, to redesign the GFE in terms of consumer disclosure of costs and to restrict any deviation in those costs at closing, and to provide a regulatory framework to allow guaranteed settlement service packages with exemption from RESPA's Section 8 liability.

GFE

The proposed rule requires that mortgage brokers as well as financial institution loan originators describe their services in boilerplate language on the GFE. This would state that the best rates and terms are not guaranteed and comparison-shopping would be advantageous.

The GFE would provide information to consumers regarding options available to them for payment of settlement costs through cash at settlement, through additional borrowing, through a higher interest rate or through discount points. The GFE would disclose total origination charges of the mortgage broker and the lender. Yield spread premiums and other payments by the lender to the mortgage broker would be listed on the GFE as lender payments to the borrower. Mortgage brokers would disclose the maximum amount of compensation they would receive.

HUD proposes a dramatic restructuring of the GFE in terms of its format, content, and objective. The GFE format would be reorganized "to facilitate borrower shopping for mortgages by making the mortgage transaction more transparent and to prevent unexpected charges to the borrower at settlement." HUD believes that this would discourage the use of "junk fees." The major proposed GFE categories are (1) loan originator, lender required and selected third party services, (2) title services and title insurance, (3) shoppable lender required third party services and (4) other charges such as government charges, escrow, per diem interest, hazard insurance and owner's title insurance. Dependent on the category, there would be 0% tolerance for the settlement costs at closing or a 10% tolerance. There would be no tolerance for number (1) above and for government charges except in the case of "unforeseeable and extraordinary circumstances" such as disaster or war. The 10% tolerance would basically apply to number (3) above as well as borrower selected title services, title insurance, and escrow. The tolerance does not apply to situations in which the consumer selects a provider independent of the originator's recommendation or where the consumer selects a more expensive service than required.

The GFE will include the loan amount, interest rate with APR and mortgage insurance, if applicable, and the monthly payment. There would be a statement that the interest rate could change unless locked.

The GFE would continue to be provided within three days of application but the definition of application would be changed. The redefined application would exist when basic information is provided to the originator so as to enable the originator to make an initial credit decision. Requests would not have to be exclusively in writing but could be communicated verbally or by computer. The GFE would be valid for at least 30 days. Any fee that relates to an application would be limited to the cost of providing the GFE and could not include appraisal or underwriting costs.

<u>GMP</u>

The GMP would provide a safe harbor from Section 8 of RESPA for anything within the package. HUD's proposed rule would remove regulatory barriers so as to encourage these packages.

The GMP could be offered by anyone who could qualify as a packager. If the packager is a non-lender, the packager must have the lender's signature verifying that the lender will provide the loan.

To qualify for exemption from Section 8 for all services within the GMP, the packager would have to offer within three days of application, a guaranteed cost for origination to include application, origination, underwriting, appraisal, pest inspection, flood determination, tax review, title service, title insurance, government fees and all other lender required services. The package would have to include the mortgage loan with interest rate guarantee subject to change only based on an "observable and verifiable index." The packager could not charge for the preparation and delivery of the package and it would have to remain open for at least 30 days. When the consumer accepts the package, the GMP becomes a binding contractual commitment subject to a "minimal engagement fee" and final underwriting and appraisal.

In terms of other costs not subject to the guarantee, there is a 10% tolerance for escrows, which must be disclosed on the GMP. Also, borrowers' choice costs such as hazard insurance, per diem interest and owner's title insurance could be excluded from the GMP and would not be subject to a tolerance. Specific services in the GMP would not have to be identified by service or cost. However, pest inspection, appraisal and lender's title insurance would have to be identified to the consumer if the lender does not plan to require any one of them. Upon request, the pest inspection, lender's title insurance, appraisal and credit reports would have to be provided the consumer.

Mortgage Servicing

In the proposed rule, HUD indicated it intends to implement by final regulation a 1997 statutory revision to the RESPA mortgage servicing transfer section. This language eliminates the requirement that a financial institution disclose the historic context of its mortgage servicing experience and a projection for the future. Prior to this finalization, HUD advised that the language of the statute may be followed in lieu of the final rule.

