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June 12, 2008

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W., Room 10276
Washington, DC 20410-0001

Re: Docket No. FR-5180-P-01
Real Estate Settlement Procedures Act
Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Department of Housing and Urban Development's (the Department) proposed amendments to disclosure requirements for mortgage settlement costs under the Real Estate Settlement Procedures Act of 1974 (RESPA).

The ABA has long supported RESPA reform that would simply the often overly complex and confusing disclosures that accompany residential mortgage transactions, and provide consumers with more relevant and understandable information. We believe that this objective is at the heart of the proposed rule and is shared with the Department. We also recognize that past efforts to achieve this objective have foundered for a variety of reasons, often because proposals have not effectively simplified the process or contributed to more understandable information, regardless of other potential benefits. Most recently RESPA reforms proposed on July 29, 2002 failed to reach fruition or draw adequate consensus during the public comment process for these reasons.

The Department is not alone in efforts to improve disclosure processes that would better protect consumers. For instance, similar challenges are faced by the Federal Reserve Board of Governors of the Federal Reserve System (the Federal Reserve), which on January 9, 2008 proposed a rule under the authority of the Truth in Lending Act (TILA) and Home Ownership and Equity Protection Act (HOEPA).

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[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $12.7 trillion in assets and employ over 2 million men and women.

Portions of this proposal would provide additional consumer protections to subprime borrowers, but other sections of the amendments would apply to all loans that are secured by a consumer's principal dwelling. The ABA encourages consultation between the Department and the Federal Reserve where interests and objects overlap with the Department's rulemakings. We believe that such consultation is essential if consumers are to receive the full benefits intended under RESPA, TILA and HOEPA.

The Department's stated objective in proposing the rule is to "protect consumers from unnecessarily high settlement costs by taking steps to:

1. Improve and standardize the Good Faith Estimate (GFE) form, to make it easier to use for shopping among settlement service providers;
2. Ensure that page one of the GFE provides a clear summary of the loan terms and total settlement charges so that borrowers will be able to use the GFE to comparison shop among loan originators for a mortgage loan;
3. Provide more accurate estimates of settlement services shown on the GFE;
4. Improve disclosure of yield spread premiums to help borrowers understand how they can affect their settlement charges;
5. Facilitate comparison of the GFE and the HUD-1/HUD-1A Settlement Statements (HUD-1 settlement statement or HUD-1);
6. Ensure that at settlement borrowers are made aware of final loan terms and settlement costs, by reading and providing a copy of a "closing script" to borrowers;
7. Clarify HUD-1 instructions; and
8. Clarify HUD's pricing mechanisms that benefit consumers, including average cost pricing and discounts, including volume based discounts."

The ABA shares these goals, but we do not believe that the proposed rule will achieve the intended results. Instead, we believe that the proposal will fall short in many respects. Further, the proposal fails to achieve the underlying object to make RESPA requirements less complex and more understandable, limiting any other potential consumer benefit.

The proposed rule also appears to go beyond the statutory authority of the Department, because it would require disclosures which would overlap, or conflict with disclosures already required under the Truth in Lending Act, and potentially several other acts, including the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA), which are all administered by the Federal Reserve. Moreover, due to the substantial costs of implementing controls to ensure compliance with the new rules (which despite being duplicative in many instances, will still require additional compliance burdens), we believe the rule is likely to increase costs for all consumers and cause delays in the closing process without a meaningful corresponding benefit.

Because of these concerns, we strongly urge that the proposed rule be withdrawn in its present form, and proposed in a new form after evaluation of public comments, coordination with soon to be amended TILA and HOEPA rules, and further consideration by the Department.

