

February 9, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Dear Secretary Donovan:

As you begin your service as Secretary of Housing and Urban Development (HUD), we the undersigned organizations representing the real estate finance industry, respectfully request your action on an urgent and important matter - the Real Estate Settlement Procedures Act (RESPA) rule published by the previous administration, on November 17, 2008.¹ While all of us have worked for many years to improve the mortgage disclosure process to better protect and empower consumers and we appreciate the efforts HUD has taken to date, we strongly believe that the rule should be withdrawn and coordinated with the ongoing reform effort of the Federal Reserve Board (Board) under the Truth in Lending Act (TILA). We would greatly appreciate a meeting with you to explain our position further.

On January 20, 2009, Rahm Emanuel, White House Chief of Staff, sent a memorandum to the heads of executive departments and agencies concerning the new administration's review of new and pending regulations. This memorandum directs agencies, in cases of new regulations that have been published in the *Federal Register* but have not yet taken effect, to consider extending the effective date for 60 days and reopening the public comment period for 30 days, to review questions of law and policy.

HUD published the final RESPA rule on November 17, 2008, and it became final on January 16, 2009. However, the critical parts of the rule—new required disclosures to be given to consumers when they are shopping and applying for a mortgage as well as final disclosures to be provided at closing—do not go into effect until January 1, 2010. Considering this delayed effective date, the revised rule should be reevaluated consistent with the Emanuel memorandum. Beyond the memorandum, however, numerous reasons warrant withdrawing the rule and coordinating it with the Board's reform effort.

RESPA, which is HUD's responsibility, provides borrowers information on their settlement charges, while TILA, which is the Board's responsibility, provides borrowers information on the costs and terms of the credit transaction. Generally, disclosures under both laws are provided simultaneously to the consumer at application and at closing. For these reasons, disclosures under both laws should be complementary, and designed to work together to achieve their common purpose of ensuring consumer understanding. The Board has announced that it is broadly reviewing TILA disclosure requirements for both mortgages and home equity loans, with a proposed rule anticipated soon. This endeavor, above all, militates in favor of combining the RESPA and TILA reform efforts.

¹ The final regulation is at 73 Fed. Reg. 68204 (November 17, 2008).

Also, immediately following the RESPA rule's comment period, Congress enacted the Mortgage Disclosure Improvement Act changing the timing requirements for TILA disclosures and requiring new adjustable-rate mortgage (ARM) disclosures. The new timing rules will go into effect on July 1 of this year, and the provisions concerning ARMs to help borrowers avoid payment shock will go into effect in 2011. These changes need to be coordinated with HUD so that RESPA and TILA disclosures can be provided together.

Considering that RESPA and TILA rules are so interrelated, successive disclosure changes, first by one agency and then the other, would be unnecessarily costly for the industry at a time when the industry can ill-afford the costs, and would confuse consumers rather than providing greater clarity. Instead, we recommend that you work together with the Board in a coordinated effort to reform the mortgage disclosure process.

During the comment period on the RESPA rule, 244 Members of Congress, industry participants, many of the undersigned, and even the Federal Reserve Board staff, asked HUD to coordinate its rulemaking efforts with the Board. We once again encourage you to do so.

The fact remains that consumers today confront a daunting array of disclosures that are disparate, uncoordinated, confusing and, consequently, too often ignored. Given the new administration's desire to review new and pending regulations, and to address problems in the marketplace, the administration has a unique opportunity to assure its new RESPA requirements do not exacerbate the problem and are an important part of the solution. To do this, and to assure that disclosures are useful and harmonious, we urge that HUD and the Board join together, with industry, consumers and other stakeholders, to make disclosures as effective as possible. Withdrawal or suspension of the RESPA rule and its combination or coordination with the Board's reform efforts is a necessary first step to achieve this goal.

Again, we would welcome an opportunity to meet with you at your earliest convenience to detail our concerns and to provide all necessary assistance in the future.

Thank you for your consideration of this important matter.

Sincerely,

American Bankers Association

American Escrow Association

American Financial Services Association

Consumer Bankers Association

Consumer Mortgage Coalition

Housing Policy Council of the Financial Services Roundtable

Independent Community Bankers of America

Mortgage Bankers Association