ABA Position

HUD's Effort on RESPA Reform

The ABA recognizes HUD's significant effort to develop a proposed rule, which HUD believes will reform RESPA by facilitating shopping for mortgage loans, by providing more meaningful disclosures and by creating a GMP designed to simplify and reduce costs associated with the settlement process. HUD's proposed rule reflects the commitment of HUD Secretary Mel Martinez to achieve these goals while enhancing the affordability of housing for individuals throughout the United States.

Secretary Martinez emphasized this commitment to the mortgage reform process during his recent testimony before the House Financial Services Committee. In his remarks, Secretary Martinez stated that, "By reforming the rules governing the purchase and finance of a home, we will create new opportunities for first-time homebuyers, keep the American dream of homeownership alive for more families, and inspire greater public confidence in the mortgage lending industry." The ABA supports the Secretary in his commitment to accomplish these objectives and looks forward to continuing to work with HUD to make this a reality.

An example of such a joint effort between the ABA and HUD could be an ABA working group to assist HUD in developing a more streamlined and concise GFE and GMP agreement. Since bankers currently work with consumers thousands of times a day in providing and explaining the GFE and the HUD-1, they are well versed in what consumers will best understand. ABA would welcome the opportunity to participate with HUD in such an effort.

As HUD seeks to attain these objectives through the RESPA reform process, the ABA urges HUD to recognize the significant regulatory burden imposed on banks by RESPA's detail and complexity. HUD should continue to reduce unnecessary regulatory burden on banks while streamlining the paperwork required by Regulation X which frequently only serves to confuse consumers rather than enlighten them.

Regulators' Oversight of Banks

HUD should recognize that banks are subject to intensive examination by their chartering and/or supervisory agencies and those agencies not only extensively examine banks for safety and soundness concerns but also oversee their compliance with numerous statutes and regulations such as RESPA and Regulation X. Banks undergo intensive scrutiny during this process. Many participants in the mortgage process that are not banks, their subsidiaries, or affiliates never receive such a thorough RESPA review. As it proceeds with a proposed rule, HUD should ensure that banks not endure additional regulatory burden because other participants in the mortgage process do not undergo such a thorough and frequent examination process.

Also, HUD should keep in mind that bank regulatory agencies have a stake in the process as they examine the institutions they regulate for compliance with RESPA and Regulation X and for any safety and soundness implications that may occur because of HUD's proposed changes to Regulation X. It is imperative that HUD coordinate the Regulation X amendment process with bank regulators. Also, HUD should ensure that the bank regulators are fully informed as to the details of the proposal process so that they are better able to examine banks under any new RESPA framework.

Adequate Lead-time for Implementation

As it moves toward further consideration of the proposed regulation, HUD should ensure that there is sufficient lead-time before any final regulation is fully implemented. As identified above, this lead-time is essential to ensure that the bank supervisory agencies are fully conversant in the final regulation and are trained to examine for its implementation. This is a key reason why ABA encourages HUD to revise the proposed rule and re-propose it – to ensure adequate input from all market participants and their regulators.

If the changes proposed by HUD, especially modification of the GFE, were to become final it would necessitate the banking industry's expenditure of extensive resources and time to become fully compliant. Banks would have to modify their mortgage origination policies and practices. They would have to retrain their employees involved in the mortgage process as well as those overseeing compliance with RESPA and Regulation Z. They would have to redesign their software programs to accommodate the changes incorporated in such a final regulation. They would have to restructure their marketing and compliance programs. If appropriate, they would have to work with their mortgage related vendors to ensure that they are in full compliance. This process is not a simple undertaking and would necessitate a significant expenditure of bank resources.

The ABA recommends that HUD establish at least a two-year period from the date a final regulation is published in the Federal Register until it becomes fully effective. Only such a time period will allow all parties affected by the final regulation to make the adjustments in policy and practice to fully comply with the modifications to Regulation X.

Redundant Language and Disclosures

The ABA strongly urges HUD to eliminate redundant language and disclosures that are already addressed in existing law and regulations especially the Truth in Lending Act ("TILA") and Regulation Z and to ensure that HUD's use of significant words and phrases that are defined in other Federal regulations is consistent with those regulations. To do otherwise would only serve to confuse consumers and impose potential roadblocks in the settlement process. Also, inclusion of items in the proposed rule relating to RESPA disclosures, which are already separately provided to consumers, only adds to a consumer's burden of understanding the complexities of the mortgage and settlement process and could result in unnecessary and expensive litigation.

