



Capital One Financial Corporation  
1680 Capital One Drive  
McLean, VA 22102

June 12, 2008

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 Seventh Street, SW., Room 10276  
Washington, DC 20410-0001  
Attn: Docket No. FR-5180-P-01  
[www.regulations.gov](http://www.regulations.gov)

**Re: Real Estate Settlement Procedures Act (RESPA) Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs**

Dear Sir or Madam:

Capital One Financial Corporation (“Capital One”) is pleased to submit comments on the proposal by the Department of Housing and Urban Development (HUD) to amend the Real Estate Settlement Procedures Act (RESPA) rule to simplify and improve the process of obtaining mortgages and to reduce settlement costs.<sup>1</sup>

Capital One Financial Corporation is a financial holding company whose principal subsidiaries, Capital One, N.A., Capital One Bank (USA), N.A., and Capital One Auto Finance, Inc., offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. As of December 31, 2007, Capital One’s subsidiaries collectively had \$83 billion in deposits and \$151.4 billion in managed loans outstanding, and operated more than 740 retail bank branches located in New York, New Jersey, Connecticut, Virginia, Louisiana, and Texas. Capital One’s subsidiary Capital One Home Loans, Inc., originates mortgages which it sells into the secondary market, and Capital One’s subsidiary GreenPoint Mortgage Funding, Inc., services a substantial portfolio of mortgages. Capital One is a Fortune 500 company and is included in the S&P 100 Index.

---

<sup>1</sup> 73 Fed. Reg. 14030 (Mar. 14, 2008).

Capital One commends HUD for its goal of simplifying and improving disclosures requirements and the process of obtaining mortgages. This is an important goal that Capital One shares. However, we are highly concerned that the proposed rule does not achieve that goal because it (1) conflicts with existing laws and regulations; and (2) will likely increase consumer confusion. As such, Capital One respectfully urges HUD to re-propose the RESPA rule after working closely with the Federal Reserve Board and after taking into consideration the various disclosures and information consumers are provided during the mortgage process.

**HUD and the Federal Reserve Board should work closely together to decrease the proposed rule's conflicts and redundancies with other laws.**

In hopes of improving disclosures and the mortgage process for consumers, HUD proposed new disclosures and other requirements. However, many of these proposed RESPA disclosures and requirements do not improve mortgage disclosures and the mortgage process for consumers because they conflict with or duplicate existing federally mandated disclosures and requirements.

Some examples of conflicts or redundancies include:

- HUD proposes that a lender must complete final underwriting within a reasonable time after the mortgage application is complete. If the lender rejects a consumer, the lender must provide a rejection notice within one business day of the decision to reject. Furthermore, HUD proposes requiring lenders to keep a record of the rejection for three years. These proposed disclosures and requirements conflict or duplicate disclosures and requirements under the Federal Reserve's Regulation B.<sup>2</sup> Regulation B requires that the lender notify an applicant of action taken within 30 days after receiving a completed application.<sup>3</sup> That written notification includes notification of the decision to deny an application along with either the denial reasons or a statement of the right to the denial reasons. In addition, Regulation B requires retention of all records, not just rejections, for at least 25 months.<sup>4</sup>
- HUD proposes that the GFE disclose any "credits," the proposed word for yield spread premium. This disclosure duplicates the yield spread premium disclosure in the Federal Reserve's proposed Regulation Z mortgage rule.<sup>5</sup> There, the Federal Reserve requires that a written disclosure be given to consumers prior to their paying any fee or submitting an application. The written disclosure would explain and provide a dollar amount for any payments made to brokers, including payments made by creditors in the form of yield spread premiums.<sup>6</sup>

---

<sup>2</sup> See 12 CFR 202.

<sup>3</sup> See 12 CFR 202.9.

<sup>4</sup> See 12 CFR 202.12.

<sup>5</sup> 73 Fed. Reg. 1672 (Jan. 9, 2008).