Our specific comments are organized in sections as follows and are based on numerous meetings with banks of all sizes:

I. **Good Faith Estimate**

II. **Tolerances**

III. **Yield Spread Premiums**

IV. **HUD-1**

V. **Closing Script**

VI. **Average Cost Pricing and Negotiated Discounts**

VII. **Required Use**

VIII. **Conclusion**

GOOD FAITH ESTIMATE

The proposal replaces the existing one-page, suggested GFE form with a required four-page standardized form which must be given to the consumer within three days of receiving a newly defined "GFE application." The "GFE application" is defined as the receipt, by written or oral communication, of borrower information necessary to arrive at a preliminary credit decision, including social security number, property address, monthly income, borrower's estimate of sale price, and amount of mortgage loan sought.

Elements of the GFE would include:

Key loan terms – to be disclosed on page 1 of the GFE:

1. the initial loan amount;
2. the loan term;
3. the initial interest rate;
4. the monthly mortgage payment;
5. whether the rate, balance and monthly payment may rise;

6. whether the loan has a prepayment penalty or balloon payment; and
7. whether the loan includes a monthly escrow payment for property taxes and other obligations.

Total settlement costs – to be disclosed on page 2 of the GFE:

1. originator's service charge including any internal processing and underwriting fees;
2. a credit or charge for the interest rate chosen, which yields "adjusted origination charges" (this is a disclosure of yield spread premiums – which is described in more detail below);
3. required services selected by the lender, such as appraisal and flood certification fees;
4. title service fees and the cost of title insurance;
5. other required services for which the consumer may shop;
6. government recording and transfer tax charges;
7. reserves or escrow;
8. daily interest charges;
9. homeowner's insurance; and
10. cost of optional owner's title insurance.

A lender or broker would be required to keep the GFE offer for settlement costs open for 10 business days to allow a consumer to shop. The lender or broker must (when the GFE offer is made) identify that the interest rate is available until a specified date. Until that rate is locked, the initial interest rate may continue to float.

Rate options – to be disclosed on page 3 of the GFE: a lender or broker would be required to provide a borrower two additional loan options in a chart format – one with a higher interest rate and one with a lower interest rate. The options are intended to show how a higher rate could reduce upfront settlement costs and a lower rate could increase settlement costs. If a consumer desires a loan product with a higher or lower interest rate, the lender or broker would be required to provide them with a new and different GFE.

Loan Comparison Chart – to be provided on page 4 of the GFE: To encourage consumers to shop, page 4 of the GFE would be required to include a blank chart on which consumers could write in the loan terms of four lender's offers of credit. Page 4 would also include estimates for other items such as property taxes, and homeowner's insurance, but would warn that such items should not be used to compare settlement charges among lenders.

The ABA finds the new Good Faith Estimate to be overly prescriptive, and estimates that it will be extremely costly to implement. The proposal turns the concept of an "estimate" on its head. Far from being an "estimate" the new GFE is in fact, a required statement of costs, many of which are not permitted to change under the rule. Others carry a penalty if changes exceed the tolerances imposed by the rule. There will be substantial costs borne by lenders both to retrain staff in preparing the new GFE, and in ensuring that disclosures are within the new tolerances, and in updating systems to comply with the requirements of the new GFE. Additionally, because of the requirement that consumers be given a choice among higher closing cost and lower closing cost loans, multiple GFEs will have to be provided to consumers opting for one of the other options presented to them.

We also believe that the proposal's requirement that a GFE be provided on a "GFE application," which is not a true application but is really a request for a price quote by the consumer, will result in a change in the timing of TILA disclosures. TILA uses the RESPA definition of application as interpreted by the Department (See Reg. Z Comment 226.19(a)(1)-(3)). Additionally, it is not clear whether a GFE application would be an application or prequalification under the Board's Regulations B and C, which implement ECOA and HMDA respectively.