As an example, the ABA directs HUD's attention to those disclosures already promulgated by the Federal Reserve Board ("Board") which underlie TILA.

In Section 3500.7 of the proposed rule, HUD intends to incorporate in the proposed GFE loan terms which are within the purview of Regulation Z and the Board.

Specifically, this section requires disclosure of:

- Loan amount
- Interest rate used to calculate the estimated amounts
- Annual Percentage Rate ("APR") including mortgage insurance
- Monthly payment for principal and interest and mortgage insurance
- Whether the loan is an adjustable rate mortgage
- Whether the loan contains a prepayment penalty clause
- Whether the loan has a balloon payment.

These disclosures are also contained in Parts II and V of Appendix C of the proposed rule, which relates to the "Instructions for Completing the Good Faith Estimate."

The ABA appreciates HUD's attempt to incorporate aspects of the two documents to seek to facilitate better understanding of important mortgage loan terms and costs. However, ABA concludes that, as proposed, HUD's loan term provisions, as above, are inappropriate and will be confusing to the consumer and draw attention away from important disclosures unique to the Good Faith Estimate. ABA suggests that HUD defer to the Board, as Congress mandated, with regard to loan term disclosures.

In this regard, HUD should recognize that disclosure of mortgage loan terms is not the purview of RESPA or Regulation X. Congress assigned that role to TILA and its implementing regulation, Regulation Z, promulgated by the Board. The proposed rule is contrary to the intent of both statutes. Also, the proposed rule preempts Congress's decision that certain terms are important and should be segregated and highlighted, as delineated in TILA.

Section 102(a) of TILA provides:

> It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. . .

In contrast, RESPA's purpose, with regard to mortgage terms is to "effect certain changes in the settlement process for residential real estate that will result (1) in more effective advance disclosure to home buyers and sellers of *settlement* costs. . . " 12 USC 2601 (b)(1). (Emphasis added.)

Clearly, Congress intended TILA to govern loan term disclosure and RESPA to cover settlement costs. However, the proposed rule preempts this intention by mandating disclosure of certain loan terms, including those related to costs, prepayment penalties, balloon payments, and adjustable rate mortgages. The proposed rule includes these terms notwithstanding that TILA and Regulation Z specifically address these loan terms. Even more importantly, the proposed terms are in some cases inconsistent with Regulation Z.

In addition, the proposed rule fails to recognize Congress's and the Board's conclusions regarding the relative importance of loan terms. TILA and Regulation Z identify certain mortgage terms that are required to be highlighted and segregated to ensure that borrowers notice the most important terms. The proposed rule provides a different and partial list of important features in a different format that makes them less noticeable.

TILA and Regulation Z require a list of terms to be disclosed in a required form. The TILA list is more expansive than the proposed rule, which is in parts redundant of, in parts different from, TILA. Section 122 of TILA and Section 226.17(a) of Regulation Z require that the terms be disclosed "clearly and conspicuously" and that the terms annual percentage rate and finance charge be disclosed more conspicuously than other terms (except for the creditor's identity). Also, under Section 226.17(a) of Regulation Z, the required disclosures must be grouped together, segregated, and may not contain any information not directly related to the disclosures.

The proposed rule provides only a partial list of the TILA terms and reflects a decision that, contrary to the conclusions of Congress and the Board, certain loan terms contained in the proposed rule are more important than others: it excludes many important terms contained in the TILA list, such as the finance charge, which TILA requires be more conspicuous than other terms; it obscures the APR, which Congress also required to be highlighted.

It also adds new disclosures and calculations. For example, it requires disclosure of the APR and the percentage attributable to mortgage insurance. While mortgage insurance costs are otherwise incorporated into the TILA disclosures, the percentage attributable to mortgage insurance is not a required disclosure. There is no explanation of why this new disclosure is being added by HUD when the Board, which has jurisdiction over loan terms, has not deemed it necessary.

Rather than reinforcing by repetition, ABA believes that the proposed rule will confuse consumers because terms are inconsistent and redundant. It will also distract consumers from noticing important terms, such as the APR because, as unhighlighted terms in a long series of disclosures, they will fade into the document. Unnecessarily lengthening the form with redundant terms will also mean that consumers will be less likely to read the materials more carefully, if at all. ABA is also concerned that those providing the disclosures will be tempted in good faith to direct borrowers to the RESPA document, on the basis that it contains all the important terms, including many of those contained in the TILA documents.

