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451 7th Street, SW
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Washington, D.C. 20410

To Whom It May Concern:

The National Association of Mortgage Brokers (“NAMB”), the nation’s largest organization exclusively representing the interests of the mortgage brokerage industry, hereby responds to the request for comments published at 70 Fed. Reg. 37087 on June 29, 2006 with respect to the disclosure requirements of the Real Estate Settlement Procedure Act (“RESPA”). NAMB has more than 25,000 members in fifty states and the District of Columbia. NAMB provides education certification, industry representation and publications for the mortgage brokerage industry. NAMB members subscribe to a strict code of ethics and a set of best business practices that promote integrity, confidentiality and the highest levels of professional service to consumers.

Mortgage brokers are independent real estate financing professionals who specialize in the origination of residential and/or commercial mortgages. Mortgage brokers are also independent contractors, who market and originate loans offered by multiple wholesale lenders. As a result, mortgage brokers offer consumers more choices in loan programs and products than traditional mortgage lenders. Mortgage brokers also offer consumers superior expertise and assistance in getting through the tedious and complicated loan process. Mortgage brokers also provide lenders a nationwide product distribution channel that is much less expensive than traditional lender retail branch (bricks and mortar) operations.

Mortgage brokers are typically small businesses that operate in the communities in which they live. They are vital members of these communities, often operating in areas where traditional mortgage lenders may not have branch offices, such as rural communities. Were it not for mortgage brokers, many of these areas would be underserved and the dream of homeownership for these communities would not be fulfilled.

Mortgage brokers perform a vital and unique role in assisting consumers in obtaining a mortgage loan. Indeed, this is why mortgage brokers originate more than 60% of all residential mortgages. Suffice it to say that NAMB recognizes the need to provide consumers with accurate and meaningful information concerning settlement costs so that they can make informed decisions in selecting settlement service providers. In that connection, NAMB believes that:

- Borrowers should receive settlement cost information early enough to allow them to shop for the mortgage product and settlement services that best meet their needs.
- Regardless of the loan distribution channel, consumers should receive the same disclosures, in the same format, for all loan products or transactions.
- Disclosures should be as firm as possible to avoid surprise costs at settlement.
- The required information should not create unintended barriers to marketing new products, competition and technological innovations that could lower settlement costs.
- Simplification of disclosures and better borrower education can improve the loan organization process.

I. THE DISCLOSURE OF INDIRECT COMPENSATION BY ONLY MORTGAGE BROKERS IS NOT NECESSARY FOR THE PROPER PERFORMANCE OF THE AGENCY'S FUNCTIONS AND PREVENTS CONSUMERS FROM MAKING VALID MORTGAGE COST COMPARISONS.

The current practice of singling out indirect compensation to mortgage brokers creates an unlevel playing field. By requiring only mortgage brokers to include the yield spread premium in the calculation of Net Loan Origination Charge, HUD needlessly complicates the real estate settlement process by making it impossible for the consumer to perform a true "apples to apples" comparison of mortgage costs. In so doing, HUD contravenes and undermines its stated goal of simplifying and improving the mortgage loan process.

There are numerous players in the home mortgage industry. Mortgage bankers, mortgage lenders, mortgage brokers, credit unions, homebuilders and real estate agents, among others, provide home mortgage loans to consumers. All mortgage lenders receive direct compensation, indirect compensation or some combination of both. Thus, for example, a mortgage lender receives indirect compensation when a loan is sold on the secondary market. However, HUD

has exempted those transactions¹ from, among other things, the disclosure requirements for yield spread premiums. This creates an unlevel playing field for mortgage brokers. HUD has even stated that “lenders are able to offer loans with low or no up-front costs required at closing by charging higher interest rates and recouping the costs by selling the loans into the secondary market for a price representing the difference between the interest rate on the loan and the par, or market, interest rate.”² This is called a service release premium (“SRP”). The sale of such a loan achieves exactly the same purpose as the yield spread premium does on a loan originated by a broker.

NAMB wholeheartedly believes that consumer interests are best served by clear and consistent communication with the consumer at every stage of the home purchase process. Thus, regardless of the loan distribution channel, consumers should receive the same disclosures, in the same format, for all loan products or transactions. Only by so doing will HUD ensure that consumers are truly able to comparison shop for mortgage products.

