



Credit Union National Association

# ***CUNA Issue Summary***

## **RESPA REFORM**

**ISSUE:** In 1974, the *Real Estate Settlement Procedures Act* (RESPA) was enacted into law to address what was then considered abusive practices that increased costs to homebuyers and a lack of understanding among homebuyers about the settlement process and its costs. RESPA's stated purpose was (1) to provide the consumer with information about the real estate mortgage transaction and the costs associated with it, and (2) to prohibit certain practices, such as referral fees between settlement service providers, that result in higher costs and reduced quality to the consumer. To provide consumers with cost information about the mortgage process, RESPA created the Good Faith Estimate (GFE) and the HUD-1 closing document. To combat higher costs in the transactions, RESPA's Section 8 makes it a criminal act for settlement service providers to pay fees to each other for the referral of business. Since its enactment, RESPA has been amended and clarified to address new business practices, i.e.: Affiliated Business Arrangements (AFBA) and other innovations in the marketplace.

A great deal of uncertainty still exists over what fees are permitted versus prohibited. This is an area that continues to cause a tremendous amount of angst among settlement service providers given that Section 8 violations may result in criminal penalties as well as substantial civil penalties. However, Section 8 is also where the consumer receives the most protection from unnecessarily high costs in the transaction.

In July of 2002, HUD undertook the significant task of overhauling RESPA and issued a proposed rule. HUD proposed two approaches to mortgage disclosure: 1) Enhanced Good Faith Estimate (GFE): and 2) the Guaranteed Mortgage Package (GMP). The enhanced GFE intended to provide homebuyers with more detail and more exact numbers prior to settlement. The GMP intended to provide lenders an exemption from the Section 8 anti-kickback provisions of RESPA for offering to borrowers a guaranteed price for a package of combined settlement services.

CUNA has supported the concept of amending the RESPA rules in order to simplify and streamline the home purchase and settlement process in an effort to reduce out of pocket costs to consumers and increase quality of services. However, the GMP proposal would have likely placed small lenders such as credit unions at a distinct competitive disadvantage to the larger institutions, which would have had the ability to negotiate discount pricing with settlement service providers. CUNA feared that the mortgage market would have been completely dominated by the larger institutions since the smaller lenders would not have been able to compete effectively, essentially forcing them to cut back or leave the mortgage market entirely.

CUNA was also concerned that the GMP would indirectly harm efforts to curb predatory lending. Since the credit union mission is to serve the underserved and those of modest means, if credit unions were no longer able to compete effectively in the mortgage market, those members who would normally be served by credit unions could have fallen prey to financial institutions that have not historically shown an interest in providing reasonably priced mortgage loans to those of modest means. CUNA recommended a GMP pilot program in certain selected geographic areas to determine if GMPs fulfilled the goals that were intended in the proposal.

Although CUNA applauded HUD's desire to simplify the settlement process, CUNA expressed concern that the proposed 3 page GFE form would actually increase confusion to the borrower. Significant changes to the GFE would have presented a number of compliance hurdles that would have impacted smaller institutions with fewer resources. Increased compliance costs cannot be absorbed by not-for-profit credit unions, so they would have had to be passed on to the members. Definitions such as unforeseeable and extraordinary circumstances would also have to be clarified, as well as the guarantee of any costs that were not within the credit union's control; otherwise it would have posed serious safety and soundness issues.

Larger financial institutions which could have afforded to handle all aspects of the real estate transaction in-house (home owner's insurance, mortgage, title insurance, settlement attorney, home warranty etc.) or negotiated discount prices with settlement service providers preferred the big package deal or the GMP. However, many of the large lenders supported HUD's RESPA proposal only in the context of the GMP and only if the rule provided a "safe harbor" from the Section 8 prohibition against markups on third-party service providers' fees. Large lenders also did not support the enhanced GFE, because their will never be an absolutely perfect good faith estimate.