The proposed rule also illustrates the difficulty of defining and formatting loan terms in an effective fashion, another reason to defer to the agency with the background, history, and authority for the task. To illustrate, Section 3500.7 of the proposed rule requires disclosure of the "loan amount." The proposed Appendix C and its instructions refer to the "mortgage amount." Are these terms the same? Are they the same as the "amount financed" as defined by Regulation Z? Do they include "any other amounts that are financed by the creditor and are not part of the finance charge" as Regulation Z defines amount financed?

The proposed rule, Appendix C, and its instructions all appear to envision a different version of payment disclosures. The proposed rule requires disclosures of the **"monthly payment for principal and interest and mortgage insurance,"** as prescribed in Appendix C. (Emphasis added.) Appendix C instructions prescribe disclosure of the length of the loan and the **"monthly payment, including any mortgage insurance."**(Emphasis added.) Are these terms the same? Does the "monthly payment for principal and interest" required by the proposed rule exclude other amounts, such as other finance charges, that are part of the borrower's monthly payment? How do these two terms differ from the TILA payment schedule disclosures?

The proposed Appendix C requires disclosure of the term of the loan (in years), the number of monthly payments, and the initial payment of principal and interest and mortgage insurance. It does not appear to contemplate disclosure of the amount of payments made after the initial payment, which may vary from the initial payment.

This commonly happens, for example, with the last payment, which may be modestly more or less than the usual payment. It also happens with balloon payments. However, Appendix C does not contemplate any variations in monthly payments. Appendix C is not labeled a "model" form. Is it mandatory? How do lenders reconcile the contradictory instructions?

The proposed rule requires disclosure of the interest rate. The proposed Appendix C uses the phrase "[fixed] interest rate." Why is "fixed" in brackets if the disclosure contemplates referring those with adjustable rate mortgages to a separate section?

Part V of the proposed rule requires disclosure of the initial interest rate and how often the rate will change, but does not appear to anticipate adjustable rate mortgages with a discounted or "teaser" rate or loans that have stepped up interest rates. The proposed disclosure, in fact, would be misleading because it does not highlight that the interest rate will increase significantly in the first month or other period.

How does a lender disclose an Alternative Rate Mortgage ("ARM") with an initial discount rate using the proposed required disclosure? This is illustrated in Section V of the proposed GFE as follows:

> The initial interest rate for this ARM loan is __ %. The first adjustment will occur after __ months/years and every month/year thereafter for a period of __ years. The interest rate is based on the __index and may increase by a margin of __% over the index with each adjustment. The maximum rate increase adjustment per period is __% and the maximum interest rate that can ever apply to this loan is __%.

As identified above, the proposed rule does not require disclosure of the amount of the increase after the initial discounted rate. Moreover, the proposed language is again inconsistent with Regulation Z, which requires disclosure of the APR. This term includes other finance charges beyond interest.

It is imperative that the terms of RESPA and TILA and their definitions be consistent, both for the interests of consumers and lenders. As it is now, the proposed rule is fraught with inconsistencies that will confuse consumers so that they are more likely to ignore them than endeavor to reconcile them. It will also be a minefield for lenders trying in good faith to comply with the competing disclosures. Given the Board's mandate to develop meaningful loan term disclosures, its successful efforts to fulfill that complicated mandate, and its long history in developing TILA disclosures, ABA strongly urges HUD to defer to Regulation Z and the Board with regard to loan terms disclosures.

Attachment A-1

Also, the proposed rule requires that in the case of a GMP the lender identify on Attachment A-1 that certain specific services are or are not required. The lender must disclose that the reports generated by these services must be available to the customer upon his or her request. The services subject to this requirement are the pest inspection, lender's title insurance, property appraisal, and credit report.

The ABA recommends that HUD delete this proposed requirement from its final rule. The availability of property appraisal reports and credit reports are fully addressed by other statutes and HUD should defer to the Federal agencies responsible for these disclosures. Also, ABA recommends that HUD delete the pest inspection and lender's title insurance reports from this requirement as an unnecessary disclosure, which only adds to the paperwork provided the customer.

