



Testimony Of
F. Gary Garczynski,
Immediate Past President
On behalf of the
National Association of Home Builders
Before the
United States House of Representatives
Housing and Community Opportunity
Subcommittee of
Financial Services Committee
On
HUD's Proposal to Reform RESPA
February 25, 2003

Good afternoon Mr. Chairman, my name is Gary Garczynski. I am a homebuilder and developer from Woodbridge, Virginia, and much of my business focuses on redevelopment of urban areas and the inner ring of older suburbs. I am the Immediate Past President of the National Association of Home Builders. I am pleased to have this opportunity to testify today on behalf of the 205,000 member firms that comprise the NAHB federation.

Last summer, HUD published a proposal, which, if implemented, would significantly change its regulations pertaining to the Real Estate Settlement Procedures Act (RESPA). NAHB's comments focus on two major elements of HUD's proposal: changes in the nature and content of current requirements for disclosure of the costs of mortgage transactions to consumers -- the Good Faith Estimate; and, the addition of an option for lenders to offer a package of settlement services at a guaranteed cost -- the Guaranteed Mortgage Package.

It is clear that HUD intends to increase the transparency and reduce the complexity of mortgage transactions by improving the disclosure of mortgage fees and expenses to consumers. NAHB applauds this initiative and believes the effort has great potential to simplify mortgage shopping and loan closings. The proposed changes should also lower mortgage transaction costs and help minimize unexpected charges at the time of loan settlement.

NAHB is working as an enthusiastic partner in efforts to expand homeownership opportunities, particularly for minority households. We view the RESPA changes proposed by HUD as important to advancing these efforts. The complexity and cost of the home financing process have been major impediments to increasing minority homeownership rates and HUD's proposed regulatory changes would do much to increase access to mortgage financing.

Any proposal as sweeping as the one HUD has undertaken is bound to raise some questions, and NAHB does have a few concerns with respect to some aspects of the Proposed Rule. NAHB's concerns relate mainly to the circumstances involved in processing mortgages for newly built homes, which typically involve a fairly lengthy loan origination process.

Good Faith Estimate

Under the requirements for the Good Faith Estimate, the Proposed Rule does not make clear when changes in the transaction warrant a new disclosure. Re-disclosure will be burdensome to lenders in a new construction environment, where the loan origination period, which covers the span from start to completion of the home, may last four to nine months or more. Many changes can, and normally do, take place during the construction process. For example: changes in the purchase price due to changes in the buyer's preferences on options; changes in the relative attractiveness of mortgage products; and, variations in the financial circumstances of the home buyer. Changes in the purchase price of a home directly impact the cost of document stamps and transfer taxes. Similarly,

changes in the loan amount affect the fee charged for lender's title insurance. Changes in a home's sale price can also prompt home buyers to seek different loan products because of changes in the funds needed to complete the sale.

Guaranteed Mortgage Package

The concept of a Guaranteed Mortgage Package is appealing and could reduce consumer costs, primarily through originators' negotiations with settlement service providers. However, a guaranteed package that is determined at loan commitment and lasts until settlement on a new home transaction puts the packager in a position of excessive risk. This may lead the original packager to offer less competitive terms than packagers who have an opportunity to offer a package closer to the date of the projected loan closing. Wider tolerances in guarantees would be needed for a new home transaction where the price and loan amount often change dramatically over the construction period.

NAHB Recommendations for Financing Quotes on Newly Constructed Homes

For both the Good Faith Estimate and the Guaranteed Mortgage Package, NAHB proposes an alternative based upon a days-until-closing threshold for providing final quotes and guarantees. For example, a lender would provide preliminary estimates at initial application and then issue final, guaranteed estimates thirty or sixty days prior to closing. This procedure would be comparable to the timing of guarantees that would be made in financing an existing home purchase. Further, this solution would allow the customer sufficient time to shop again if the final package was deemed to be less competitive, while providing the lender an opportunity to adjust those components of the package that actually changed during the often significant duration since the original application.

Other Issues of Concern

There are a number of other issues that must be clarified or resolved prior to the implementation of the proposed RESPA regulations. Two areas of concern to NAHB are the Truth in Lending Act and state laws governing real estate transactions.

Truth in Lending Act Issues

Meaningful reform of the settlement process must address the requirements of the Truth in Lending Act. The Guaranteed Mortgage Package approach of reducing the loan offer to two numbers -- settlement package price and interest rate -- effectively eliminates the need for an APR calculation. To continue to calculate and disclose an APR would likely be confusing to consumers and may actually diminish the desired results under the Guaranteed Mortgage Package proposal. We are concerned that pricing agreements negotiated between service providers and packagers could subject the APR calculation to manipulation through a shifting of the cost of fees included in the APR to fees outside the calculation. Therefore, we recommend that Congress allow the Guaranteed Mortgage

Package to satisfy or replace Truth in Lending Act requirements for those mortgage transactions involving such a guarantee.

Conflict with State Laws

NAHB believes that the proposal may conflict with the laws in many states, particularly with regard to state anti-rebate statutes, which might prevent packagers from negotiating a better price for required items such as title insurance. In addition, many states have anti-affiliate laws that would prohibit firms that are affiliated with the lender from having products or services included in a Guaranteed Mortgage Package.

Conclusion

In closing, NAHB recognizes the effort HUD has put into correcting some salient shortcomings in an otherwise effective housing finance system. We strongly support the intent of HUD's efforts. However, loans for new homes, which represent more than a quarter of annual purchase mortgage originations, have unique characteristics that must be specifically addressed in any RESPA reform.

We are confident that, in drafting a final regulation, HUD will fairly address the concerns that have been expressed regarding the proposal. NAHB believes it is possible for HUD to increase the transparency of mortgage transactions by improving the disclosure of mortgage fees and expenses to consumers without disrupting mortgage services.