Other Conflicts:

The proposal also requires that the new GFE contain a section entitled "Summary of your loan terms." Terms in this section would overlap or conflict with TILA disclosures:

- Creditor vs. Originator - TILA requires a disclosure of the "creditor." The HUD proposal lumps mortgage brokers and lenders together as "originators."
- Amount Financed vs. Loan Amount - TILA requires a disclosure of the Amount Financed (equal to the loan amount less the prepaid finance charges paid at or before closing). The HUD proposal requires a disclosure of the loan amount.
- APR vs. Initial Interest Rate - TILA requires the disclosure of an APR, which is the cost of credit over the life of the loan and takes into consideration all rates that are expected to apply over the life of the loan plus prepaid finance charges. HUD's proposal requires disclosure of the initial interest rate.
- Monthly Payments - TILA requires a payment schedule disclosure that shows payments over the life of the loan. HUD's proposal requires the disclosure of the initial monthly payment.
- Prepayment Penalty - TILA requires the disclosure of prepayment penalties. HUD's proposal requires the disclosure of the penalty and of the maximum amount of the penalty.
- Balloon Payments - TILA requires disclosure of a balloon payment as part of the payment schedule disclosure. HUD's proposal requires a separate balloon payment disclosure.

- Adjustable Rates and Payments/Negative Amortization - TILA requires that the borrower be provided with (1) the Federal Reserve's booklet, Consumer Handbook for Adjustable Rate Mortgages, which explains how ARMs work, (2) ARM Program Disclosures, which describe the specific ARM product offered by the creditor, including how often the rate and payments adjust and limitations on those adjustments and generic examples of maximum rates and payments and whether the loan has the potential for negative amortization, and (3) information on the final TILA disclosure reminding the borrower that the loan is adjustable and reference to the disclosures provided earlier. The HUD proposal requires a disclosure of the maximum rate and payment and if the loan has the potential for negative amortization, the maximum loan balance.

Rejection/Adverse Action/Counteroffer - HUD's proposal requires that if a borrower is rejected for the loan terms identified in the GFE, the borrower must be notified of the rejection within one business day and if another loan is made available a new GFE must be provided. This section of the proposal conflicts with Regulation B and the Fair Credit Reporting Act ("FCRA").

- Regulation B gives a creditor 30 days after declining a loan to provide an adverse action letter and provides procedures for making counteroffers (See Section 202.9 of Regulation B.)
- The one business day time period contained in HUD's Proposal also conflicts with the adverse action requirements of Section 615 of the FCRA.
- Assuming that a GFE application would be a "prequalification" under Regulation B, the requirement to notify a borrower of a "rejection" may convert the prequalification into a declined application under Regulation B, triggering the compliance burden of adverse action requirements under Regulation B (see Regulation B Comments 202.2(f)(3) and 202.9-5).
- HUD's proposal effectively treats any changes to an application that affects the loan terms as a new application requiring new disclosures. This is contrary to ECOA and Regulation B, which generally permit a creditor to define its application procedures (see Regulation B Section 202.2(f)).

These potential effects and the conflicts with TILA, ECOA, and HMDA are not to be taken lightly. The proposal would require lenders to provide consumers with disclosures that are contradictory and confusing. This would be a step backward in the effort to provide consumers with better and more understandable information about loan terms and settlement costs.

Purchasing a home is likely the costliest and most complex transaction that a consumer will undertake. To help consumers understand mortgage and settlement costs, we request that the Department withdraw the proposed rule and coordinate with the Federal Reserve in order to develop TILA and RESPA disclosures that are consistent and complementary.

New mortgage disclosure rules should be adopted in conjunction with the Federal Reserve's initiatives to improve mortgage disclosure practices. The Federal Reserve is working on a rulemaking under Regulation Z that would address payments to mortgage brokers. As currently proposed, the Federal Reserve's disclosures would differ from the proposed RESPA disclosures in terms of the timing, form, and content of the disclosures. In addition, we are aware that the Federal Reserve is in the process of reforming the closed-end credit disclosures that are required by Regulation Z. We strongly urge the HUD to work with the Federal Reserve to adopt a simplified and improved disclosure package for consumers.

