Written Statement

of

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On Behalf of

The Real Estate Services Providers Council, Inc. (RESPRO®)

Before the
U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Financial Services

On

The Department of Housing and Urban Development's (HUD) Proposed
Real Estate Settlement Procedures Act (RESPA) Rule

September 16, 2008

Good morning, Mr. Chairman and Members of the Subcommittee. My name is David H. Stevens and I am President of Affiliated Businesses for Long and Foster Companies.

Long and Foster Companies is the third largest residential real estate brokerage firm in the nation, with over 200 residential real estate brokerage offices that engage in real estate sales and leasing in Virginia, Washington, D.C., Maryland, West Virginia, Delaware, Pennsylvania, North Carolina, and New Jersey.

Long and Foster offers a full array of mortgage services through Prosperity Mortgage, which is a joint venture co-owned by Long and Foster and Wells Fargo Home Mortgage. In addition, we operate an independent mortgage banking firm, Walker Jackson Mortgage, in southeastern states from Florida to North Carolina. We also offer personal, commercial, and financial insurance protection from over 50 insurance companies through Long and Foster Insurance, a wholly-owned insurance agency. Another wholly-owned company, Mid-States Title, runs several joint ventures that conducted over 27,000 settlements last year.

Today I am representing the Real Estate Services Providers Council, Inc. (RESPRO®), a national non-profit trade association of over 200 residential real estate brokerage, mortgage, home building, title, and other settlement service companies who promote an environment that enables providers to offer diversified services for home buyers – often called one-stop shopping -- through affiliations, joint ventures, and other strategic alliances across industry lines.[1]

I. Overall Position of RESPRO® on HUD's Proposed RESPA Reform Rule

Because Long and Foster offers real estate brokerage, mortgages, title and closing services, and insurance, we share along with other RESPRO® members many of the concerns that my fellow witnesses are expressing in their testimony today over the potential impact of HUD's proposed RESPA rule on these individual industries. We support HUD's goal of providing simplified mortgage disclosures that make it easier for consumers to shop when they purchase or refinance a home. However, we believe that the rule it proposed on March 14, 2008 would have the opposite effect. For example:

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1 See Attachment 1 or http://www.respro.org/content.cfm?L1=1.0&L2=3.0 for membership list).

- The proposed Good Faith Estimate (GFE) is lengthy, complex, and cannot be easily compared by a borrower with the HUD-1 Settlement Statement at closing to determine whether the actual costs exceed the estimate provided at the time of the loan application.

- The proposed GFE contains terminology that conflicts with other disclosures consumers receive under the Truth in Lending Act (TILA) and the Equal Credit Opportunity Act (ECOA), which will add to the borrower's confusion during the loan application process.

- HUD's proposed new GFE and mortgage application process would overlap and conflict with the broader federal mortgage regulatory framework under TILA and ECOA, which would further add to the borrower's confusion.

- HUD proposed that closing agents be required to prepare and read a new "closing script" that even it estimates would take 45 minutes to read and would cost the consumer an additional $54 per closing. The closing script would also violate many state "unauthorized practice of law restrictions", and HUD did not anticipate how it would be delivered in non-face-to-face transactions or in transactions involving foreign languages.

These are just a few reasons why we believe HUD's 2008 proposed RESPA reform rule -- which was almost 100 printed *Federal Register* pages -- was fundamentally flawed. Given the short timetable for public comments (March 14 – June 13, 2008), the thousands of comments received, and the extremely short time after the deadline for comments that HUD took to analyze them, draft a final rule, and send it to OMB (June 13 – August 14, 2008), we think that it is extremely unlikely that HUD has modified the proposed rule in a manner that would resolve these and numerous other potential problems.

II. The Impact of the Proposed RESPA Rule on Diversified Real Estate Brokerage Companies and Their Customers

I am here today; however, to address the particular impact that the proposed rule would have on diversified real estate brokerage firms like Long and Foster Companies and our customers.

