



National Association of Insurance Commissioners

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June 10, 2008

Attention: Ivy Jackson, Director
Office of RESPA and Interstate Land Sales
Department of Housing and Urban Development
451 Seventh St., SW., Room 9158
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; 24 CFR Parts 203 and 3500
Docket No. FR-5180-P-01**

Dear Director Jackson:

One of the reasons the NAIC Title Insurance Issues Working Group was established by the membership of the NAIC was to monitor the developments of the U.S. Department of Housing and Urban Development (HUD) proposed changes to its Real Estate Settlement Procedures Act (RESPA) and to provide comments to HUD or to the U.S. Congress. The NAIC appreciates and thanks you for the opportunity to provide comments to the captioned.

Whether someone is purchasing a home for the first time or not the NAIC believes the proposed changes will benefit consumers to help them in comparison shopping and for the borrowers to understand or gain additional knowledge in their real estate transactions.

Our specific comments to some of the proposed changes include the following:

- The transition period, as indicated in IV. D. Planned Implementation of Final Rule is not needed or appropriate.
- Loan originators, as proposed in § 3500.7 (4), would be allowed to collect a fee to recover their cost for providing a GFE including the initial cost of a credit report, albeit to recover their costs, and the NAIC agrees with HUD’s commentary that fees should not be allowed and believe this will be a hindrance to consumers in obtaining price comparisons as is the goal of the GFE. Loan originators should not be allowed to collect a fee for providing a GFE.
- Section IV. E. 10, Enforcement, Discussion solicits comments regarding the 14 business day refund. The NAIC agrees that refunds to consumers would be received faster if there was a grace period as indicated. However, there should be an enforcement measure if there is a pattern of abuse by a loan originator.
- The NAIC agrees that the closing script should be read at closing. However, consumers will be even better protected if the same information were provided in writing earlier in the real estate transaction. The NAIC suggests that the information contained in the closing script be provided to consumers at the same

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time as the GFE so that they see the information twice: first at the beginning of the transaction and second at closing.

- The “required use” definition, as contained in § 3500.2 Definition, to limit the steering arrangements with affiliated business arrangements is necessary.
- The NAIC agrees the services performed by or on behalf of the title underwriter or title agent should be split out as indicated in § 3500.8 Use of HUD–1 or HUD–1A settlement statements (b) (1).
- There are various references to optional owner’s title insurance. The NAIC believes the word “optional” should be removed. Because of increased liability issues, most real estate brokerages and title companies will not exclusively issue a lenders' policy on a real estate sale transaction. Arguably, owners' insurance is just as required as lenders', and the term "optional" is just going to add confusion to an already confusing process.
- Average cost pricing and volume based discounts as proposed would be a violation of several states’ anti-rebating laws. These laws are the foundation of these states' regulation of the title insurance industry. HUD General Deputy General Counsel Mr. Michael C. Flynn when he appeared at the NAIC Title Insurance Issues Working Group Meeting June 1, 2008, indicated the proposed rule is not intended to preempt state law. However, NAIC is concerned that a court may nevertheless find that the regulation preempts state laws to the contrary. Consequently, the NAIC believes that this provision should either be removed, or there should be an explicit provision that the average cost pricing and volume discount provisions of the regulation are not intended to preempt state law.

In addition, NAIC is concerned that average cost pricing and volume based discounting will result in a competitive disadvantage to smaller companies, and may lead title insurers to increase overall rates in order to compensate for the discounted rates. NAIC is concerned that discounting decisions may not be based upon either the risk the insurer is accepting, or the actual cost of providing settlement services. It also can be expected to lead to increased improper directing of business by third parties, and will make the buyer of the property, the person most directly affected by the choice of title company, less likely to exercise any independent voice in the choice of which title company insures his or her property.

As provided in the Overview of HUD's Efforts Since 2002, change to RESPA has been considered as early as 2002 and no changes have been made to date. The NAIC believes that changes are needed to further the interests of the nation's consumers and recommends changes be implemented as soon as practical.

Sincerely,



Morris J. Chavez
Superintendent of Insurance, State of New Mexico
Chair, NAIC Title Insurance Issues Working Group