Expert Exposé - Jeff Naimon

RESPA - HERE WE GO AGAIN

At a June 27, 2005 press conference, Department of Housing and Urban Development ("HUD") Secretary Alfonso Jackson announced HUD's roadmap for reform of its regulations implementing the Real Estate Settlement Procedures Act of 1974 ("RESPA"). HUD states that it seeks to "update, simplify and improve the disclosure requirements for mortgage settlement costs and help control these costs for consumers."

Because of both ongoing consumer confusion at settlement that RESPA was meant to alleviate, and the general understanding that RESPA was propping up prices to consumers rather than lowering them, HUD has made efforts in the past to reform RESPA. The most recent effort began with a proposed rule published in the Federal Register on July 29, 2002, that included both a safe harbor from RESPA Section 8 liability for settlement service providers offering a specified "guaranteed mortgage package" ("GMP") and a requirement that certain disclosures on the Good Faith Estimate ("GFE") be exact. After months of comments and meetings with interested groups, HUD eventually sent a draft final rule for review by the Office of Management and Budget. That draft was abandoned in March 2004 prior to final adoption because settlement services providers and consumer advocates strongly disagreed both with HUD and one another as to the best approach for reform.

HUD is seeking the thoughts of numerous consumer advocacy and trade groups across the entire spectrum of the industry. It plans to conduct three general roundtable discussions at its headquarters in Washington, DC in July and August of this year with consumer organizations, industry trade groups, state government associations, and selected industry providers. Participation is by invitation only. HUD also announced that will it hold roundtable sessions focused on the impact of potential RESPA reforms on small businesses at locations in Los Angeles, California; Chicago, Illinois; and Fort Worth, Texas, also in July and August. HUD indicated that it is seeking comments, suggestions, views and perspectives on a variety of issues, many of which were the most significant issues on which industry groups and consumers differed as HUD's 2002 proposal was discussed. The following are most of the issues on which HUD has said it is seeking input, along with some commentary on each issue from the 2002 rulemaking process:

> What changes, if any, should be made to the Good Faith Estimate form to make it more helpful to consumers and the industry?

Consumer groups and the National Association of Realtors supported HUD's 2002 proposed changes to make the GFE less of an estimate and more of a guarantee to prevent deceptive sales tactics and reduce consumer confusion at closing. Lenders and brokers largely opposed that portion of the provision, stating that the proposed change would cause lenders to raise prices to create a cushion, delay the implementation of the guaranteed mortgage package, lead to a welter of litigation, and was probably beyond HUD's authority to require in any event.

How should loan originator compensation be disclosed on the Good Faith Estimate?

Consumer groups had requested that HUD require yield spread premiums to brokers be disclosed as lender credits to the borrower. Brokers opposed any disclosure of their "back-end" compensation and have been seeking to have the same disclosure as given for lender employees like loan officers who similarly get loan level (and sometimes rate-based) compensation. Most lenders wanted to remove the "lender credit" yield spread premium disclosure but add a new broker disclosure that would disclose all of the broker's compensation from the transaction.

What may be the impact on consumers of a mortgage package that includes an interest rate guarantee and a fixed price for settlement costs?

HUD, supported by the consumer groups, proposed requiring the Guaranteed Mortgage Package or GMP to include a rate guarantee, presumably to ensure that a lender would not slip out of its closing cost guarantee by raising the loan rate. Lenders strongly opposed requiring the rate guarantee because the GMP is provided too early - right at application -- and it would require the lender to in essence provide a free rate lock.

How can subpackaging be designed to maximize competition without creating undue complexity for consumers?

Two major trade groups, the American Land Title Association ("ALTA") and the Real Estate Settlement Providers Council ("RESPRO") promoted the concept of "dual packages", one for "lender services" such as appraisal and credit reports, and the other for "other services," such as title. They believed that the large lenders or packagers would have enough market power to squeeze their profit margins. Lenders pushed hard for a single package, both because of the complexity of having two packages and because much of the proposal's consumer benefit would come from the same price squeezing feared by the title providers. Many lenders were also concerned that without Section 8 liability, real estate agents would have the business leverage to force lenders to accept an overpriced "subpackage" from the

real estate agent, again subverting the reform proposal's savings from the lower price for the consumer to a bigger slice of the pie for the real estate agent.

Should Home Ownership and Equity Protection Act (HOEPA) loans be eligible for packaging?

Consumer groups pushed hard to prevent the GMP reform from applying to HOEPA loans, on the basis that these consumers needed the protections provided by RESPA Section 8. Lenders, led by the Consumer Mortgage Coalition, argued that the simplicity and lower costs of the GMP were most important to borrowers getting higher cost loans and that the simplicity of the GMP would be an important step forward in stopping predatory lending.

So here we go again. If you want to see HUD's notice for yourself, the following are links to HUD's Federal Register notice announcing this reform process and to HUD's invitation list for the Washington, DC roundtable discussions:

http://www.hud.gov/respareform/notice.pdf