



Supreme Court Spanks HUD

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Having one's read of the law vindicated by the Supreme Court is always a nice feeling, even if I had to wait about a decade. From 2002 to 2003, I managed the HUD office which administered the Real Estate Settlement Procedures Act (RESPA).

In 2001, prior to my arrival, the legal staff at HUD released a "policy statement" claiming that RESPA's Section 8(b) prohibited some instances of fees as excessive or unreasonable because said fees would constitute a person "giving or accepting any unearned fees".

How HUD even knows what is earned or unearned is besides the point, Section 8(b) of RESPA only prohibits fees that are basically split between two or more parties. As far as statutes go, RESPA is actually quite clear. That clarity, however, did not stop HUD from taking the convoluted position that one can split or share a fee with one-self. This was obviously an attempt to create a "reasonable" test for fees where one did not exist.

During my brief tenure at HUD, the RESPA office largely ignored this section of the 2001 policy statement. The staff there related to me that its inclusion was largely "political" anyway, an attempt to make the remainder of the policy statement more palatable.

I made clear at the time that the policy statement went far beyond any actual authority in RESPA. It seems, however, that the trial bar was not willing to let this statement remain dormant, and assembled a class action based upon this erroneous reading of RESPA, leading to last week's [decision](#), which rejected 9 to 0 HUD's reading of RESPA.

Dodd-Frank moved the RESPA office from HUD to the newly created Consumer Financial Protection Bureau (CFPB). It moved much of the HUD enforcement and legal staff as well. What is not clear is whether the willingness to simply make up law where there is no statutory authority was also left behind.

One of the reasons why I, among others, have strong concerns as to the current structure of the CFPB is this trend of regulators constantly going around the letter of the law. How are we to hope for respect for the law when those tasked with enforcing it show so little respect themselves.