



News Flash

MAY 20, 2008

Proposed RESPA Rule

Urgent – Action Needed Before June 12, 2008

HUD has proposed changes to RESPA with the intent to provide borrowers more complete, accurate and understandable information about their new loans. While there may be some aspects of the proposed rule that would improve the system, many of the changes, if enacted, would result in significant changes detrimental to the California escrow settlement process.

CEA, along with CLTA, AEA, ALTA and a number of other related-industry trade associations will be sending official comments to HUD about the impact of the proposed changes on the escrow settlement process.

This is a key time for your individual voice to be heard. You'll want to review the proposals and know how they could change the way you handle escrow transactions. Some of the key components are listed below, along with references for more information.

Please submit your comments directly to HUD by the - revised deadline of **June 12, 2008**. *Note that it is largely ineffective to create a form letter and have different people submit the same comments.*

Comments should be submitted to HUD in electronic form by using the following direct link to the RESPA comments submission page on the HUD website:

<http://www.regulations.gov/fdmspublic/component/main?main=SubmitComment&o=09000064805a5d3a>
(scroll down the page for the submission form)

All submissions must refer to the docket number and title of the rule:

Docket No: HUD-2008-0028

Title: FR-5180-P-01 Real Estate Settlement Procedures Act (RESPA)

(Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs)

After submitting them to HUD, please forward a copy of your comments via email to CEA – jennifer@camgmt.com - subject line "RESPA".

If you prefer to mail comments, they must be sent for receipt before the June 12th deadline to:

Regulations Division, Office of General Counsel
Department of Housing and Urban Development

451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001.

HUD strongly encourages electronic submissions. All comments when submitted are available to the public.

Following are some issues and talking points you may wish to include in your comments. You may choose one or several which are meaningful to you - **and put them in your own words**. How would you be affected? How would your customer the buyer/borrower, seller and others in the transaction be affected? Remember that east of the Mississippi, many still equate 'escrow' with an impound account, so you should indicate 'California settlement agent' rather than 'escrow officer' to make the difference in terms easier for the reader and ultimately for HUD.

The full text of the proposed changes can be viewed on the HUD Web site at:
http://www.hud.gov/offices/hsg/sfh/res/respa_hm.cfm

Additional information can be obtained as it becomes available from:

CEA, www.ceaescrow.org

CLTA, www.clta.org

AEA, www.a-e-a.org

ALTA, www.alta.org

http://www.alta.org/images/PDF/08-04-08_RESPA_Rule_Memo.pdf

http://www.alta.org/images/PDF/08-04-14_RESPA_ListofIssues.pdf

HUD Extension of Comments period to June 12, 2008: <http://www.hud.gov/news/release.cfm?content=pr08-061.cfm>

Issues

There are many changes in the new RESPA rule affecting the California settlement agent, the lender, the mortgage broker, the title insurer and others. Below are some very brief details on the impact of the proposal on the California settlement agent. This information is intended to be a guide to assist with your correspondence to HUD and is not intended to be viewed as a comprehensive guide to all proposed changes.

Closing Script: The proposed rule would require the California settlement agent review the Good Faith Estimate provided to the borrower at the beginning of the transaction by the lender, compare it to the actual terms of the new loan at the time of loan document receipt and choose the appropriate closing script, by loan type, to prepare and read to the borrower at the time of signing. The preparation of the closing script would include not only a complete explanation of the terms of the transaction, but also essentially an accounting of the differences in the estimated and actual closing costs. By their own estimate, HUD indicates that the closing script adds forty-five minutes to the closing process; depending on the circumstances, it could take much longer than that.

Fee tolerances: Under the proposed rule, depending on the type of fee, some fees such as recording fees could not vary at all and other fees could vary up to 10%. There is reference to average-cost pricing of recording fees and this might be a reasonable solution to past problems, particularly in California where exact recording fees may not be known until the day of closing. The main issue with fee tolerances is that the proposed rule does not provide a remedy for the circumstances where the borrower and California settlement agent are learning for the first time at the document signing that the tolerances have been exceeded. Is the California settlement agent to stop the signing? How does the transaction continue?