NAMB also believes that any current or future disclosure requirement that singles out mortgage brokers for disparate treatment has and will have unintended adverse consequences. Two such consequences come immediately to mind. First, HUD has a stated goal of increasing minority homeownership. And, indeed, minority homeownership has increased in recent years. For example, homeownership among Hispanics rose substantially to 46 percent.³ However, “a large gap still exists between minority and white households.”⁴ For example, “since 1994, when the black homeownership rate was 27.5 percentage points below the rate of whites and the Hispanic rate was 28.8 percentage points below, only small gains have been made.”⁵ Thus, “by 2001 the gap had been reduced by just 1.6 percentage points for African Americans and 1.8 percentage points for Hispanic households.”⁶

HUD’s own data have identified several barriers to homeownership: “(i) lack of capital for the down payment and closing costs, often the single greatest barrier to homeownership; (ii) lack of access to credit and poor credit histories, which means more minority families are

¹ 24 C.F.R. § 3500.5(7).

² Real Estate Settlement Procedures Act, Statement of Policy 2001-1, 66 Fed. Reg., 53,052, 53,056 (October 18, 2001).

³ Press Release, Department of Housing and Urban Development, Homeownership Increase Among Hispanics (April 24, 2402) (on www.hud.gov).

⁴ News Release, Department of Housing and Urban Development. New HUD Report Identifies Barriers to Minority Homeownership, Outlines Bush Administration Actions to Overcome Them (June 17, 2002) (on www.hud.gov).

⁵ *Id.*

⁶ *Id.*

rejected for a mortgage loan or given loans with high interest rates; (iii) lack of understanding and information about the homebuying process, especially for families for whom English is a second language;" and (iv) others.⁷

Mortgage brokers are the key to bridging the gap in minority homeownership. Mortgage brokers are integral members of their community and provide access to credit that most large lenders cannot. A recent study performed by Wholesale Access, a research, advisory and publishing company, on minority lending found that "(i) brokers reach more minorities than lenders; and (ii) the explanation for this is found in their locations, products and staffing."⁸ Many of these communities would not have the availability of mortgage loans currently enjoyed today were it not for mortgage brokers, who originate more than 60% of all mortgage loans. HUD's disclosure requirements should not inadvertently adversely impact the ability of mortgage brokers to assist minorities in obtaining homeownership.

Second, as previously noted, mortgage brokers are typically small businesses. They are vital members of their communities and offer services and employment in communities that sorely need both. Any disclosure or other regulatory requirement that singles out mortgage brokers for undue burden not only threatens the existence of these vital small businesses, but reduces consumer choice and access to credit. Simply put, consumer interests are not served by further consolidation in the mortgage industry at the expense of small businesses. NAMB firmly believes that HUD should subject to heightened scrutiny and reject any requirement that singles out small business mortgage brokers for disparate treatment and makes their continued viability more difficult.

II. NAMB'S PROPOSAL TO ENHANCE THE QUALITY, UTILITY AND CLARITY OF INFORMATION TO BE COLLECTED.

NAMB supports creating and implementing uniform consumer-tested disclosures that provide consistent and meaningful information to consumers. In order to compare mortgage products, each consumer, without regard for the mortgage distribution channel chosen, should receive the same disclosures in the same format for any loan product or transaction. NAMB firmly believes that only consumer input can shed light on whether the information provided by current or future disclosures is too complex, insufficient or in need of further explanation. Without consumer testing, any new or revised disclosure will be merely another piece of paper added to a pile that is already largely ignored by consumers.

In that connection, NAMB has proposed a one-page good faith estimate ("GFE") in response to a series of round tables conducted jointly by HUD and the Small Business

⁷ *Id.*

⁸ Press Release, Wholesale Access, Study of Minority Lending Completed, (Sept. 24, 2002) (on www.wholesaleaccess.com).

Administration throughout the summer of 2005. The one-page GFE mirrors the HUD-1 consumers received at settlement and not only provides the loan features and costs, but fully discloses the role of the loan originator in the mortgage transactions.⁹ Most important, the revised GFE would provide the information most valued by the consumer – meaningful closing costs and monthly payments.

