SUMMARY ANALYSIS OF HUD'S PROPOSED REVISIONS TO ITS RESPA REGULATIONS

PREPARED FOR THE AMERICAN LAND TITLE ASSOCIATION

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This memorandum provides a summary analysis of the major aspects of HUD's proposed revisions to the RESPA regulations published for public comment at 67 Fed. Reg. 49134 (July 29, 2002). A copy of the proposed regulations and a more extensive analysis of the proposal (dated July 29, 2002) are available at the American Land Title Association (ALTA) website. The memorandum is divided into two parts:

- Part I summarizes the HUD proposals, emphasizing those aspects of particular relevance to the title insurance industry; and
- Part II identifies some of the more significant problems and concerns that may be posed for title companies, settlement agents, attorneys and others whose charges are included in the 1100 series ("Title Charges") on the HUD-1 form, and consumers who obtain mortgage loans as part of the purchase of a home.

I. SUMMARY OF HUD'S PROPOSALS

Section 5(c) of RESPA, 12 U.S.C. § 2604(c), requires a mortgage lender,[1] within three business days of receiving a loan application, to provide to the applicant a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur." Appendix C to the RESPA regulations sets out the form for this disclosure, in which there is a line item, linked to the numbered lines on the HUD-1 settlement form, for the estimated amount or range of each of the settlement charges that the consumer may have to pay. While the statutory regime specifies that lenders must provide these estimates in good faith, RESPA does not require that lenders undertake any specific commitments with regard to these estimates, nor does it require that settlement service providers limit their charges to conform to any estimates

[1] Unless otherwise noted, "lender" is used to refer both to the entity funding the loan and the mortgage originator (such as a mortgage broker), if different from the funder.

provided by the lender. In addition, RESPA provides no specific enforcement measures for violations of this good faith estimate (GFE) regime.

The proposed regulations are substantially identical to proposals for amendments to RESPA made in a 1998 joint report by HUD and the Federal Reserve Board.[2] Rather than seek the necessary statutory amendments to authorize the sweeping changes being proposed, HUD has decided to take the proposals for legislation developed in the Clinton administration and implement them as regulatory changes without any further statutory authorization or congressional debate. The proposed regulations, if ultimately adopted, would effect significant changes in the information and commitments lenders will have to provide to mortgage loan applicants and in the ways in which settlement service providers interact with lenders and consumers regarding their services and prices .

The changes reflect HUD's belief that the current GFE regime provides for estimates that are confusing (there is a proliferation of charges) and unreliable (because new charges may appear for the first time at closing or the estimates are frequently lower than the actual charges turn out to be), that the GFE form fails to include certain information about the loan needed to help the consumer shop, and that the regime inhibits shopping (because lenders require consumers to pay various fees before receiving the GFE).

HUD therefore proposes to abandon the regulations and GFE form it has used for almost three decades in implementing RESPA § 5(c) and to create two radically new regulatory regimes and disclosure forms to replace the current GFE regulatory regime:

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[2] Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act, Board of Governors of the Federal Reserve System and Department of Housing and Urban Development (July 1998), available at <<http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf>>.

- a revised GFE regime, whereby:
  - lenders would identify the specific terms (interest rate, APR, monthly payments) of the mortgage loan requested by the applicant, together with
  - guaranteed prices (what HUD nevertheless refers to as "estimates") for each of seven major categories of settlement costs (including a category for "title services and title insurance"); and
- a new regime for the provision of "Guaranteed Mortgage Package Agreements" (GMPAs), whereby:
  - the packager (most likely a lender) would offer the applicant a loan on specific terms (interest rate, APR, monthly payments) with the interest rate "guaranteed" not to change for at least 30 days except in accordance with an observable and verifiable index, and
  - a single "guaranteed" price for virtually all services and charges that would be provided or incurred in connection with the making and closing of the loan (the "Guaranteed Mortgage Package" (GMP)).

Although the two regimes are similar in many ways, prices, payments, and arrangements between lenders who offer GMPAs and providers of services in the GMP would be exempt from RESPA § 8 scrutiny, whereas § 8 would continue to apply to the new GFE regime. As discussed below, this is likely to be the critical factor that motivates lenders to adopt the GMPA regime rather than the new GFE regime.

