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Statement by

Philip C. Jackson, Jr.

Member, Board of Governors of the Federal Reserve System

before the

Subcommittee on Housing and Community Development

of the

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Thank you, Mr. Chairman, for the opportunity to present the views of the Board of Governors of the Federal Reserve System on proposals to amend the Real Estate Settlement Procedures Act of 1975. The Board has interest in this legislation as an agency with responsibilities over creditors and to consumers, as an organization with concerns for monetary conditions in the nation, and, finally, as a regulator under the Truth in Lending aspects of the real estate settlement procedures required under the Act. It is this final matter--the Truth in Lending aspects of real estate settlement procedures--on which I would like to concentrate during this testimony.

The RESPA Act has been in effect only a very short time. The Board does not know if the reports of lenders claiming substantial increases in administrative costs under the required procedures are correct. Nor do we have any factual evidence whether or not RESPA has reduced closing costs to consumers, or whether it is likely to do so in the future.

Implementation of RESPA required coordination between the Department of Housing and Urban Development and the Board of Governors to assure that the basic requirements of the Truth in Lending Act administered

under Board supervision would be incorporated into RESPA procedures. The Board and HUD have done so. During the course of this coordination and the early stages of the Act's implementation, the Board has become aware of several instances of needless complexity and procedural problems with the Act.

First, as the Committee knows, all consumer credit grantors, including those in the mortgage market, have operated under Truth in Lending procedures for the past six years. Creditors have developed forms which are in almost universal operation to meet the requirements of that Act, and to fit the needs of each lender-borrower transaction. RESPA mandated that existing forms on real estate credit transactions be replaced by standard forms. Because of the complexity and variety of real property transactions, it was extremely difficult to develop a standard RESPA form which was easily applicable to all transactions. Standardization required lenders to change procedures and adapt to the new required forms. It required industry personnel to be retrained in new Truth in Lending procedures. Lenders report that this change has proved costly, without better disclosures on the cost of credit to consumers as a result of the change. Therefore, the Board would recommend that creditors be permitted to use, for such Truth in Lending disclosures, any form meeting the requirements of the Truth in Lending statute, or at the creditor's option, the present uniform disclosure statement contained in RESPA forms.

Second, the Board has long supported requirements that a prospective borrower be given proper information in advance on which he can make decisions on his credit and closing costs--especially on such a major undertaking as the purchase of real estate. RESPA requires that Truth in Lending be disclosed twice: once in advance of settlement and again on the day of settlement. The Board recommends to the Congress that it amend the Real Estate Settlement Procedures Act to require that the Truth in Lending disclosures be furnished only to the borrower one time, in advance of the date of settlement, and not require that they be duplicated at the time of closing. Truth in Lending disclosures received on the day of settlement are too late to serve any shopping function. The Board believes that these minor changes will not adversely affect consumers but will reduce the amount of effort necessary to give consumers adequate disclosure as to the facts concerning their credit transaction, while avoiding unnecessary duplication. Moreover, such disclosures need not be made to the seller, in the Board's opinion.

Finally, the Board urges the Congress to repeal entirely the provisions of Section 409 of P. L. 93-495 which amended the Truth in Lending Act to require advance disclosure of closing costs. The Committee will recall that this Act was passed October 28, 1974, prior to the enactment of the Real Estate Settlement Procedures Act. We feel that the

provisions of the Real Estate Settlement Procedures Act supplanted the need for Section 409 disclosure and therefore, Section 409 is no longer necessary.

While there are some transactions which are not covered by the Real Estate Settlement Procedures Act to which Section 409 disclosure of closing costs would be applicable, such as some home improvement transactions, there is real doubt of the value of advance disclosure of closing costs in such situations for several reasons. First, closing costs are usually not a material factor in total consumer costs in such transactions. Second, these transactions are usually subject to the 3-day right of rescission under Truth in Lending because they are secured by real estate which is the primary residence of the borrower. Consequently, if the consumer does not like the credit deal proposed, he can cancel it. Finally, the time framework within which such transactions take place is usually so short that disclosure delays may be detrimental to the consumer's interest.

The Board is currently in the process of implementation of Section 409, having waited until final RESPA procedures were completed in order to avoid public confusion between the two disclosure requirements.

In a broader context, the Board has earlier expressed concern that legislation purporting to assist consumers may actually harm

consumers by imposing burdens on the creation of borrower-lender relationships. Such harm might come from creation of requirements which are so complex as to eliminate some lenders from consumer markets, thus reducing the competition for the consumer's business. Another harm could arise from increasing the cost of creating proper borrower-lender relationships. Since lenders must in the final analysis make investments based on net return after administrative costs, any increases in administrative costs of lenders in competitive markets are ultimately passed on to the consumer either directly or indirectly. Reports from others give the Board concern that the Real Estate Settlement Procedures Act may be creating both of the problems which I have described.