The one-page GFE applies equally to all segments of the mortgage industry. It prevents abusive lending tactics such as bait-and-switch schemes. It also clearly and objectively informs the borrower of the role of the loan originator in the transaction. Furthermore, it grants the consumer a private right of action. Specifically, NAMB's proposed GFE possesses four distinct attributes:

First, it is even-handed. The NAMB proposed GFE would be equally applicable to all originators conducting business in the mortgage marketplace. Of import, the proposed NAMB GFE treats the disclosure of rate, fees, costs and point uniformly regardless of distribution channel, giving meaning to the ability to "comparison shop." As a result, distribution channel bias is eliminated and all consumers are afforded the same level of protection against abusive lending tactics.

Second, it is informative. The NAMB proposed GFE clearly discloses the role of the originator in the mortgage transaction. The borrower is notified that the loan originator does not distribute all of the loans available in the marketplace and, therefore, cannot guarantee the lowest rate. This aspect of the proposed GFE is significant. For example, a loan product offering the lowest interest rate may not necessarily be the "best" loan product for the borrower. It is far more effective to disclose the role of the broker, the loan features and costs, and empower the consumer to comparison shop and choose a product that suits his or her needs. Also, requiring that every mortgage originator disclose his or her role and relationship with the borrower will eliminate any confusion on the part of the borrower – this approach actually ensures that a borrower is not operating under a faulty impression that an originator, such as a bank-affiliated mortgage lender, owes him or her a fiduciary duty.

Third, it is effective. The NAMB proposed GFE is effective in combating abusive lending tactics because it provides simplicity, clarity and transparency of the loan costs and features. It is one page in length; mirrors the HUD-1 settlement statement; requires mandatory re-disclosure if settlement costs increase by more than 10% of the original estimate, or if the proposed interest rate increases.

Fourth, it is enforceable. Consumers are given a private right of action to enforce the GFE tolerance limits of 10% if no timely re-disclosure is given to the consumer.

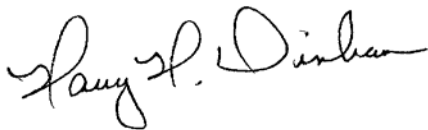
⁹ See Attached Appendix A, NAMB Proposed GFE.

CONCLUSION

NAMB is very concerned that HUD's current disclosure requirements single out mortgage brokers, many of whom are small businesses, for disparate treatment and that a continuation or exacerbation of such treatment will result in serious unintended adverse consequences that will be harmful not only to mortgage brokers but to the consumers who depend upon them. The only way to guarantee that consumers have a meaningful opportunity to comparison shop for mortgage products is to provide them with the same disclosures in the same format for all loan products and transactions regardless of the loan distribution channel chosen by consumers.

If you have any questions, please feel free to contact Roy DeLoach, Executive Vice President, at 703-342-5850 or Nikita Pastor, Senior Counsel, Public Policy and Government Affairs, at 703-342-5851.

Sincerely yours,

A handwritten signature in cursive script, reading "Harry H. Dinham".

