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**Comments of John G. O'Brien and Henry L. Shulruff
on Behalf of the Illinois Real Estate Lawyers Association
Presented to the HUD Roundtable on RESPA
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The Illinois Real Estate Lawyers Association would like to thank the Department of Housing and Urban Development for inviting it to participate in the extremely important process of revising the real estate transaction settlement process. We applaud the department for its efforts and believe that the stated objectives to “update, simplify and improve the disclosure requirements for mortgage settlement costs” and to “help control these costs” are laudable goals and are worthy of the efforts of the department, Congress and the industry.

There is consensus within both the lending and settlement service industries that the current RESPA Rules fail to adequately and appropriately address each of the goals outlined by HUD as its objectives for RESPA Reform. We agree that the present disclosure requirements are not as effective as was hoped in ensuring that consumers receive accurate, timely and understandable disclosure of mortgage loan settlement costs. We believe that there is a likelihood that a better solution can be developed, and we are gravely concerned that the solutions proposed by HUD in prior proposals will worsen, not improve the current situation.

First, under the guaranteed mortgage package agreement (GMPA) and the mortgage package offer (MPO), borrowers would still be paying a lump sum for settlement services within the package. The lack of required itemization of charges for each service and the provider of that service would hinder, not foster, transparency in the transaction. From our perspective, disclosures to consumers should be strengthened and enhanced, not eliminated.

Second, the settlement services industry is already embracing packaging as a market based initiative. These recently implemented market based approaches should be given an opportunity to work, then be studied and, if necessary, be regulated in such a way as to allow the most efficient method of delivery with greater certainty of costs.

Third, the packaging that does occur today is fundamentally different than the packaging that would occur under the HUD proposal. Under the current regulations, the economic benefits of packaging discounts are passed on to consumers. Packagers or other parties may not retain the consumer's savings — if they do it is considered a kickback and Section 8 of RESPA applies. This is not what was envisioned by HUD in past packaging proposals. Prior proposals have contemplated Section 8 exemptions for packagers and would have allowed packagers to retain any or all of the economic benefits of packaging and not be subject to Section 8 liability if they stayed within the safe harbor created by HUD. Saving consumers money is an objective that should be in the minds of government and industry participants developing these new processes.

Past HUD proposals have not recognized that buyers and sellers of property across our country have a long history of allocating costs among themselves. Transaction by transaction, buyers and sellers are able to negotiate how costs will be allocated and are able to shop for the providers of those services. Also, in many jurisdictions, it is the seller that shops for and selects the title insurance provider. Under the HUD proposal, all of the charges required to complete the mortgage would be incurred by the borrower in the HUD proposed package. Prior proposals have not fostered shopping by consumers or freedom to negotiate.

It is the position of IRELA that HUD should consider the following in developing a new regulatory framework:

- Consumers should be allowed to shop for settlement service providers.
- Impact on small business must be a paramount consideration.
- HUD should first allow the market to determine how packages should be implemented before considering government intervention.
- Any allowance for Section 8 referral payments can only increase the cost to consumers as any payment for work not performed increases the cost of providing the product.
- Preemption of existing state law should not be part of the framework unless those laws are inconsistent with provisions of the statute.
- Any changes must recognize that buy/sell transactions and refinances are fundamentally different.
- Regulatory approaches must be consistent with RESPA and more dramatic changes must be accomplished through legislative action.

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