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## **A Financial Institutions Legal Update**

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### **HUD Issues Final RESPA Rule and the Federal Reserve Board Makes More Changes to Regulation Z**

On November 17, 2008, the Department of Housing and Urban Development ("HUD") published its long-awaited rule amending Regulation X. Regulation X is the rule that implements the Real Estate Settlement Procedures Act ("RESPA"). The new rule makes sweeping revisions to the Good Faith Estimate ("GFE") and corresponding modifications to the Uniform Settlement Statements (the "HUD-1" and the "HUD1-a"). It also contains a new definition of "application" that may change the point at which many GFEs will be provided. Even more significantly, the rule will require that the GFE be "binding" for at least 10 business days, and it will limit the amount by which many of the estimated fees may increase before closing.

The new rule will permit lenders to engage in the practice commonly referred to as "average cost pricing," provided that certain requirements are met. Average cost pricing is when a lender charges third party fees to all customers based on an average amount versus the exact fee that the third party actually imposes on each loan. However, HUD has reserved authorization of volume discounts. It also changed the definition of "required use" for purposes of affiliated business arrangements. Effective April 16, 2009, a settlement servicer provider will be deemed to have required the use of an affiliated provider if the first provider has provided a financial incentive to the customer to use the affiliate's services. For example, the new definition will prohibit builders from providing closing cost assistance on the condition that the buyer obtain financing through an affiliated mortgage lender or broker. Finally, the rule makes some technical amendments, including implementing the 1996 statutory changes to the servicing disclosure statement.

On December 19, 2008, the National Association of Mortgage Brokers filed suit to enjoin implementation of the rule. Assuming that they don't prevail, lenders will have until January 1, 2010, to start complying with most of the new rule. However, the guidelines for average cost pricing and the technical amendments were effective January 16, 2009. The new definition of required use was also to take effect on January 16, but HUD recently agreed to extend the effective date to April 16, 2009.

On December 5, 2008, the Federal Reserve Board announced proposed amendments to Regulation Z that will implement the Mortgage Disclosure Improvement Act of 2008 ("MDIA"). The proposed rules supplement and, to some extent, revise the amendments to Regulation Z that were published in July of 2008. Both regulatory actions are designed to help prevent a repeat of

the current mortgage and foreclosure crisis. Comments on the proposed MDIA rules are due by February 9, 2009.

Meanwhile, the effective date of portions of the final changes to Regulation Z that were published in July of last year will now be **July 30, 2009**, and not October 1, 2009, as the Board originally announced. Lenders must start providing early Truth-in-Lending ("TIL") disclosures on non-purchase money loans by July 30, 2009. The new substantive limitations on all dwelling-secured loans will still take effect on October 1, 2009. So too will the new limitations on "higher priced loans." Note that "higher priced loans" are not the same as the "high cost loans" that TIL regulates today. In fact, early assessments indicate that a significant percentage of prime loans may fall within the definition of "higher priced loans" in the new rules. Lenders should review their lending practices carefully to determine if the higher priced loan restrictions might apply to some of their loans. It is dangerous to assume that they will not apply simply because the lender doesn't make subprime or Alt-A loans.

For a more detailed summary of the new RESPA and TIL rules, [click here](http://www.lanepowell.com/pdf/pubs/fi_2009_0001.pdf) ([http://www.lanepowell.com/pdf/pubs/fi\\_2009\\_0001.pdf](http://www.lanepowell.com/pdf/pubs/fi_2009_0001.pdf)).

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