Harry H. Dinham, CMC
NAMB President 2006-2007

Attachment

Appendix A

US Department of Housing and Urban Development		
Uniform Good Faith Estimate Statement		
Name and Address of Borrower		Originating Company Name and Address: Loan #: _____
Property Address:		Proposed Interest Rate: _____ % Term of the loan: _____ Years
		Proposed Loan Amount: \$ _____
		Program Type: <input type="checkbox"/> Conventional; <input type="checkbox"/> FHA; <input type="checkbox"/> VA; <input type="checkbox"/> Other: _____
		<input type="checkbox"/> Fixed Rate Mortgage Loan, or <input type="checkbox"/> Adjustable Rate Mortgage Loan
		Prepayment Penalty: <input type="checkbox"/> May; <input type="checkbox"/> May Not Balloon Payment: <input type="checkbox"/> Yes; <input type="checkbox"/> No
Settlement Charges:		Summary of the Borrower's Transaction:
800: Items Payable in Connection With The Loan:		Contract Purchase Price
801: Loan Origination Fee (%) to:		Existing Loan Amount to be Paid Off
802: Loan Discount Fee (%) to:		Personal Property
803: Appraisal Fee to:		Total Settlement/Closing Cost Charges to Borrower(s): 1400 A
804: Credit Report Fee to:		Total Pre-Paid/Reserves Charged to Borrower(s): 1400 B
805: Lender's Inspection Fee to:		
806: Application Fee to:		Gross Amount Due From Borrower(s):
807: Flood Certification Fee to:		<Deposit of Earnest Money>
808: Mortgage Broker Fee (%)		<Principal Amount of new loan(s)>
809: Tax Service Fee to:		<Seller Paid Closing Cost Credit(s)>
810: Processing Fee to:		<Subordinate Loan Proceeds>
811: Underwriting/Admin Fee to:		<Other Credit(s)>
812: Wire Transfer Fee to:		Amounts Paid By or In Behalf of Borrower(s):
813:		
900: Items Required By Lender To Be Paid In Advance		Cash at Settlement Due From/To Borrower(s):
901: Interest for _____ days at \$ _____ /day		
902: Mortgage Insurance Premium for _____ mos. to _____		Proposed Payment(s):
903: Hazard Insurance Premium for _____ mos. to _____		1 st Mortgage: <input type="checkbox"/> Principal & Interest pmt <input type="checkbox"/> Interest Only pmt
904: Flood Insurance Premium for _____ mos. to _____		2 nd Mortgage: <input type="checkbox"/> Principal & Interest pmt <input type="checkbox"/> Interest Only pmt
905: VA Funding Fee / Mortgage Insurance Premium		Property Taxes
1000: Reserves Deposited with Lender: Waived <input type="checkbox"/> Yes <input type="checkbox"/> No		Home Owners Insurance
1001: Hazard Insurance: _____ months @ \$ _____ per mo.		Private Mortgage Insurance
1002: Mortgage Insurance: _____ months @ \$ _____ per mo.		Homeowners Association Dues
1003: City Property Taxes: _____ months @ \$ _____ per mo.		Other
1004: County Property Taxes: _____ months @ \$ _____ per mo.		Other
1005: Annual Assessments: _____ months @ \$ _____ per mo.		
1006: Flood Insurance: _____ months @ \$ _____ per mo.		Total Proposed Monthly Payment:
1007: _____ months @ \$ _____ per mo.		
1008:		
1100: Title Charges		
1101: Settlement or Closing/Escrow Fee to:		
1102: Abstract or Title Search to:		
1103: Title Examination to:		
1104: Title Insurance Binder to:		
1105: Documentation Preparation to:		
1106: Notary Fees to:		
1107: Attorney's Fee to:		
(Includes above item numbers:)		
1108: Title Insurance Fee to:		
(Includes above item numbers:)		
1109: Lender's Coverage \$		
1110: Owner's Coverage \$		
1111: Includes Commitment Fee to:		
1112: Endorsement Fee to:		
1113: Wire Fee to:		
1114: Electronic Doc Fee to:		
1115: Courier Fee to:		
1116:		
1117:		
1118:		
1200: Government Recording and Transfer Charges		
1201: Recording Fees: <input type="checkbox"/> Deed \$ <input type="checkbox"/> Mortgage \$		
<input type="checkbox"/> Release(s)/Reconveyance(s) \$		
1202: City/County Tax/Stamps: <input type="checkbox"/> Deed \$ <input type="checkbox"/> Mortgage\$		
1203: State Tax/Stamps: <input type="checkbox"/> Deed \$ <input type="checkbox"/> Mortgage \$		
1204: Assignment Fee to:		
1205: Subordination Fee to:		
1300: Additional Settlement Charges		
1301: Survey to:		
1302: Pest Inspection Fee to:		
1303: General Inspection(s) to:		
1304: Home Warranty Fee to:		
1305: Elevation Certificate Fee to:		
A: Settlement Cost (Sections 800, 1100, 1200, 1300 above)		
B: Prepaid Items (Sections 900 and 1000 above)		
1400: Total Estimated Settlement/Closing Costs		

Applicant(s) hereby acknowledge(s) the receipt of a copy of this Good Faith Estimate and that you/they inquired into real estate mortgage financing with _____ (Company) on _____ (date).

Borrower: _____ Co-Borrower: _____

Originator _____ Date _____ License # (if applicable) _____