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RESPA Reform Update

■ *Scott Pierce, Southeast Region Manager*

At the recent RESPRO Conference held in Washington, D.C., John Weicher, Assistant HUD Secretary, acknowledged that the settlement service environment today is much different than the one in existence when RESPA was adopted in 1974, hence, the need to reform RESPA to come into line with the current state of real estate lending and closings. He stated that in light of the numerous comments to the proposed rule, of which HUD received more than 40,000, the Department will be revising the rule that came out last year. However, Assistant Secretary Weicher said that the Secretary is committed to a new rule as soon as possible. That said, it appears that most all of the affected industry groups are threatening legal action unless there are serious changes made to the new proposal. No one has an issue with what the proposed rule is attempting to do: encourage effective shopping by borrowers and encourage consumer savings by lowering costs. However, with large lenders, realtors, mortgage brokers, title agents, and consumer groups pitted against each other, this seriously lowers the possibility of a consensus.

Of major concern in Congress is the effect that HUD's RESPA reform rule will have on small business. Chairman of the Senate Banking Committee, Richard Shelby (R-AL), expressed concern that the proposed rule will significantly impact the competitive landscape, especially in light of the fact that the top ten mortgage lenders control such a significant amount of the business. During testimony in Congress it was noted that 68% of title agencies are small businesses. Some of the main problems associated with the proposed rule as it is currently written are as follows:



- It is difficult for lenders to guarantee a rate for 30 days given the nature of the finance markets, especially without knowing whether the borrower will come back for the loan after shopping the rate and costs
- It appears to be inconsistent with existing laws in at least 43 states
- HUD's authority to implement such a rule without Congressional approval is in question
- The proposed rule has some inconsistencies with TILA
- It does not cover high interest loans
- There are no cure provisions for violations of the Section 8 exemption
- From the title industry perspective, it puts a great deal of control in the hands of the large lenders

Although the ALTA has proposed a dual packaging system with a separate settlement service package to be offered by the title industry, it is unclear that this will be in the new proposal. Without an industry consensus, the threat of lawsuits and the involvement of Congress, there are some that question whether or not a new rule can be adopted in the near future. We will update you once the revised rule is published.

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