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***CONSUMER MORTGAGE COALITION***

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*Statement Of:*

**ANNE C. CANFIELD  
EXECUTIVE DIRECTOR**

**HOUSE FINANCIAL SERVICES COMMITTEE  
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY'S**

**HEARING ON --**

**“SIMPLIFYING THE HOME BUYING PROCESS:  
HUD’S ROPOSAL TO REFORM RESPA”**

**February 25, 2003**

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**STATEMENT OF ANNE C. CANFIELD  
EXECUTIVE DIRECTOR  
CONSUMER MORTGAGE COALITION**

February 25, 2003

Good afternoon. I am Anne Canfield, Executive Director of the Consumer Mortgage Coalition, a trade association of national, residential mortgage lenders, servicers and service providers. I appreciate the opportunity to speak to you today on HUD's proposed RESPA rule. We would also like to submit a copy of our comment letter to HUD on the RESPA proposal for the Committee's written record.

The CMC believes HUD's proposal represents a major step toward improving the process by which consumers obtain mortgage loans in this country. Significantly, it gives loan originators and other settlement service providers the option of offering guaranteed closing costs to consumers. And if such a guarantee is provided, it allows packagers to use their purchasing leverage to lower these costs – something which RESPA to date has prohibited. With this guarantee, consumers will have a better understanding of closing costs and be better able to shop for the best loan that suits their needs.

We also believe that this guarantee – which the proposal calls a “Guaranteed Mortgage Package,” or “GMP,” if structured appropriately, will help reduce predatory practices. The CMC has developed a comprehensive set of proposals to address predatory lending, which are in Tab 1 of our comment letter to HUD. The GMP is an important element of those proposals, for two reasons. First, the proposal will ensure that consumers receive relevant information about a loan's costs early in the process, which promotes comparison-shopping. Second, by simplifying the comparisons, it will increase consumer understanding and make more difficult the deception that characterizes abusive loans.

I would like to focus today on five key aspects of HUD's proposal that, we believe, are crucial to this rule becoming a reality – not just the reality of becoming a final rule, but the reality of millions of borrowers obtaining lower cost loans as a result of receiving offers of guaranteed mortgage packages.

**First, the structure of the Guaranteed Mortgage Package.** HUD has included in the GMP the guaranteed settlement costs and an interest rate component. Although the proposal called this an “interest rate guarantee,” the interest rate is not, and cannot, be a “guaranteed rate,” unless the borrower locks in the rate and qualifies for the loan. The costs to the consumer and industry of actually offering every potential applicant a “guaranteed” rate would be staggering. HUD understands this.

Because they are not guaranteed, we have urged that the interest rate and any discount points, which together constitute the interest “price” of the loan, be separated from the “guaranteed closing costs package.” Consumers need to receive, and shop with, offers of guaranteed settlement costs. These costs, far more than the interest rate, are misunderstood, are not subject to comparison-shopping, and come as an unwelcome “surprise” to borrowers at the closing table. Also, if the interest “price” were removed from the package, non-loan originators would more readily be able to assemble and offer a guaranteed package because they would not have to offer the actual loan, an act that requires special licensing authority.

If HUD determines to include an interest rate component in the GMP, it must be a conditional rate, subject to underwriting. HUD also wants borrowers who have either not yet accepted a GMP offer, or have accepted but not locked in the rate, to be able to track the rate using some verifiable index. This is a problem, however, because there is no universal index that can be used to track lenders’ rates. Because loan pricing is highly company-specific and is driven by numerous internal and external factors, the only way for this to work is to require loan originators to make their rates available to these applicants on a daily basis, by phone, on a website, or via some other medium. That will assure that similarly situated borrowers will be treated alike.

A few trade associations have urged HUD to adopt a “Two Package” approach to the rule. One package would be the “loan package,” including the interest rate and any separate settlement charges imposed by the lender, such as loan origination or loan processing or underwriting fees. The second package would be the “settlement package,” which presumably would include the remaining settlement costs, such as the title insurance, closing attorney, survey, etc. It is not clear where the costs for the appraisal or credit report would go. In some proposals, there would be a Section 8 exemption for the services within each package, but not across the packages.

After looking closely at this approach, we cannot support it because it significantly complicates the origination process, and raises more questions than it answers. Consumers want simplified shopping. They understand and shop for the interest rate, and they understand (or should understand) that they can raise or lower that rate with discount points. They now need a simple way to compare and shop for closing costs. Having certain closing costs (loan origination fee, processing fee, etc.) in one package and other closing costs (title, closing attorney charges, etc.) in another package makes it harder, not easier, to shop for these costs.

The structure we see working best is one in which lenders and other settlement service providers may assemble and offer packages of guaranteed settlement costs. If a non-lender offers a package to a consumer, it would let the consumer know which lenders have agreed to accept that package. The consumer can then go to those lenders, with that pre-approved package in hand, and negotiate for the best interest price (rate and points) he or she can obtain. The loan would still be subject to underwriting, but if it is approved, and the consumer has not changed the loan for which he or she applied, the

lender and the packager would be bound to adhere to the terms of the guaranteed package agreement.