The Equal Credit Opportunity Act ("ECOA") and Regulation B already address the applicant's right to a property appraisal report. Section 701 (e) of ECOA requires creditors to provide copies of these appraisal reports and directs the Board to adopt regulations implementing this statute. Accordingly, Section 205.5a of Regulation B requires lenders to provide a copy of the appraisal report, but also allows various options that included notices of the right to the report or automatic delivery. First, HUD should leave regulations regarding access to appraisal reports to the federal agency assigned the task, in this case, the Board. The Board has identified the appropriate disclosures and timing of disclosures after extensive public comment. This process works well and ABA is not aware of any complaints relating to the provision of property appraisal reports.

Second, ABA does not believe that repeating a particular item, especially one that is not deemed highly important to the shopping decision, enhances the disclosures, especially among so many other important terms and disclosures. As noted earlier, this confuses consumers and lengthens the disclosure so that they are less likely to review carefully what they receive.

Similarly, the proposed notice regarding credit reports reaches beyond the requirements of the Fair Credit Reporting Act ("FCRA") and assumes jurisdiction of a matter Congress assigned to other agencies.

Section 615 of the FCRA requires that if a credit report is used in making an adverse credit decision, (which includes a denial or rejection of terms not as requested) the lender must provide notice of that fact along with notice of the applicant's right to obtain a free report. Moreover, in 1996, when Congress amended FCRA substantially, it chose to address consumers' access to reports by, for example, *permitting* users of a consumer report to share it with an applicant *in the event the report was used for adverse action*. (Emphasis added.) The proposed rule clearly goes beyond what the statute dedicated to credit reports requires by *mandating* that *creditors* provide the report upon request. (Emphasis added.) Congress had the opportunity to adopt a HUD-like proposed requirement in 1996, after years of debate about amending FCRA, but chose not to do so.

In the case of banks, only the federal banking agencies are allowed to prescribe regulations under the FCRA. In general, the federal banking agencies, the Federal Trade Commission, and the states, not HUD, are responsible for enforcing that statute with respect to all types of lenders.

The ABA also recommends deletion of the right to the pest inspection and lender's title insurance reports. First, ABA does not believe there is value in providing this disclosure or these reports: their utility was not explained in the supplementary information other than to explain that they are of "specific interest and value to the borrower." (67 Federal Register 49153, July 29, 2002). These services are intended to provide information to protect the lender, not the borrower. They assure the lender that the property on which the lender is relying as a security interest will not be threatened by physical deterioration or superior legal claims. They are accordingly priced and delivered for this purpose. Furnishing them to consumers could lead consumers to rely on them for their own purposes and provide a basis for an unanticipated lawsuit. Prices and contracts would have to be adjusted to reflect this.

Second, the disclosures will unnecessarily lengthen the disclosure forms, distracting consumers from more important information and discouraging them from reviewing the document altogether. Finally, ABA does not believe that HUD has the authority under RESPA to mandate the provision of these reports. Thus, ABA recommends deletion of this provision.

Application

The ABA is also concerned that the definition of application, when coupled with the requirements to guarantee terms either subject to or not subject to tolerances in effect dictates the factors lenders can consider in pricing mortgages.

For example, the proposed rule defines application to mean:

> the submission of credit information (Social Security number, property address, basic income information, the borrower's information on the house price or a best estimate on the value of the property, and the mortgage loan needed by a borrower in anticipation of a credit decision…

The proposed rule further requires that the GMP guarantee the interest rate and APR. In effect, the proposed rule mandates pricing criteria by limiting the information required on an application on which the lender must base a pricing decision. Simply put, it obliges creditors to price loans based on the criteria set forth in the proposed rule.

The proposed rule ignores factors both commonly and occasionally used today to price mortgage loans: e.g., assets of borrower, current rent payment, whether the property is a condominium or coop. There are undoubtedly other factors, particularly for programs designed to be more flexible in underwriting and pricing standards in order to broaden the field of eligible borrowers and provide more affordable loans. The proposed rule in effect precludes lenders from using these factors as well as other factors that lenders in the future may determine are appropriate and useful for pricing loans. ABA does not believe that HUD should be dictating pricing criteria.