All service providers should view any regulation that moves an industry toward a more concentrated market structure with considerable caution. On March 4, 2004, Representatives Ruben Hinojosa (D-TX) and Judy Biggert (R-IL) sent a letter to OMB calling on the agency to reject the proposed changes to RESPA. The letter was signed by over 226 members of Congress asked OMB to send the rule back to HUD. On March 22, 2004, citing "the significant number of questions raised about the draft RESPA rule" HUD Secretary Alfonso Jackson notified OMB that the U.S. Department of Housing and Urban Development decided to withdraw the rule.

**IMPACT ON CREDIT UNIONS:** The *Real Estate Settlement Procedures Act* (RESPA) applies to federally-insured state-chartered credit unions that make or refinance a loan that is secured by a first or subordinate lien on a 1-to-4 family residential property. RESPA also applies to privately-insured credit unions if the mortgage loan, in whole or in part, is insured, guaranteed, or assisted by the federal government or is intended to be sold on the secondary market.

This law, which the Department of Housing and Urban Development implements through Regulation X, was written to better enable consumers to shop around for settlement services and to eliminate kickbacks and referral fees that unnecessarily increase the cost of settlement services. RESPA covers home purchase loans, refinances, home improvement loans, home equity loans and reverse mortgages. Home equity lines of credit (open-end credit) are exempt from the RESPA disclosure provisions as long as the credit union provides the required Truth-in-Lending disclosures to members for such loans.

**STATUS/OUTLOOK:** On March 14, 2008, HUD published a new proposed RESPA rule. HUD's proposal sought to improve and standardize the Good Faith Estimate (GFE) form to make it easier to use for shopping among settlement service providers. It also would have ensured that page one of the GFE provided a clear summary of the loan terms and total settlement charges so that borrowers would be able to use the GFE to comparison shop among loan originators for a mortgage loan. The proposal also sought to provide more accurate estimates of costs of settlement services shown on the GFE. In addition, it aimed to improve disclosure of yield spread premiums to help borrowers understand how they could affect their settlement charges. The proposal facilitated comparison of the GFE and the HUD-1/HUD-1A Settlement Statements (HUD-1 settlement statement or HUD-1), helping to ensure that at settlement borrowers were made aware of final loan terms and settlement costs. It also required the reading and providing a copy of a "closing script" to borrowers and it clarified HUD-1 instructions. In addition, the proposal clarified HUD's current regulations concerning discounts. Also, the proposal sought to expressly state when RESPA permitted certain pricing mechanisms that benefit consumers, including average cost pricing and discounts and volume based discounts.

On May 14, 2008, CUNA submitted a comment [letter](#) to HUD expressing its concerns over provisions in the proposed RESPA overhaul. Representatives Ruben Hinojosa (D-TX) and Judy Biggert (R-IL) sent a letter signed by 146 other Members of Congress, urging HUD to extend the comment period on the RESPA proposal. HUD granted the request and many believed that implementation of a new RESPA rule would be left to the next Administration. On August 7, 2008, Hinojosa and Biggert submitted a follow-up letter in which they urged HUD to extend the comment period further and also work with the Federal Reserve on a joint rule compatible with disclosure forms provided to consumers under the *Truth in Lending Act*. The letter was signed by more than 200 House members. The comment period closed on June 12, 2008.

On August 21, 2008, HUD submitted its final RESPA proposal to the Office of Management and Budget for a required review. Reps. Hinojosa and Biggert, as well as CUNA and other trade associations, expressed their concerns with the proposal as submitted. On September 16, 2008, Rep. Melvin Watt (D-NC), Chairman of the Subcommittee on Oversight and Investigations, held a hearing on the proposal. CUNA wrote a [letter](#) regarding HUD's RESPA proposal. Chairman Watt has indicated that legislative action may occur in response to the proposal.

On November 12, 2008, HUD announced that it had finalized its changes to the Real Estate Settlement Procedures Act regulations. They were published them in the Federal Register and the changes will become effective on January 1, 2010. The final RESPA rule changes and lengthens the Good Faith Estimate and HUD-1 Settlement Statement forms. It also requires that RESPA forms include information on interest rates and loan terms. It requires lenders to stay within tolerances of certain cost disclosures included in the GFE form and mandates that yield spread premiums paid to mortgage brokers will have to be disclosed as "credit or charge for the interest rate chosen."

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