A. The New GFE Regime.

The new GFE regime would require that, within three days of receiving an "application" as redefined by the proposed regulation,[3] a lender must, without charging an application fee or fees for credit reports or appraisals, provide to the applicant the revised GFE form proposed by HUD. (A nominal GFE disclosure charge to cover the cost of providing the GFE may be made.)

[3] "Application" would be refined to mean the submission by the applicant, either orally or in writing, of her Social Security number, the property address, basic income information, information the applicant may have on the house price or a best estimate on the value of the property, and information on the mortgage loan needed.

The new GFE form would provide specific information on the terms of the loan requested (interest rate, APR, monthly payment) and "estimates" of the aggregate total amount to be paid by the borrower for each of certain specified categories of settlement charges. While the GFE must remain "valid" for 30 days (whatever that means), the making of the loan is still subject to the lender's normal loan underwriting and, unless the applicant locks in the loan rate, the rate noted in the GFE may change. If the rate changes by the time the applicant decides to lock-in a rate, the lender must provide a revised GFE. However, the charge for any category of settlement services cannot change from the estimate unless the settlement charge is dependent on the interest rate.

The categories of settlement charges for which the GFE must provide aggregate "estimates" are:

- all lender-required charges for originating the loan (the 800 series charges on the HUD-1 form) (Category III(A));
- all payments – whether made directly by the consumer or paid to a mortgage broker by a funding lender – dependent on the interest rate (e.g., discount points or yield spread premiums) (Category III(B));
- services required by the lender where the lender has selected the provider (800 and 1300 series charges) (Category III(C));
- **"title services and title insurance" (the 1100 series charges) (Category III(D))**;
- other services required by the lender where the borrower may shop for the provider (800 and 1300 series charges) (Category III(E));
- state and local government charges and taxes (the 1200 series charges) (Category III (F)); and
- amounts to be placed in a reserve or escrow for insurance and property taxes (the 1000 series charges) (Category III(G)).

In fact, the figures that must be shown for each of these categories are not "estimates," but amounts that, absent "unforseeable and extraordinary circumstances,"[4] either cannot be exceeded at settlement (Categories (A), (B), (C) and (F)), or can only be exceeded by 10% (Categories (E) and (G)).

With regard to the Category (D) charge for title-related services, it appears that the lender's estimate of this Category (which the lender is likely to obtain from its selected title company or companies) must include all charges (except for optional owner's title insurance) that would be reflected in the 1100 series and not just charges made and kept by the title company.[5] With regard to the "estimate" given to the applicant for Category III(D):

- it cannot be exceeded at settlement (what HUD calls "0% tolerance") if the provider of the services is selected by the lender (the lender may not, however, require that an affiliated title company be used);
- it may be exceeded by up to 10% where the lender allows the borrower to shop for a provider but the borrower ultimately elects to use a provider suggested by the lender (which may include an affiliated title company recommended by the lender); and
- there is no limit at settlement for Category III(D) services where the borrower selects a provider not recommended by the lender or "chooses a more expensive service."

The proposed regulations appear to assume that a single provider performs all of the Category III(D) services, so that the lender must indicate on the GFE form whether the services are "lender selected" or "borrower selected." The proposal does not take into account the fact

[4] Proposed § 3500.2(b) of the Regulations defines "unforeseeable and extraordinary circumstances" as "acts of God, war, disaster, or any other emergency, making it impossible or impractical to perform." HUD has invited comments on this definition.

[5] The other charges would include document preparation fees, notary fees, attorney's fees (including any charges paid by the borrower for the lender's or seller's attorney, as well as the buyer's own attorney), tax service or tax certificate fees, Torrens fees, and charges for wire transfers and express deliveries.

that the provider of some of the 1100 series services (such as escrow closing services) may have been selected by the buyer, and providers of other services may be selected by the lender. While the total of all the charges for these seven categories would be shown on the form, there would be no identification of the amounts for the individual services or charges included in the total for any category, nor, in general, would there be any information on the particular services or charges that are, or are not, contained in a particular category.[6]

Lenders would also have to include with the GFE an Attachment A-1, which, among other things, requires the lender to indicate on separate lines the amount of the title insurance premium and the amount of the charges "for title and settlement agent services, including any commissions for title insurance."[7] HUD appears to believe that if the total amount of compensation received by the title insurance agent (including the commission) is disclosed to the borrower, the borrower will be in a better position to negotiate lower charges from the agent.

