

DONALD A. MANZULLO  
16TH DISTRICT, ILLINOIS

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June 10, 2008

Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 Seventh Street, S.W.  
Room 10276  
Washington, D.C. 20410

Re: Real Estate Settlement Procedures Act (RESPA): Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs

Docket No: FR-5180-P-01 / 73 Fed. Reg. 14030 (Mar. 14, 2008)

Dear Sir or Madam:

Thank you for the opportunity to comment on this proposed rule to amend the Real Estate Settlement Procedures Act (RESPA). I recognize and appreciate the amount of time that the Department of Housing and Urban Development (HUD) has put into developing these recommendations. However, after a thorough review of the proposed regulations, I remain unconvinced that these changes will enhance the home buying process, and in fact may act as an unnecessary distraction for HUD during this time of market turmoil.

As you are aware, I have long been critical of HUD's attempts to reform RESPA, as I feel that the attempts evidence a serious lack of familiarity with real world experience in the real estate settlement process. Despite HUD's best efforts, I feel that this current attempt at reform is no different. As many settlement practitioners have undoubtedly expressed, there are numerous practical problems with this rule. I would like to address three that concern me specifically.

First, with the housing market in crisis, I seriously question the appropriateness of HUD's timing with this rule. As a Member of the Financial Services Committee, I have sat through a number of hearings in which the government witnesses have assured me that our agencies are pouring all their resources into aiding the ailing housing market. The timing of these new regulations—some of which could actually create impediments for settlement service providers struggling to maintain their businesses—leaves me to wonder whether HUD is adequately using its resources to help troubled homeowners and the associated housing sector businesses. During this time of market turmoil the resources of our housing agencies should be exclusively directed toward helping people stay in their homes, not yet on helping them to purchase new ones.

Furthermore, I echo the concerns of my colleague, Representative Steve Chabot, the Ranking Member of the Small Business Committee, that the Department's initial regulatory flexibility

analysis uses data from as long as five years ago. Five years ago was around the time when I held a hearing in the Small Business Committee regarding the incompetent job HUD did in its regulatory flexibility analysis. The HUD witness could not point out the part of the analysis that dealt with settlement attorneys or the small business people involved in a closing. Again, this makes me question HUD's awareness of the residential real estate market. Not only has the market changed significantly since the data was obtained in 2002 and 2004 (which may not have even been sufficient at the time it was gathered), but these changes may impact how the regulations are implemented. HUD should most certainly update this data and ensure that it is a thorough representation of those industries impacted by these regulations and the current market conditions before moving forward with the proposal.

Second, I raise issue with the obligations placed on title companies and closing agents by the requirements of a closing script. Requiring the closing agents to explain specific loan terms, such as interest rate, monthly payment amount, and the presence of a prepayment penalty places the agent in the ambiguous position of acting not only as a closing agent, but as a lender as well. There is no guidance given as to what action the closing agent should take if there is a discrepancy between the final documents sent by the lender and the estimated settlement costs provided at the application stage, specifically if this discrepancy violates the 10 percent tolerance for certain settlement charges.

Moreover, forcing the closing agent to read the script places them in a difficult position should the borrower have specific questions regarding the terms and charges of their loan. Many title agents have expressed concern that answering these questions will risk engaging them in an unauthorized practice of law in the states which allow only licensed attorneys to answer borrower questions and explain the details of a mortgage transaction. This issue remains unaddressed by the proposal.

If the purpose of the closing script is to reduce settlement costs to consumers, the requirement that a settlement agent spend a significant amount of time preparing the document and reading it aloud will hardly result in cost savings. This situation is exacerbated by the fact that there is no binding obligation on the lender to provide the closing script information to the closing agent well in advance of closing, making timely action by the closing agent contingent upon no delay by the lender. Additionally, there is no guidance given as to correct closing script protocol if the settlement does not take place face-to-face, a situation which frequently occurs.

Finally, I am extremely troubled by HUD's thinly veiled attempt to reintroduce the concept of "bundling" services. As I made clear to HUD in 2003, the long term impact of these volume discounts is to eliminate competition and destroy small businesses. Only large businesses have the resources necessary to determine the financial terms, negotiate for settlement services or simply discount their own services. In order to compete, small businesses will be forced to reduce their prices and profit margins, a move that, when combined with the market turmoil, will drive many small firms out of business. The result is a shrunken marketplace with limited choices for consumers and an anti-competitive environment that will allow large lenders to raise prices for settlement services. Once again, HUD has completely overlooked the future viability of small businesses in their rulemaking process.

While I appreciate HUD's attempt to simplify and clarify the mortgage loan and settlement process, I have yet to see a proposal that accomplishes this purpose without significantly impacting segments of the mortgage and settlement markets. I implore HUD to carefully evaluate the unintended consequences of this proposal, of which there are many. In doing so, I urge the Department to strike the appropriate balance between the interests of informing the consumer and the interests of the industries that serve them.

Sincerely,

A handwritten signature in black ink, reading "Donald A. Manzullo". The signature is written in a cursive style with a large, prominent initial "D".

Donald A. Manzullo  
Member of Congress