A. An Overview of Diversified Real Estate Brokerage Firms

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The segment of the industry that I represent today is not insubstantial. According to the independent real estate research firm REALTrends, Inc., 285 of the nation's 500 largest residential real estate brokerage firms -- which were involved in 30% of all home purchase transactions in 2007 -- offer mortgages, and 240 of the top 500 firms offer title, closing or escrow services. According to a 2008 survey of home buyers by Harris Interactive, the parent of Harris Poll, 29% of recent home buyers used a one-stop shopping service in 2008 compared to 20% in 2002 – an increase of 45%.[2]

Since real estate brokerage firms began to offer mortgage, title, and other settlement services over 20 years ago, there have been several consumer surveys and economic studies to assess their impact on the home buyer. Consumer surveys have consistently shown that consumers who use realty-based one-stop shopping programs have a more favorable home buying experience[3], and economic studies over the years have shown that they are competitive in cost.[4]

In today's challenging housing market, which has seen the failure of numerous mortgage and title firms that can threaten prompt and efficient closings, diversified real estate brokerage firms like Long and Foster are increasingly using our affiliated mortgage, title, and other settlement service companies to better enable our real customers to close on time and move into their new homes as scheduled. Because we own or partially own other companies needed to close the home purchase transaction, we are able to assure that they communicate promptly with each

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[2] "One-Stop Shopping Consumer Preferences" (February 2008), performed by Harris Interactive and commissioned by the National Association of Realtors (NAR).

[3] The 2008 Harris Interactive consumer survey (see footnote 1) also found that buyers who used one-stop shopping in their latest real estate transaction are more satisfied with their home buying experience (8.3) than those who used services from multiple providers (7.6). These results are consistent with a 2002 Harris Interactive survey of recent and potential home buyers that found that 82% of home buyers would "strongly" or "somewhat" strongly consider using a one stop shopping service for their home purchase, and that 64% of home buyers who recently used one stop shopping programs had a better overall experience with their home purchase transaction.

[4] The most recent economic study on the costs of affiliated services vs. unaffiliated services involved an independent analysis of over 2200 HUD-1 Settlement Statements from transactions conducted in nine states (Alabama, Illinois, Maryland, Michigan, Minnesota, North Carolina, Ohio, South Carolina and Virginia) in 2003 and 2005. The study concluded that title premiums and title-related settlement closing charges are not higher when affiliated business arrangements are involved compared to when they are not. "Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs" (2006), The CapAnalysis Group LLC. The CapAnalysis Study reached the same conclusion as a 1994 study performed by the national economic research firm of Lexecon, Inc., which found that title and title-related services for transactions performed by affiliated title companies in seven states – Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania, and California – were competitive with those provided by unaffiliated title companies. "Economic Analysis of Restrictions on Diversified Real Estate Services Providers", by Lexecon, Inc., January 3, 1995.

other and we are better able to resolve any service issues that arise more efficiently than we could with independent companies.

B. The Impact of HUD's Proposed RESPA Rule on Diversified Real Estate Brokerage Companies

Diversified real estate brokerage firms are subject to RESPA's "affiliated business" provisions, which prohibit companies from "requiring the use" of an affiliated settlement service provider. HUD has long allowed companies, however, to provide voluntary discounts, rebates, and other incentives to consumers who purchase our affiliated services as long as the services are separately available and as long as the incentive is genuine, meaning it is not offset by increased prices of other services in the transaction to offset the incentive.

Because diversified real estate brokerage firms are more confident that our affiliated companies can assure a prompt and efficient closing, we commonly offer voluntary, positive incentives to customers who use our affiliated mortgage and title services under this longstanding RESPA exemption.

For example, earlier this year Long and Foster offered our real estate customers who purchase a home listed by Long and Foster and also obtain a 30-year fixed mortgage through our affiliated mortgage company, Prosperity Mortgage, a 1/2 percentage reduction in their mortgage rate over the first year – which, using an interest rate of 6%, for example, saves them $762 on a $200,000 mortgage.

Currently, we promise home buyers who use a Long and Foster listing or sales agent and also obtain a loan commitment through Prosperity Mortgage that we will pay their first month's principal and interest up to $5,000 if the loan doesn't fund.

Last year, under Long and Foster's "Helping Those Who Serve" program, we offered state and local police, firefighters, military personnel, teachers, and certified health care providers a $500 closing credit if they used Long and Foster Real Estate, Prosperity Mortgage, Long and Foster

Insurance Services, and a Prestige Settlement Agency to purchase their home. In addition, they received discounts on a variety of support services from a variety of support industries from moving companies to home supply retailers.