<sup>6</sup> See proposed 12 CFR 226.36.

- HUD proposes requiring a closing script be read and given to consumers at closing to explain, among other things, the terms of the loan. While we agree that consumers should be made aware of the terms of their loans, we note that the written and oral script duplicates information already provided prior to loan consummation in the Regulation Z mandated disclosure. HUD proposes but Regulation Z already requires disclosure of the terms of the loan, including features such as late charges, prepayment penalty, and balloon payment.<sup>7</sup>

These are just three examples of where the proposed rule conflicts with or duplicates requirements in other federal consumer banking regulations. Because of these conflicts and redundancies, the proposed RESPA rule does not achieve HUD's goal of simplifying and improving mortgage disclosures and the mortgage process. As such, Capital One recommends that HUD and the Federal Reserve Board work closely together to eliminate conflicts and redundancies in the proposed RESPA rule in order to achieve HUD's goal.

**To minimize consumer confusion, HUD should take into account other federal and state mandated disclosures when proposing RESPA disclosures.**

In hopes of making disclosures more useful and informative to consumers, HUD proposed new and revised existing RESPA disclosures. However, the proposed disclosures will have the opposite effect as they are more likely to overwhelm and confuse consumers.

The proposed RESPA rule would overwhelm consumers with the volume of information required by the proposed rule. Two examples are increasing the one page GFE to four pages, and increasing the length of a mortgage closing and the number of pages that consumers will receive at closing with the closing script. Consumers would especially be overwhelmed by the volume of information because the proposed disclosures would be given in addition to other federal and state mandated disclosures and documents.

In addition to being overwhelmed, consumers will likely be confused by the proposed disclosures. As mentioned above, some of the proposed disclosures conflict or duplicate existing required disclosures. For example, consumers will be confused when they receive a GFE and closing script that repeats the same information in the Regulation Z disclosure. Consumers may be particularly confused by inconsistent information. For example, the proposed GFE and closing script require disclosure of an initial interest rate. However that rate is not the annual percentage rate (APR) that is required by Regulation Z to be disclosed in advertisements and in Regulation Z disclosures.<sup>8</sup> As such, the same loan product will have one rate appear in advertisements and Regulation Z disclosures and a different rate appear in the proposed GFE and closing script. Consumers will be confused by these different numbers that are both percentages intended to convey the cost of credit. More troubling, consumers comparing mortgages from different lenders may

---

<sup>7</sup> See 12 CFR 226.17 and 226.18.

<sup>8</sup> See 12 CFR 226.18 and 226.24.

compare the APR of one lender's mortgage against the initial interest rate of another lender's mortgage and choose the more expensive mortgage. This defeats HUD's goal of simplifying disclosures and the mortgage process in order to help consumers shop and obtain the best loans for themselves.

To minimize overwhelming and confusing consumers, we recommend designing the RESPA disclosures with the volume and content of non-RESPA disclosures in mind. One way to do so is to supplement past consumer testing with additional consumer testing that simulates consumers' real-world experience. In other words, additional consumer testing should include testing the proposed RESPA disclosures along with other disclosures and information consumers receive when shopping for mortgages and closing on a home.

Capital One supports HUD's goal of simplifying and improving disclosures and the process of obtaining mortgages for consumers. However, Capital One shares the concerns and joins the recommendations of other commenters, notably the American Bankers Association, that HUD reconsider the proposed RESPA rule. There is a need for HUD to work closely with the Federal Reserve Board and to carefully consider current disclosures and mortgage processes. Doing so will help HUD design RESPA disclosures and processes that will meet HUD's goal of simplifying consumer disclosures and the mortgage process.

\* \* \*

Capital One appreciates the opportunity to comment on HUD's proposed RESPA rule revisions. If you have any questions about this matter or our comments, please call me, Ducie Le, at 703-720-2260.

Sincerely,



Minh-Duc T. Le  
Assistant General Counsel, Policy Analysis