**Second, the treatment of HOEPA loans.** The proposal excludes from the exemption for packaging loans subject to the federal Home Ownership and Equity Protection Act, which applies to loans whose rate or points exceed specific thresholds. We strongly disagree with this exclusion. We think it is wrong to withhold from subprime borrowers the clear shopping and cost-savings advantages of obtaining GMP offers. It has been argued that many HOEPA borrowers today do not shop effectively for loans. That is all the more reason to include them under this rule. We need to give them every tool and motivation to shop. In fact, HOEPA borrowers are likely those *most* in need of GMP offers. Armed with guaranteed settlement cost offers, HOEPA borrowers can focus on obtaining the best loan price (in terms of rate and discount points) available to them in the market.

**Third, federal preemption.** Many state laws conflict with, or frustrate the purpose of, HUD's proposal. There are state laws that require the disclosure and itemization of all closing charges. There are state laws that, like Section 8, prohibit referral fees, or that require a direct pass-through of all third party closing charges to the third party provider, or that restrict the use of affiliated settlement service providers. An exemption from Section 8's federal prohibitions, and the express federal authority to bundle and guarantee settlement costs, will have no meaning if these state laws remain in effect. Without broad federal preemption of all state laws that conflict with or frustrate the purpose of the proposal, the advantages to consumers from the GMP are illusory. As HUD states in its economic analysis accompanying the proposal, preemption will allow "competition to substitute for regulation," which is a desired effect of providing the GMP option.

We have also urged HUD to pursue federal legislation to amplify and confirm the state preemption of these laws.

**Fourth, the need to delay the changes to the Good Faith Estimate.** In addition to the GMP, HUD proposed significant, new changes to the Good Faith Estimate, or "GFE," provided under RESPA. Loan originators who do not offer applicants a GMP must provide applicants with the new GFE. With the exception of the more precise disclosure of mortgage broker fees, we have urged that HUD postpone action on the GFE.

As we outlined in our comment letter, the revised GFE raises a host of compliance and operational difficulties that require significant attention. Implementing the GMP is a huge enough task. Taking on the mandatory additional project of implementing an entirely restructured GFE is too much change at once, particularly as the industry is struggling to implement the Federal Reserve Board's new requirements under the Home Mortgage Disclosure Act.

We have urged HUD to implement the GMP aspect of the proposal as quickly as possible. This is the crucial new experiment that will help consumers shop and exert downward pressure on settlement costs. However, that new process will be many

months, if not years, away if HUD also requires implementation of the new GFE changes. The reason is that lenders will have to implement the mandatory changes, meaning the GFE, first. Our companies have estimated that implementation of the GFE changes alone could take upwards of 18 months. Only then will the optional GMP be implemented.

There is a second, more ominous, reason for our concern about the revised GFE. Many have argued that HUD lacks the statutory authority to implement the proposal, with the strongest attacks questioning HUD's authority to institute "zero tolerance" disclosures in the new GFE for certain categories of costs, where the RESPA statute requires only an "estimate." Lawsuits challenging HUD's authority to make these changes will only further forestall the effective date of the regulation, further delaying any benefits that would result from GMP offers to consumers.

**Fifth, the need for additional legislation to harmonize RESPA and the Truth in Lending Act.** In many respects, HUD is attempting to combine RESPA's settlement cost disclosures and the Truth in Lending Act's credit cost disclosures in one new HUD regulation. While there are difficulties with HUD's approach (incorporating TILA disclosures into the RESPA regulation is duplicative and causes confusion), we agree with the concept. What is really needed is federal legislation to harmonize RESPA and TILA and other federal mortgage related disclosure statutes, so that the consumer can receive one combined, coherent disclosure that covers all aspects of the loan. Such a system would vastly simplify the loan origination process for the benefit of all. Secretary Martinez has indicated a desire to pursue such legislation and we laud his efforts in that regard. We look forward to working with this Subcommittee on that much-needed legislation.

**In conclusion,** I thank the Subcommittee for the opportunity to testify today on HUD's bold, new proposal. I say "new proposal" with some hesitation. There's an old adage that "There are no new ideas in Washington, only old ideas that are given new labels." The idea of bundling closing costs has been around a long time. In fact, back when RESPA was first enacted in 1974, former Senator Proxmire contemplated a similar kind of simplified approach that made it easier for borrowers to shop for loans.

We believe HUD is on the right track in offering lenders and others the option of bundling and guaranteeing settlement costs, and removing barriers to competition. We should let the market work for the benefit of consumers. This is a sensible approach whose time has come. As I've mentioned before, it's also optional – allowing this new product or approach to be test marketed to see how it works. We hope that HUD's final rule allows such test marketing to begin immediately. If simplified appropriately, we think it will work and make a real, positive difference in the lives of many borrowers.

Thank you.