These programs were voluntary and if they were not used, the home buyer pays no more. But if they are used, our customers can receive substantial savings and just as importantly we were better able to assure they got to closing on time, since they are using the services of our affiliated businesses over which we have more control.

Other commonly used consumer incentives used by Long & Foster and other diversified real estate brokerage firms throughout the country include:

- Payment of all or part of the 1% mortgage origination fee
- Downpayment assistance
- A free or discounted home warranty
- A gift certificate for a Home Depot, Sears, or Lowe's purchase
- A guarantee that the provider will pay the difference if closing costs on the HUD-1 Settlement Statement exceed those on the Good Faith Estimate
- A guarantee that the title commitment will be delivered within five or ten business days from the date the title order is received
- A guarantee that the HUD-1 Settlement Statement will be delivered five days prior to settlement
- A guaranteed payment of $500 or more if closing occurs later than the date mutually agreed upon.

These voluntary consumer incentives have been well-received by real estate brokerage customers. In fact, Harris Interactive found in its 2008 home buyer survey that I referred to earlier that 77% of home buyers surveyed considered the biggest advantage of using a one-stop shopping program to be saving money through discounted prices.[5]

[5] Other advantages that home buyers said they could obtain from one-stop shopping programs included increased efficiency and manageability (73%), convenience (73%) and things not falling through the cracks (73%).

Unfortunately, HUD proposes a new definition of "required use" in its proposed RESPA rule that would effectively prohibit companies from offering these positive, voluntary consumer incentives for the purchase of affiliated mortgage, title, or other settlement services that lower costs and enable a prompt and efficient closing.

HUD says in the Regulatory Impact Analysis that accompanies its proposed rule that it recognizes that consumers may benefit from one-stop shopping programs offered by real estate brokerage firms and homebuilders. But it says it is proposing this ban on consumer incentives because it believes that some companies are hiding discounts by increasing the price of other services – which clearly is prohibited under current RESPA regulations – or are charging more than their normal rates if the customer does not use the affiliated service – which also clearly is prohibited today.

HUD also has provided no indication that it has analyzed the types of positive, voluntary consumer incentive programs being offered throughout the industry today that provide consumers tangible savings and better service. We find it odd that HUD would overturn a 16-year-old policy that would prevent companies from offering consumers (1) lower costs in their home purchase transaction; (2) a guarantee that their closing will be on time; or (2) a guarantee that their costs at closing will not exceed those on the Good Faith Estimate without performing more research on today's marketplace activities in this area.[6]

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[6] In June 11, 2008 public comments to HUD regarding its proposed RESPA rule, staff of the Federal Trade Commission (FTC) also recommended that HUD reconsider the change to the definition of "required use" in HUD's regulations:

> "FTC staff recommends that HUD reconsider the change to the definition of "required use" in HUD's regulations. The expanded definition of required use could deprive customers of the lower prices that can result from bundling related services. Bundling related services can create efficiencies in – lower the costs of – providing those services, and discounting the bundle allows consumers to pay less for the services. Indeed, HUD recognizes the potential benefits of bundling, and appropriately retains a safe-harbor to allow settlement service bundling. FTC staff believes that the analysis of settlement service bundling also applies to the analysis of other bundles. Absent clear evidence of probable harm from bundling related services, FTC staff believes that HUD should reconsider the proposed change because bundling can improve efficiency and save consumers money." Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission, June 11, 2008, page 30.

III. Summary

Mr. Chairman and Members of the Subcommittee, HUD’s proposed ban on voluntary consumer incentives is another example of how HUD’s proposed RESPA rule would increase costs and result in poorer service for home buyers. The rule was not well-conceived as a whole. Given the breadth of HUD’s proposed RESPA rule and its potential impact on today’s fragile housing market, we believe that HUD should withdraw its 2008 RESPA regulation and work with the Federal Reserve Board (Fed) which separately is revising its Truth in Lending Act (TILA) disclosures to develop uniform mortgage disclosures that would truly accomplish its goals in this rulemaking.

Thank you for the opportunity to testify, and I would be glad to answer any questions.