Instead, the proposed rule should look for guidance at definitions of "application" contained in Regulation B and Regulation C. Section 202.2(f) of Regulation B defines application as "an oral or written request for an extension of credit that is made *in accordance with procedures established by a creditor* for the type of credit requests." (Emphasis added.) Under Section 203.2(b) of Regulation C, application means "an oral or written request for a home-purchase or home-improvement loan that is made *in accordance with procedures established by a financial institution for the type of credit requested."* (Emphasis added.) These definitions allow lenders to establish their own criteria for evaluating creditworthiness and loan terms (except for prohibited basis as defined under ECOA.) This approach to defining applications is more appropriate in the context of the proposed rule and will facilitate compliance by making the terms consistent.

If HUD does not modify the definition, it should eliminate the requirement to guarantee an APR and interest rate. Lenders should not be required to price loans without adequate and appropriate information.

However, the proposed rule should retain the reference to "submission of credit information" or a similar phrase and avoid the Regulation B and Regulation C references to request for credit. Otherwise, the shopping inquiry envisioned under the proposed rule could trigger unwanted Regulation B notices and Regulation C reporting requirements.

<u>GMP</u>

Throughout the mortgage reform discussion process, ABA has recognized the interest of many banks in the concept of a Guaranteed Mortgage Package. In developing such a package, the ABA has recommended to HUD that it structure such a package so that it would serve as an optional approach to the traditional GFE. Such an option would provide the broadest range of choices to banks in terms of the mortgage products that they offer and to consumers in terms of which products are in their best interest.

In this context, the ABA believes that the concept of the GMP may be a viable option for lenders, provided that the GFE and the fee for services rendered approach to the mortgage process remain an equally viable option for banks.

In terms of the specifics of the GMP as proposed by HUD, the ABA has several recommendations that would restructure the GMP so as to better reflect the realities of the marketplace.

HUD should delete the word "guaranteed" from the package, as it implies a lock on costs, contrary to the intent of the proposed regulation. A more appropriate word or phrase should be substituted. While the goal of an all-in package at a set cost is laudatory, the fact remains that a number of items may not be able to be included in a package, which would lead to confusion by consumers if the package were referred to as a "guarantee."

Mortgage originators should be allowed to collect a fee for the GMP that is sufficient to cover the costs of the initial credit determination process. The proposed rule sets forth that originators may only collect a "nominal" fee at application. A "nominal" fee raises a number of questions – the most serious of which is how HUD will determine what is "nominal" especially in light of the fact that RESPA specifically directs that HUD not set prices for settlement services. Rather than venture into such troubling territory, ABA suggests that HUD simply require that the fee collected by originators should cover the initial credit determination efforts of originators.

The mandatory shopping period, set by the proposed rule at not less than 30 days, should be reduced to not less than 10 days. Requiring an originator to hold rates and terms open for an entire month is an excessive burden, which may reduce options for consumers as it creates uncertainty and unnecessary delay in the marketplace. A 10-day shopping period provides borrowers with ample time to shop among various originators, while ensuring that originators do not unnecessarily tie up lines of credit for loans which may never be made.

Finally, HUD should provide for a "cure" mechanism for technical violations of the GMP. In the fast-paced environment of mortgage origination, it is inevitable that unintended errors will be made. Those offering the GMP should be provided with the ability to cure errors before being penalized for those errors. ABA strongly encourages HUD to add a "cure" mechanism.

GFE

Many banks have expressed to the ABA their serious concern with the proposed revised GFE. To them, HUD's proposed modifications to the GFE convert what for years has been an estimate of settlement costs to a new, expanded form which is very close to a guarantee of settlement costs. The proposed revised GFE does not offer banks and other lenders a viable option to the GMP since it imposes new requirements on lenders which, many believe, transcend the intent of Congress in requiring "a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur…" Many believe that such statutory language precludes HUD from imposing the changes incorporated in the proposed revised GFE. For decades, bankers have effectively served their mortgage loan customers and to the best of their knowledge have provided accurate and complete estimates of anticipated settlement costs in the form of the GFE. They believe that imposing strict tolerances recommended by HUD will interfere with their ability to serve their customers and will discourage them from future mortgage lending activity.