Finally, because RESPA § 5(c) provides no express enforcement mechanism for the GFE requirements, the question arises what happens if a lender fails to comply with one of more of HUD's new requirements? HUD's answer is that "[i]f the cost at settlement exceeds the estimate reported on the Good Faith Estimate, absent unforeseeable and extraordinary circumstances, the borrower may withdraw the application and receive a full refund of loan-related fees and

[6] In addition, the revised GFE form would show estimates for *per diem* interest, hazard insurance, and optional owner's title insurance. These figures would be true "estimates" in that the amounts paid at settlement would not be limited by the estimate.

[7] It is not clear whether the title insurance premium is the premium for the loan title insurance policy only, and whether the premium is to be net of the agency retention (what HUD refers to as the "commission"). Including the commission in the figure for the title insurance premium and in the "title agent charges" would double count the commission.

charges."[8] It is unclear how effective such a remedy will be in ensuring the loan originators comply with all of the requirements of the GFE regime, and what HUD's authority is for creating such a remedy in the absence of any statutory authorization.[9]

B. The New GMPA Regime.

Any entity offering a Guaranteed Mortgage Package Agreement must, within three days of receiving an application (as redefined), provide the applicant at no charge with a signed GMPA in the form specified by HUD. The GMPA form proposed by HUD:

- commits the packager to provide a mortgage loan (subject to "acceptable final underwriting and a property appraisal") at a "guaranteed" interest rate, which, for at least 30 days, can only increase in accordance with interest rate changes based on a verifiable index or other appropriate measure;[10]
- offers a Guaranteed Mortgage Package (GMP) at a single price that must include:
  - all lender charges (including discount points and origination fees);
  - all third party charges for services required by the lender to make the loan;
  - all title and closing related charges, including a loan title insurance policy (if any), but not optional owner's title insurance; and

[8] Proposed § 3500.7(d)(1).

[9] In addition, HUD notes that regulators of financial institutions (such as the OCC for national banks) may enforce the GFE obligations with regard to their regulated institutions, although many types of loan originators (mortgage brokers and mortgage bankers) may not be subject to any such regulation. HUD also indicates that, concurrent with the finalization of the proposed regulations, it "will establish procedures for closely scrutinizing loan originators that fail to meet these new GFE requirements for possible Section 8 violations." It is not clear how a lender potentially violates Section 8 if the lender fails to comply with one or more of the new GFE requirements.

[10] As noted above, the making of the loan is not "guaranteed" and is subject to normal underwriting.

- all charges required to complete the loan (including government recording fees and transfer taxes);[11] and

- advises the borrower if the lender "anticipates" including a pest inspection, a loan title insurance policy, a credit report, and/or an appraisal in the package, and commits the packager to providing the borrower with a copy of any such report that is obtained by the lender.

Apart from indicating whether these four services are included in the GMP price, the GMPA does not require the packager to disclose what individual services and charges are – or are not – included in the GMP or the specific amount of any service or charge. If the applicant signs the GMPA within the time frame specified by the packager (which can be no less than 30 days from the date of the offer) and pays an acceptance fee determined by the lender, the GMPA becomes a binding agreement.

Unlike the GFE regime, any payments, discounts, things of value, or mark-ups involving the GMP or the services included in the GMP would be exempt from RESPA § 8 scrutiny. Similarly, because of the § 8 exemption, any or all of the services contained in the GMP may be provided by an affiliated business (in essence, the packager may require the use of an affiliated provider) and the affiliate relationship need not be disclosed to the applicant.[12]

While HUD's proposal appears to allow anyone to offer a GMPA, because the GMPA must include a loan at a guaranteed interest rate it is highly unlikely that anyone other than

[11] As in the case of the proposed GFE regime, the GMPA must provide separate, non-binding estimates of the additional amount to be paid by the borrower at settlement for *per diem* interest, hazard insurance, and optional title insurance, and an estimate, subject to a 10% tolerance, of the amount the borrower will have to pay into a reserve or escrow for property taxes and hazard insurance.