Consumer testing of proposed disclosures should be part of this combined effort. We believe that increased collaboration and consumer testing would help to achieve the central goal of this regulatory reform project—that is—to develop loan and settlement disclosures that consumers can understand and use when shopping for a mortgage loan.

In addition to benefiting consumers, a coordinated approach would lessen the costs and compliance burdens on banks. Piecemeal changes adopted by multiple regulators are very costly and inefficient. This is a very real concern for ABA members in today's economic environment. Therefore, we request that HUD work with the Federal Reserve so that banks will be able to implement new disclosure requirements in a cost effective way.

If additional consumer testing is undertaken as a combined effort, we recommend a change in the approach from that implied in the proposal. We believe that the Department's assumptions about borrower loan shopping behaviors do not reflect the way most borrowers actually shop for a loan. Our members indicate that their experience shows that most borrowers do not shop exclusively on the lowest rate, allowing for an easy comparison of one loan vs. another. Instead, experience has shown that borrowers are looking for the loan which best meets their circumstances, and in fact, are shopping for financial advice and the ability to tailor a loan to meet their specific needs. Often this results in significant changes from the initial GFE to the final loan product. Features subject to change include the loan amount (e.g. the borrower discovers they qualify for a higher loan amount and request an increase to purchase a higher priced house); the loan term (e.g. the borrower opts for a shorter term versus a lower payment); and loan type (e.g. the borrower applies for a 30 year fixed, but after considering the expected period of residence opts to switch to a variable rate loan). Under the proposed rule, each of these changes by the borrower will require a new GFE be provided to the borrower, each time the borrower requests a change from their initial discussion with the lender. Required redisclosures will likely delay closings and frustrate consumers who will most likely already have settled on a lender but are in fact only shopping for the right product elements. Further, this redisclosure obligation will present a massive compliance burden as well as litigation risk to lenders. Lenders will be required to modify systems and procedures to ensure that additional GFEs are appropriately given. Plaintiff's attorneys are likely to view the required additional disclosures (and any failure to provide such disclosure) as a lucrative opportunity for lawsuits, no matter how minor the violation, or unnecessary the redisclosure. Such outcomes will only increase costs for the lending industry – and these costs will necessarily be passed along to all consumers in the form of higher fees, rates or both.

TOLERANCES

In a significant departure from the current Good Faith Estimate, the newly proposed GFE would in some instances not be an estimate at all, but a statement of costs which could not, barring "unforeseeable circumstances," be exceeded at closing. Specifically, the proposal creates three categories of settlement charges to be disclosed in the GFE, each subject to different tolerances.

- Zero Tolerance fees would include: the lender or broker's own charges for underwriting and processing (the Department expresses a preference that no fee be charged for the GFE, but allows a fee of the lender's actual costs including the cost of an initial credit report); the credit or charge to the borrower for the interest rate chosen (i.e., the yield spread premium or discount points); and government recording and transfer taxes.

- Ten Percent Tolerance fees (while each fee could increase or decrease, the sum of increases in the fees in this category cannot exceed 10 percent at closing. These include: lender-required settlement services (lender-selected third- party provider such as an appraiser or tax search); lender-required services where the borrower selects a third party provider recommended by the lender (title insurance, settlement services, etc); and optional owner's title insurance when the borrower uses a provider recommended by the lender.

- No restriction fees (the Department places no restriction on how much these fees could differ at closing) include: reserves or escrow; daily interest charges; homeowner's insurance; lender-required services where the borrower chooses their own third party provider (settlement services, title insurance, etc.).

The ABA supports greater consumer protection against unjustified cost increases above good-faith estimates, but does not believe that establishment of zero tolerances are justifiable under RESPA or that the 10 percent tolerance range is practicable on certain third party charges. Section 5 of RESPA requires a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary." The ABA does not believe that this language provides the Department with authority to define tolerances concerning estimates in such a limited fashion as in the proposal. This is particularly true when tolerances are set at a "zero" level, or where lenders do not have the ability to control third party costs.

