



**Testimony of Teresa B. Payne**

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**U.S. Department of Housing and Urban Development**

**Subcommittee on Insurance and Housing**

**“Mortgage Origination:**

**The Impact of Recent Changes on Homeowners and Businesses”**

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Thank you, Chairman Biggert, Ranking Member Gutierrez, and members of the Subcommittee for this opportunity to bring you up to date on the status of the Real Estate Settlement Procedures Act (“RESPA”) and the transition of its statutory authority from the Department of Housing and Urban Development to the Consumer Financial Protection Bureau.

Before discussing how RESPA will transition from HUD to the CFPB, both in terms of statutory authority and personnel, it is perhaps best to explain first the status of RESPA at HUD currently, and then to go into detail regarding the transition moving forward.

**The Office of RESPA and Interstate Land Sales (“ILS”).**

The Office of RESPA and ILS currently has 21 staff members including the Director, the Deputy Director, four Compliance Team Supervisors, eleven RESPA Compliance Specialists, three ILS Compliance Specialists, and one Administrative Assistant. It is housed at HUD headquarters here in Washington, DC, without any satellite offices.

During 2010 and 2011, the RESPA complaint caseload has been extremely heavy. More than 1,500 cases were opened in the last 18 months. Moreover, the Office's increased caseload led to increased enforcement activity, which has in turn involved greater coordination with state regulators to share information about real estate settlement practices and regulatory compliance. Monthly collaborative telephone calls among RESPA staff and state regulators from numerous state offices are routinely attended by representatives of more than 25 states. The RESPA Office has also been working more closely with the Department of Justice and HUD's Office of Inspector General in investigation and enforcement actions.

As you are aware, in November 2008, the Department issued a new RESPA regulation that established a standard, required Good Faith Estimate form and process, in coordination with a revised and expanded HUD-1 Settlement Statement, for more clarity, transparency and better understanding by consumers in the real estate settlement process. To be in compliance with RESPA, and help assure fair prices for consumers, actual costs at closing must fall within established tolerance ranges.

The new disclosures were implemented on January 1, 2010. Before then, beginning in December 2008 and continuing today, the RESPA Office established a compliance guidance regimen to educate industry participants, state and federal regulators, housing counselors and consumers.

A few of the educational tools utilized by the Office include:

- Speaking to over 175 organizations in person, by phone and via the web;
- These speaking engagements have reached more than 25,000 people directly;
- To further assist industry and regulators, the Office periodically publishes on its website the "RESPA Roundup," which is unofficial guidance addressing relevant compliance questions. In addition, this guidance is distributed by email to over 4,500 recipients that are on the Office's direct distribution list; and
- Similarly, the Office published on its website 300 Frequently Asked Questions and Answers, which are also unofficial guidance, on the new RESPA rule. These FAQs have been downloaded tens of thousands of times and have been a major guide for industry.

In addition to all of the guidance described above, in order to reach out directly to better inform consumers, the RESPA Office produced and released three consumer education videos:

- *Shopping for a Home;*
- *Shopping for a Loan;* and
- *Closing the Deal.*

These videos have been viewed thousands of times and assist consumers in the home buying and mortgage loan process. Additionally, a new settlement cost booklet that must be delivered to consumers within three days of loan application was also published.

RESPA Office staff members answered more than 15,000 e-mails and handled more than 4,700 phone inquiries in 2010 and 2011. As you can imagine in a period of extensive implementation, the vast majority of these inquiries were received from industry stakeholders, and the inquiries were responded to quickly and informatively.

Although it has only been six months since completion of the 2010 implementation year, some tangible results are being seen. Prospective borrowers are receiving more accurate Good Faith Estimates and costs at closing are being held within tolerance ranges. Several commenters noted that the new GFE form is holding lenders accountable for low-balling and bait-and-switch, which have made estimates closer to the actual closing costs. In some cases where tolerances were exceeded, borrowers received refunds for the overage from loan originators. In addition, RESPA staff has assisted borrowers in saving hundreds or thousands of dollars through tolerance violation cures and loan term corrections per loan. In some instances this has amounted to in excess of \$100,000.

### **Specific Guidance Documents Published during 2010-2011.**

Several interpretive rules and policy pieces have been published during the last 18 months. I would like to discuss several of these in more detail.

- The Home Warranty Interpretive Rule.

Home warranties have been expressly covered as a settlement service under HUD's regulations since 1992, and HUD staff has subsequently provided informal guidance on fees paid to real estate agents for placement of home warranties.

In February 2008, an unofficial staff interpretation letter responding to an inquiry explained the framework for applying HUD's RESPA regulations to compensation of real estate agents for providing home warranty services. This letter was widely circulated among industry and led to requests for more-formal and comprehensive guidance.

In June 2010, HUD issued an interpretive rule regarding compensation arrangements for real estate agents in connection with the sale of home warranties to home sellers and buyers. Although public comment is not required for interpretive rules, HUD also invited public comment on the clarity and scope of the interpretive rule. In December 2010, the Department published additional clarifying guidance in this area.

The Home Warranty interpretive rule and additional guidance interpret Section 8 of RESPA and HUD's regulations that implement referral and kickback prohibitions as these apply to the compensation to real estate brokers and agents from home warranty companies. Briefly, the guidance states that, in order for such compensation to be acceptable:

- (1) A real estate broker or agent must perform actual and necessary services that are distinct from their primary services and for which there are not duplicative fees; and
- (2) The compensation must be reasonably related to the value of the services actually performed.