[12] It is possible that, in a GMP regime, lenders and other packagers with affiliated business arrangements may conclude that they are better off not using the services of an affiliated provider if they can obtain the needed service from a non-affiliated provider at a lower price or with no continued obligations of ownership.

lenders will be in a position effectively to offer a GMPA to consumers. While lenders may turn to third parties, such as title companies, to help provide or arrange for services the lender may require for its packages, because the GMP must also include all of the charges the lender may be seeking in connection with the origination of the loan, a non-lender packager may not be able to establish the charge for the GMP without specific information from a particular lender.

II. CONCERNS RAISED BY THE HUD PROPOSALS

The HUD proposals are likely to have adverse effects on providers of title-related and other services covered by the 1100 series on the HUD-1 form. Moreover, the inclusion of such charges in the proposed GFE and GMPA regimes is also likely to create problems for consumers in mortgage transactions involving the purchase of real estate.

A. Potential Impact on Providers of Title-Related Services.

HUD anticipates that, under both proposals, there will be a substantial reduction in the revenues realized by providers of title-related services, particularly small business providers. Under the proposed GFE regime, HUD expects prices to fall by 10% and believes that this will save consumers $1.8 billion annually in third-party settlement costs by virtue of "increased price pressure as a result of the imposition of tolerances and expanded shopping by originators."[13] Under the proposed GMPA regime, HUD estimates the savings in third-party charges as a result of lender-obtained discounts will be twice as great – 20% or $3.6 billion annually – and that an

[13] HUD estimates that a total of $6.3 billion in annual consumer savings would be realized if all lenders operated under the GFE regime.

additional $3.7 billion will be saved in loan origination and settlement service costs by virtue of the substitution of more efficient competitors for less efficient competitors.[14]

1. Lenders are likely to pressure title companies for reductions in charges and to assume the risks of unanticipated 1100 series charges.

In order to provide the GFE within three business days of receiving an application and to ensure that the tolerance limits for the estimate will be met, lenders will seek to have firm quotes readily available from one or more preferred title companies for all title-related charges or, as may be likely, for all of the 1100 series charges that the lender and title company anticipate will be involved in the transaction.

Because RESPA § 8 would continue to apply, a lender cannot require the use of an affiliated title company because this would violate the "no required use" condition of the § 8 safe harbor for affiliated business arrangements. Thus, a lender would appear to have three choices:

- require the use of a non-affiliated title company, in which case there is a 0% tolerance for the Category III(D) estimate;
- base its Category III(D) estimate on the charges made by a non-affiliated title company, permit the borrower to use any other title company, and, if the borrower ultimately elects to use the title company recommended by the lender, there is a 10% tolerance; or
- base its Category III(D) estimate on the charges made by an affiliated title company, permit the borrower to use any other title company, and, if the borrower ultimately elects to use the affiliated title company, there is a 10% tolerance.[15]

[14] HUD estimates that a total of $10.3 billion in annual consumer savings would be realized if all lenders operated under the GFE regime.

[15] Moreover, the fact that a title company includes in its estimate of the Category III(D) total an "average" charge for a particular activity, such as a lien release charge or an overnight delivery charge, would not in HUD's view enable the company to charge more in the specific transaction than the actual costs incurred because (a) RESPA § 8 would continue to apply to

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HUD believes that competition among lenders will induce them to seek discounts from title companies for the Category III(D) charges. Because RESPA § 8 continues to apply in the GFE regime, HUD proposes that discounts may be offered by settlement service providers in order to be selected or recommended by the lender only if the entire discounted price without any mark-up is included as part of the total Category III(D) estimate. Whether lenders will press for such discounts when they cannot directly benefit from the discounts is unclear.