Talking Points

Regarding the Closing Script:

The lender is the party most knowledgeable about loan products and most able to explain variations in costs and terms prior to closing. The lender should prepare any requisite closing versus initial estimate comparisons and explain to the borrower, in written form, all differences in fees, pricing and terms.

Where the signing of documents is conducted away from the California settlement agent for the convenience of the borrower, there is not an alternate method provided for delivery of the closing script by the notary or other vendor.

The California settlement agent receives, delivers and follows written instructions in transactions in a process that has worked efficiently and effectively for decades. Verbal delivery of loan details is contrary to standard California settlement procedures and carries the burden of not being able to provide evidence of the verbal information given.

Preparation and use of the closing script would require the California settlement agent take on new roles in the closing process; this is NOT a function we already perform.

Generally the California settlement agent is not an attorney and is prohibited from the unlicensed practice of law.

The role of the California settlement agent is that of a neutral third party. Requiring the California settlement agent to prepare and read the script seems to make them an agent of the lender in delivering the details of the final loan terms.

Requiring the California settlement agent to compare the GFE and the loan documents, prepare the closing script and detail the changes for the borrower would result in significant additional time and cost added to the transaction, likely yielding higher fees in the end.

Preparation of the closing script forces additional liability on the California settlement agent for possible mistakes in preparation, for misstatements at the time of signing and in the event incorrect information was provided by the lender.

It is unclear in the proposed rule what happens when the terms of the loan changed during the course of the transaction due to changes in sales price, appraised value, downpayment amount or other pre-closing transactional changes that result in a change in the loan amount and therefore those fees that may be calculated as a percentage of the sales price or loan amount.

If the intent of the closing script is to give one last, final review of the documents to ensure the terms are as the borrower agreed; the time of signing carries with it a degree of urgency that may prevent the borrower from adequately addressing any changes in terms or fees or from resolving those issues prior to closing. Borrowers are hesitant to create delays at the signing table when a closing deadline looms.

There is no direction given to how the California settlement agent would verbally deliver the closing script when borrower is a non-English speaker, is hearing-impaired or has other physical or developmental barriers which prevent verbal delivery.

As a convenience to the buyer/borrower and to expedite the transaction, the California settlement agent has taken on additional duties including assisting with loan document signing. Loan document signings at one time were conducted by the lender.

Although many of the proposed changes have been discussed in prior RESPA rule workshops industry-inclusive roundtable discussions, the closing script is an entirely new concept not thoroughly explored by HUD for its impact on the closing process.

Regarding Fee Tolerances:

The proposed rule provides no direction about how the California settlement agent should proceed when fee tolerances are exceeded.

The proposed rule provides no direction about the borrower's remedies when fee tolerances are exceeded.

It is impractical, difficult or impossible to determine with exact accuracy the amount of recording fees prior to recording. Additionally, it may be unknown if certain transfer taxes will be charged (for instance, in a transaction between family members).

Average cost pricing should be available for fees such as governmental/recording fees as well as appropriate settlement charges such as settlement/closing fees and charges arranged for by settlement services providers.

Regarding other related items:

California has an efficient, low cost system that would be harmed by the imposition of additional duties and time requirements on the California settlement agent.

Adverse impact on small business:

The additional software and systems requirements as well as the additional labor required to comply with the proposed rule would be onerous to the California settlement agent, many of whom are located in small, individually-owned or operated offices.

Disclosure of title insurance underwriter/agent split of premium:

It is neither practical nor useful for the California settlement agent to be required to detail the allocation between underwriter and agent for the title insurance premium; in some cases this information may not even be available to the closer. No other parties in the transaction, such as property and casualty insurers, real estate brokers and agents or other parties are required to disclose percentages received as compensation.