In addition, exceptions to good-faith tolerances are permitted for only very narrowly defined unforeseeable circumstances. At a minimum, unforeseeable circumstances should include those cost changes which occur in the normal course of business and over which the lender has no direct control.

In summary, the ABA objects to the rule's imposition of overly narrow tolerances in connection with the GFE. Further, we question the statutory authority to establish tolerances in the fashion prescribed. RESPA allows for a range of fees to be disclosed on the GFE and does not impose penalties if the estimate is not consistent with the final settlement statement – it is, in fact, an estimate. This statutory provision would be wrongfully negated by the pending proposal. We believe that imposing tolerances, and more specifically, penalties for failing to meet the tolerances, is beyond the authority granted to the Department under the authorizing statute.

YIELD SPREAD PREMIUMS

Disclosure of yield spread premiums has long been one of the most controversial aspects of RESPA. The newly proposed rule takes an approach which is not likely to reduce this controversy. Under the current RESPA rules, yield spread premiums are disclosed on the HUD-1 Settlement Statement, but it is not transparent that the broker is receiving the compensation. The new proposal would require that YSPs and discount points be disclosed on the second page of the GFE as a "credit or charge for the specific interest rate chosen". It does not propose to label these charges as YSPs. Instead a "credit" is the YSP, and "charge" is a discount point. A mortgage broker would be required to disclose all internal origination fees on page 2 of the GFE under "our service charge". If a lender is paying a broker a YSP, the broker must disclose it as a credit and subtract it from "our service charge" to arrive at the "adjusted origination charge" in order to provide "for the interest rate of X percent". Alternatively, if the borrower chooses to pay discount points to reduce their interest rate, the amount of the discount points would be added to "our service charge" to arrive at the "adjusted origination charge".

The ABA agrees that consumers should receive information that is more specific about a broker's role and compensation in a mortgage transaction. Consumers, particularly first-time homebuyers, are not always well-informed about the mortgage process or the varying roles of the parties that are involved in the transaction. In many cases, consumers are not aware that the interest rate on a loan affects the amount of compensation that a broker receives. However, we believe that the Department's proposed YSP disclosures will do little to assist borrowers in understanding yield spread premiums. The formula required by the proposal is overly complex and will likely only serve to confuse borrowers. Additionally, the proposed approach for disclosing yield spread premiums conflicts with the pending HOEPA and TILA rule changes proposed by the Federal Reserve in its proposed HOEPA revisions. A final rule under HOEPA is expected to be in place as early as July, 2008, well in advance of – and in conflict with – the Department's proposal.

The Federal Reserve proposal aims to increase the transparency of a mortgage broker's compensation. Under these proposed amendments, a mortgage broker could not be paid a yield spread premium unless the consumer agrees in advance to the dollar amount that the broker will receive as compensation. The broker and the consumer must enter the agreement before the consumer pays a fee to any person or submits a loan application. This rule would apply even if all or part of the broker's compensation is paid directly by the creditor.

<u>The ABA generally agrees with the Federal Reserve's simplified approach to YSP disclosures</u>. Disclosing a broker's interest in the transaction, as the Federal Reserve has proposed, will help consumers understand how to better use a mortgage broker. Moreover, providing specific information about a broker's role could make brokers less likely to steer consumers into a more expensive loan product in order to increase their own compensation. In our comment letter to the Federal Reserve on this issue, ABA suggested a number of improvements, but agreed with the general thrust of the proposal.