The ABA's members have identified several aspects of the proposed revised GFE, which create potential problems. The ABA joins with banks throughout the country in raising these issues. Their concerns include (1) the above-mentioned tolerances, which fail to take into account local variations in the settlement process and costs that might well exceed the best intentioned estimate, (2) the need to reduce the complexity of the proposed revised GFE by eliminating information otherwise included in other disclosures and/or incorporating this additional language in HUD's Special Information Booklet, (3) the problems created by requiring banks to maintain the estimates identified in the GFE for a minimum of thirty days, and (4) the problems associated with the imposition of restrictions on the ability of lenders to modify mortgage products available to their customers resulting in application denials and multiple re-issuances of the GFE.

In particular, the proposed revised GFE requires that certain terms may "not vary at settlement by greater than a tolerance of 10% from the amounts for such categories reported on the good faith estimate…absent unforeseeable and extraordinary circumstances." These include, for example, lender required and selected third party services. "Unforeseeable and extraordinary circumstances," defined as "act of God, war, disaster, or any other emergency making it impossible or impractical to perform" obviously has a very limited application.

This requirement will unfairly require lenders to absorb necessary costs. For example, property appraisals and surveys are subject to a strict tolerance. However, there are occasions when these fees are unexpectedly and significantly higher than usual. For example, the property may be unusual or difficult to reach or evaluate, e.g., property is difficult to access due to road conditions, and property contains difficult terrain or other obstacles such as animals. The appraiser must therefore expend much more time on the valuation, resulting in a fee that can be three or four times higher than "usual." Lenders with a significant volume of business in mortgage loans may be able to absorb the loss, but the additional burden will force other lenders to reconsider whether to offer such loans, especially those that make only a few mortgages a year as a customer convenience.

The ABA urges HUD to carefully consider these and the other concerns raised by banks relating to the proposed revised GFE. HUD should use the re-proposed rule as an opportunity to make modifications to ensure that the revised GFE is a workable document and a realistic option for banks.

Mortgage Servicing Transfer Disclosure

In the preamble to the proposed rule, HUD indicates that it intends to finalize the 1997 Congressional modification to the Mortgage Servicing Transfer Disclosure language of RESPA. ABA fully supports HUD in its implementation of this statutory change. ABA urges HUD to issue a regulation implementing this change separate and apart from action on this proposed rule. ABA recognizes that HUD has indicated that the statutory language addressed by this change may be used in lieu of the existing language of Regulation X. However, for purposes of fully informing banks and other lenders of its applicability, the ABA recommends HUD act quickly to incorporate this statutory change in Regulation X.

Affiliated Business Treatment Proposal

The ABA, along with its affiliate, the American Bankers Insurance Association ("ABIA"), would also like to express our support for the eligibility of independent insurance agents and brokers to receive a fee for referring their insurance clients to the banking operations of full financial services (insurance and banking) enterprises with which they are contracted.

Essentially, the proposal aims to level the playing field between competing segments of the insurance industry in terms of the application of one specific provision in Section 8 of RESPA. This provision is applicable only to insurance carriers whose distribution mechanism is the independent agency system. Large, direct writers are advantaged in this regard since their network of "captive" agents qualifies as "affiliates" and are, therefore, exempt from this specific provision of RESPA. This proposed rule would correct this presumably unintended result, expanding options for consumers.

The ABA and ABIA ask your consideration of the inclusion of this proposal as part of a re-proposal of this rule, with the intent of achieving a more level playing field, of eliminating the unintended advantage of one segment of the financial services industry over another and of furthering expanded consumer options.

Conclusion

In conclusion, the ABA congratulates HUD for addressing comprehensive mortgage reform. The mortgage origination process is a complicated and important one, which in many instances, is the most significant transaction entered into by many borrowers. HUD is to be commended for its efforts thus far. ABA believes that real reform is possible, but that more steps are necessary to ensure that the current process is improved without unduly disrupting those elements of the system that are working. As HUD has recognized, the current mortgage process is one that has provided the highest rate of homeownership in our nation's history, and reform must be achieved carefully to ensure that the ability of consumers to obtain housing credit and services is not impinged. Therefore, ABA strongly encourages HUD to revise the current proposed rule, and re-propose it for additional comment.

If you have any questions or need additional information, do not hesitate to contact the undersigned at (202) 663-5333.

Sincerely yours,

John C. Rasmus

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