The interpretive rule and subsequent response to public comments also provide examples of services that real estate agents could perform for which they might be legitimately compensated, depending on the facts of the situation. Some of these examples had been suggested by the industry in submissions to HUD.

The examples include conducting actual inspections of the items to be covered by the warranty to identify preexisting conditions that could affect home warranty coverage, recording serial numbers of the items to be covered, documenting the condition of the covered items by taking pictures and reporting to the HWC regarding inspections.

While this remains an issue on which there are concerns among some industry participants, HUD believes strongly that the interpretive rule and guidance clarify important consumer protections.

Additionally, you have asked HUD to review and comment on the recently proposed legislation entitled the "RESPA Home Warranty Clarification Act of 2011." While the Administration has not taken a formal position on the bill, HUD has concerns that the proposed legislation could limit consumer protection in the context of home warranties and lead to higher closing costs for consumers through referral fees. Such a result would be in contrast to the purposes of the statute and would erode the statute's consumer protections.

HUD recommends — prior to enacting legislation — that a study be conducted by appropriate regulatory agencies about the quality of home warranties, including a review of their use by homeowners and homebuyers, business practices around their sale, representations made to consumers at the time the home warranty is marketed, and what is included or excluded in home warranty contracts.

- Guidance was also issued through a Secretarial exemption, which had been requested by over 125 nonprofit organizations with "soft seconds." Subordinate loans provided by assistance programs for low- and moderate-income persons were exempted from RESPA's Good Faith Estimate and the HUD-1 Settlement Statement requirements.
- The RESPA Office also drafted unofficial guidance, which was posted in a "RESPA Roundup," clarifying how the Federal Reserve Board's Mortgage Loan Origination Compensation Rule that was going to take effect on April 1, 2011, would be consistent with the RESPA disclosure requirements.

The guidance addressed:

- (1) Mortgage broker transactions where the broker is compensated indirectly from the lender by means other than an amount computed based on the interest rate, such as by a flat fee or an amount that is based on any other computation;
- (2) No cost transactions where the credit for the interest rate chosen covers third party settlement charges;
- (3) Using a credit/charge calculation prior to completing portions of the Good Faith Estimate; and
- (4) Payments by lenders to borrowers to correct tolerance violations in mortgage broker originated transactions.

Overall, the guidance helped consumers and industry to have a better understanding of the interaction between RESPA and the Board's rule.

- In November 2010, the Department solicited general information on warehouse lending and other financing mechanisms used to fund federally related mortgage loans, including how those mechanisms have evolved in recent years. Under HUD's RESPA regulations, warehouse lending arrangements are generally secondary market transactions that are not covered by RESPA. In early 2011, after reviewing comments received, the Department released two letters explaining that the same analysis that HUD would use to determine if a traditional warehouse lending arrangement was a secondary market transaction would be used to determine the application of RESPA to other arrangements with similar characteristics, such as repurchase agreements.

### **Transition from HUD to the CFPB.**

Now that I have explained some of the recent regulatory actions and proposed legislation regarding RESPA, I would like to turn to the question of how the statutory authority and RESPA-related functions and personnel will transition over to the CFPB. I would note at the outset that I am still an employee of HUD and will not be an employee of CFPB until July 31, 2011. Therefore, I am not authorized to speak on behalf of the CFPB. Notwithstanding that restriction, however, there are certain aspects of the transition that are commonly known.

First, pursuant to the requirements of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), on July 21, 2011 – next week – the statutory authority for RESPA will formally transfer from HUD to the Consumer Financial Protection Bureau. The transition of personnel currently has 37 HUD staff slated to become CFPB employees by July 31, 2011. The reduction in staff had been taken into consideration at the time of preparing the FY 2012 budget request.

Second, I would note that under the terms of Dodd-Frank, RESPA is merely one of 18 statutory authorities that will transfer to the CFPB. This point is significant. Although the Office of RESPA at HUD currently handles all aspects of the statute—consumer in-take, industry questions, investigations and enforcement actions, FOIA requests and Congressional inquiries—these functions and related HUD personnel will be dispersed throughout the CFPB. Specifically, HUD staff members will be placed in CFPB’s Office of Consumer Response, the Office of Enforcement, Rulemaking, the Office of General Counsel, Consumer Education and External Affairs. Thus, there will be a shift from a subject matter-based approach to RESPA at HUD, to a more functionally defined approach to RESPA at the CFPB.

Additionally, each function may require addressing a combination of statutes. For instance, mortgage loans may require the simultaneous understanding of RESPA, Truth in Lending Act (TILA), and the Fair Credit Reporting Act (FCRA) for a rulemaking, an enforcement action or simply an inquiry from a stakeholder.

Finally, as you may be aware, the CFPB has begun undertaking another Dodd-Frank statutory requirement – to create a new model disclosure form that combines RESPA Good Faith Estimate information and TILA loan disclosure information. This model form must be proposed within one year of the statutory transfer date – July 21, 2012. Throughout 2009 and 2010, HUD staff had been consulting first with Federal Reserve staff and during 2011 with CFPB staff in developing a combined RESPA-TILA disclosure. Prototypes of these disclosures were published in May 2011 on the CFPB website for comment.

Thank you for this opportunity to appear before you and I look forward to answering any questions that you may have.