We cannot similarly agree with the Department's proposal. It is overly complex and will only add regulatory burden for lenders and confusion for consumers. Further, providing consumers with two very different disclosures relating to the same charges is not good public policy. This aspect of the proposed rule needs to be reconsidered and coordinated with the Federal Reserve Board staff. We strongly urge the Department to work with the Federal Reserve to issue regulations and disclosures that are the product of a coordinated effort to improve the mortgage process and to provide useful information to consumers. It would be costly and confusing for the banking industry if the two agencies issued varying rules, revisions, and disclosures independently. Similarly, we are aware that the Federal Reserve is in the process of reforming the closed-end credit disclosures that are required by Regulation Z. We strongly urge the Department and the Federal Reserve to work with all relevant agencies to adopt a simplified and improved disclosure package for consumers. Piecemeal or inconsistent disclosure provisions would not be helpful to consumers and would be unnecessarily expensive for the industry to implement.

HUD-1

The Department is proposing to alter the HUD-1 form so that borrowers may directly compare fees on this form with fees disclosed on the revised GFE. In doing so, the proposal actually reduces a number of itemized fees on the current HUD-1 so that the disclosed fee categories match those of the new GFE. As an example, the current HUD-1 requires a lender or broker to itemize internal origination charges, such as processing and document preparation fees. The proposal would allow a lender or broker's bundled "service charges" to be disclosed instead. The proposal would also require that certain text in the HUD-1 identify the section of the GFE matching the disclosure on the HUD-1.

Additionally, the new HUD-1 would require two additional disclosures (which are not required on the GFE). The title/closing agent would be required to disclose the title agent and title underwriter's portions to the total title premium.

The ABA believes the proposed changes to the HUD-1 are some of the least troubling in the proposal. The minimal changes to the HUD-1 actually give borrowers less information than the current HUD-1, in an attempt to make comparison with the GFE easier. The problem remains the flawed new GFE. Additionally, there will be training and systems updating costs for complying with the new HUD-1 disclosures. The Department has not demonstrated that such costs will result in a markedly improved disclosure for the consumer.

CLOSING SCRIPT

The proposal includes a new addendum to the HUD-1 known as a "Closing Script" which is required to be prepared by the closing agent, read aloud to the borrower at closing and provided in hard-copy to the borrower with a written acknowledgement. The script would seek to explain loan terms such as "interest rate," "monthly payment," "fees," etc. A specific script format is called for and included in the Appendix to the regulations.

The closing script, while in theory a good idea, will actually only lead to longer closings, more potential litigation over what was presented and how it was heard or misheard, and additional training and compliance costs for lenders. RESPA reform should have as a goal the clearest, most concise disclosures possible. If that goal is met, there is no need for a separate "plain English" description of what has just been disclosed to the borrower – particularly one which will add time and cost to the settlement process.

Additionally, the concept of a "closing script" to be read at closing assumes a face-to-face closing. Many loans are settled without a face-to-face meeting, with documents shipped, or otherwise delivered. Such situations do not facilitate a reading of a closing script. Finally, even if it is possible for the closing script to be read in person, it is delivered at a time when the borrower is virtually powerless to do anything with the information provided. Most borrowers will be unwilling to stop a closing (and possibly cancel a transaction) at the very last minute. They will view the closing script merely as one more hurdle before receiving their loan.

AVERAGE COST PRICING and NEGOTIATED DISCOUNTS

In addition to proposed changes to the HUD-1 itself, the proposal seeks to include a requirement that "The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the third party for that itemized service, unless the charge is based on an average cost price in accordance with paragraph (b)(2) of this section." This language indicates that mark ups of third party fees would be prohibited unless done so on a cost averaging basis. The Department would allow lenders or brokers to use average cost pricing for settlement services. The average price would be arrived at using either the actual average cost of a settlement service determined over the previous six month period, or through a tiered pricing approach. The rule would appear, however, to prohibit any other mark ups of services outside of the cost averaging.

