April 9, 2009

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW
Room 10276
Washington, DC 20410-0001

Re: Real Estate Settlement Procedures Act (RESPA) Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Further Deferred Applicability Date for the Revised Definition of “Required Use” and Solicitation of Public Comment on Withdrawal of Required Use Provision (24 CFR Part 3500, Docket No. FR-5180-F-05, RIN 2502-AI61)

To Whom It May Concern:

The American Financial Services Association (“AFSA”) appreciates the opportunity to comment on the definition of “required use” as revised by the Department of Housing and Urban Development’s (“HUD”) November 17, 2008 final rule amending its Real Estate Settlement Procedures Act (“RESPA”) regulations.

AFSA strongly believes that flood certification and tax service providers should be added to the current list of affiliated service providers that lenders are allowed to require borrowers to use. The new RESPA regulations contemplate that the lender will choose the appraisal, credit reporting, tax service, and flood certification providers, in essence “requiring” the use of the lender’s chosen provider. See Instructions for Completing HUD-1 and HUD-1a Settlement Statements and Instructions for Completing Good Faith Estimate (GFE) Form, 24 C.F.R. Pt. 3500 Appx. B and C. On the other hand, RESPA prohibits a lender making a referral to an affiliated service provider from requiring the use of a particular provider, but makes an exception to allow a lender to “requir[e] a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction.” 24 C.F.R. § 3500.15(b)(2).

As is recognized in the context of the GFE and HUD-1/HUD-1A disclosures, flood certification and tax service providers are similar in nature to appraisal and credit reporting service providers – they “represent the lender’s interest in a real estate transaction” by providing technical information that the lender uses in evaluating the loan application and establishing the loan terms and conditions. Lenders very often have

1 AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers.
automated processes set up with these service providers and there is no direct contact
between the borrower and the service provider. Accordingly, flood certification and tax
service providers should be treated the same as appraisal and credit reporting service
providers for affiliated business arrangement purposes. AFSA requests that Section
3500.15(b)(2) be revised to allow a lender to “requir[e] a buyer, borrower or seller to pay
for the services of an attorney, credit reporting agency, flood certification provider, tax
service provider, or real estate appraiser chosen by the lender to represent the lender's
interest in a real estate transaction.”

Thank you for taking our comments into your consideration. Please feel free to contact
me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

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