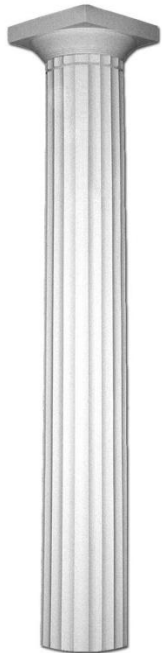


RESPA Proposed Rule 2008

“Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages & Reduce Consumer Settlement Costs” (73 FR 14030)

MBA Legal Issues and Regulatory Compliance Conference 2008



Legal Concerns

Rodrigo J. Alba, *Esq.*

Legislative Counsel, MBA

1250 24TH STREET, NW

WASHINGTON, DC 20037

202/306-4911

RXALBA@VERIZON.NET

RESPA: Background

- The Department of Housing and Urban Development (HUD) publishes proposed rule to amend Regulation X (RESPA) on March 14, 2008.
- The objective in proposing these revisions is to “protect consumers from unnecessarily high settlement costs” through various new provisions.
- HUD invites the public to submit comments on the proposed provisions. The comment due date is May 13, 2008.



RESPA: Background

▶ Proposed Rule

- ✓ HUD's release does not impose any immediate compliance changes on lending institutions.

▶ Compressed Comment Period

- ✓ HUD limited the comment period to 60 days
- ✓ Due May 13, 2008

▶ “Proposal” stage : Agency projects intention & trial approaches.



Assumptions

- ▶ Legal Critiques Assume –

- ▶ HUD “means” what it states in the proposed issuance;
- ▶ All portions of the issuance are relevant in distilling intent—
 - ▶ Regulatory changes
 - ▶ Preamble
 - ▶ Economic Analysis



GFE Amendments

- ▶ Proposal sets forth “bifurcated” application process through two new definitions for “application”—
 - “GFE Application,” and
 - “Mortgage application.”
- ▶ Gives Rise to A Series of Legal & Regulatory Questions



GFE Amendments: Question 1

▶ How does the “bifurcated” system work?

➤ “GFE Application”

- ❑ written or oral submission of information which triggers the transmittal of a GFE to applicant;
- ❑ allows for “preliminary credit decision concerning the borrower.”
- ❑ “Restricted” to six items of information—name, social security number, property address, gross monthly income, information on house price (or best estimate of the value of the property).

➤ “Mortgage Application”

- ❑ fuller application submitted once consumer has “shopped and compared” the market.
- ❑ Once applicant decides on a particular loan originator, originator is notified and more information is exchanged to “fully underwrite the loan.”



GFE Amendments: Question 2

- ▶ Does the Proposed rule mandate free and fast underwriting?
 - GFE disclosures subject to “tolerance”;
 - Originator “must complete final underwriting within a reasonable time”;
 - Charges are restricted.



GFE Amendments: Question 3

- ▶ Which definition for “application” will now serve as the trigger term for all other applicable federal regulations?
 - ▶ TILA
 - ▶ ECOA
 - ▶ FCRA
 - ▶ HMDA



GFE Amendments: Question 4

- ▶ Do the proposed GFE rules provide new and different requirements when rejecting the applicant?
 - Revised GFEs (redisclosures);
 - Rejection = 1 business day notification;
 - Borrower-initiated changes to the application.



GFE Amendments: Question 5

- ▶ Does HUD have the necessary authority to issue the proposed GFE changes?
 - Forms
 - Tolerances



Mortgage Brokers: Definition

- ▶ Definition: Term “Mortgage broker” proposed to be defined as a “person (not an employee of a lender) or entity that renders origination services in a table funded or intermediary transaction.”
 - HUD adding a definition for “origination” services, but it is NOT removing existing definition for “settlement services” that now appears in Regulation X.
 - The proposal does not define novel term “intermediary transaction.”



Mortgage Brokers: Disclosure

- ▶ Disclosure: Proposed rule would classify the Yield Spread Premium, and all other payments to the mortgage broker, as a “Service Charge.”
 - Varies from the Board’s recent HOEPA proposal;
 - Require disclosure of compensation to loan officers?
 - Authority under RESPA.



Interactions With TILA

- ▶ **General Observations**



Closing Script

- ▶ Statute silent on any guidance regarding—
 - Authority
 - Liability

- ▶ Clash with E-Sign Act?



Section 8

▶ Average Cost Pricing

- Establishing the “pass-through”
- Burden of proof
- Other

▶ Required Use

- Proving “incentive” becomes extremely risky. Effect is to prohibit “incentives” as well as “disincentives.”
- Involves HUD into “pricing” of product offered by referring party.
- Other



Questions and Answers

RODRIGO J. ALBA, *ESQ.*

LEGISLATIVE COUNSEL, MBA

WASHINGTON CONSULTING ALLIANCES

1250 24TH STREET, NW

WASHINGTON, DC 20037

RXALBA@VERIZON.NET

RALBA@BUCKLEYKOLAR.COM