Another pricing issue addressed by the proposal is an amendment to Section 8 of the current RESPA relating to a "thing of value". Currently, Section 8 prohibits any person from giving or receiving a "thing of value" – including discounts – in return for the referral of business. The proposal would amend the definition of "thing of value" to exclude discounts negotiated by settlement service providers in the price of a third party settlement service so long as no more than the discounted price is charged and disclosed on the HUD-1 form. This appears to allow settlement service providers to negotiate volume discounts so long as they pass the savings along to the borrower. A concern for lenders here is that if the lender negotiates a volume discount and the entire savings is not passed along to the borrower, they could be in violation of Section 8 of RESPA.

Average cost pricing and negotiated discounts are something which could benefit both consumers and lenders. We note, however, that volume discounts may put community banks at a disadvantage, as most discounts will be negotiated on a volume basis. Smaller banks, making fewer loans, will not be able to negotiate as many or as deep discounts as larger lenders. Further, lenders should be allowed to benefit as well from negotiated discounts (not being required to pass along the entire savings to the borrower), or there is little incentive for them to enter into such programs.

REQUIRED USE

The current RESPA rules prohibit the required use of particular settlement service providers. The rules allow for discounts and incentives that serve as an impetus for a borrower to use a certain settlement service provider. The proposed rule would allow for the optional combination of services at a lower price, but would prohibit discounts for using an affiliated provider. For example, under current RESPA rules a homebuilder could offer discounts to borrowers using the builder's affiliated mortgage or title companies, but under the proposed rule, the builder would not be allowed to offer a discount from the affiliated company for a particular service, but instead would be allowed to offer a combination of services at a lower price.

The ABA is concerned that the proposal to change the treatment of "required use" is flawed and unreasonable. The Department cites anecdotal evidence that incentives have been abused by some companies to steer customers to affiliated vendors with high prices and inferior service, but offers no empirical evidence to support this assertion. The Proposed Rule prohibits incentives to use an affiliated company unless a cost savings to the borrower can be demonstrated. An incentive does not become a "required use", however, merely because that entity is an affiliated company. Neither can an ordinary incentive be seen as tantamount to a required use without some undue leverage. Moreover, there is no credible data showing that affiliated companies offer higher costs or inferior service to that of unaffiliated companies. Yet, the Proposed Rule concludes that incentives to affiliated companies should be prohibited.

The proposal runs counter to the plain meaning of the words used by Congress in the RESPA statute. By defining "required use" to mean any incentive offered to use an affiliated company, the proposed rule contradicts the unambiguous meaning of the statutory word "required". An incentive is not a requirement; it is simply that, an incentive. The Department should not confuse legitimate incentive arrangements among affiliated entities with undue influence or a required use of a product or service.

CONCLUSION

The ABA strongly opposes the proposed rule. The rule fails to meet the goals the Department itself establishes for the proposal:

- It does not improve the GFE, but instead makes it longer and more confusing;
- It does not provide for a clear summary of loan terms and settlement charges, but instead will serve to confuse consumers with definitions and

disclosures which run counter to those provided in other statutes and regulations;

- It will not lead to more accurate estimates of costs, but instead will only add costs for borrowers as lenders implement costly compliance structures to ensure the new requirements are met and then face penalties and lawsuits for violations that merely reflect unreasonable tolerances;
- It will not improve disclosures of yield spread premiums, but instead will further serve to confuse consumers with complicated calculations and requirements that run counter to disclosures required under the Truth in Lending Act;
- It will not facilitate better understanding through a "closing script" but instead will only delay closings and subject lenders to additional liability for misunderstandings associated with a closing script; and
- It will not clarify pricing mechanisms benefiting consumers, but instead will prohibit reasonable incentives provided for the use of affiliated service providers.

The rule is badly flawed, runs counter to a number of legal and regulatory requirements, and will harm, rather than help, consumers. It should be withdrawn and re-proposed after further consideration.

We appreciate this opportunity to comment on this proposal. Should you have any questions, please contact the undersigned or Joseph Pigg at 202-663-5480 or jpigg@aba.com.

Sincerely,

Robert R. Davis

Robert R. Davis