In the GMP regime, however, the pressure for reductions in third-party charges is likely to be substantially greater because pricing arrangements within and for the GMP would be exempt from RESPA § 8. Accordingly, any reductions in third-party charges a lender can negotiate may increase the lender's bottom line profits if competition does not force the lender to pass through all such savings to consumers.[16] In light of the other similarities between the two regimes, the fact that lenders operating in the GFE regime must pass through to the consumer any discounts they are able to negotiate, whereas they can retain the benefit of such discounts without § 8 liability in the GMPA regime, is likely to be the determinative factor in lender decisions as to which regime to operate under. [17]

GFE transactions, and (b) in HUD's view, charging more than the actual costs without providing additional services constitutes an unjustified "mark-up" in violation of § 8(b).

[16] History suggests that even if some or all of the discounts are passed through to prime borrowers, competition in the sub-prime market, in the inner city, and with regard to less sophisticated borrowers may not ensure that the reductions are passed through.

[17] HUD believes that exempting GMPs from RESPA § 8 so that lenders can use their clout in referring business to arrange for the purchase of settlement services at discounted prices is a good thing. A strong argument might be made, however, that this is not sound regulatory or economic policy in light of the increase in concentration in mortgage lending in recent years. In this regard, it should be noted that, in the last five years, the market share of the top 10 originators of residential mortgages has doubled from 25% of the market to "control of upward

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If the GMPA regime comes to predominate, being included in the GMPs developed by lenders may be the only effective means by which providers of title/closing services can obtain any significant amount of business in residential mortgage loan transactions. To the extent that a mortgage lender can realize greater profits on the GMP price by negotiating lower prices from the providers of the services in the package, providers of title/closing services are likely to face significant pressure to offer cut-rate prices and/or cut-rate services in order to be selected for inclusion in lender-created GMPs.[18]

While HUD believes that such loss of revenues for the title/closing industry is desirable if consumers reap the benefits of such revenue transfers, there is no comprehensive study – indeed, no responsible study at all – that supports the conclusion that the loss of such revenues (a) will simply eliminate "fat" or unnecessary charges, or (b) will not adversely affect the ability of the industry to continue to provide needed services, or to retain and attract capital.

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of 50%." See "Consortium Approach Gains in Home Loans," American Banker, July 12, 2002, at 1, 10.

Moreover, it is debatable whether such discounts are desirable if they do not reflect real cost savings, but are provided solely because (a) major lenders are given control by HUD over the access to consumers by settlement service providers, and (b) getting into the packages of major lenders becomes the only route for survival for settlement service providers.

[18] What state law limitations may exist on the ability of title insurance companies or title insurance agents to offer "discounts" on particular charges in particular states as an inducement to be included in the GFE estimate or GMPA of a particular lender is an important issue beyond the scope of this memorandum. The issue is not merely whether such a discounted rate would be consistent with a filed, approved or promulgated rate, but whether a discount given to borrowers from lenders with significant market clout – but not to borrowers from smaller lenders without such clout – can be justified under state law requirements that insurance rates not be discriminatory.

In addition, under both regimes lenders are likely to look to their favored title companies not only to provide the Category III(D) estimate for the GFE, or the amount to be used by the lender for the 1100 series charges in determining the total GMP price, but to assume the financial risk if it should turn out that that the final settlement charges for the 1100 series services exceed the total amount estimated.[19] To the extent that certain charges actually incurred in a particular settlement may not have been anticipated, the title company may have to bear this cost overrun.

2. Lenders may be more willing to accept a lesser quality of protection.

Widespread adoption of the GMPA regime could also result in lenders being more willing to accept less expensive and less comprehensive forms of title protection in lieu of loan title insurance policies if they believe that the greater title risks they would be assuming would be more than offset by the increased profit they may realize on the GMP. Of course, a critical factor in what protection lenders are willing to accept is the extent to which secondary market purchasers, such as Fannie Mae and Freddie Mac, would be willing to accept such reduced protection.

B. Potential Problems for Borrower/Buyers

Many of the problems raised by the HUD proposals for consumers seeking mortgage loans to finance the purchase of residential real estate appear to be the result of two fundamental misconceptions by HUD: (1) that all settlement charges covered by the GFE Category estimates (whether at 0% or 10% tolerance), or covered in the GMP price, are really provided for the lender's benefit and it is therefore appropriate to have the lender bear responsibility for these

[19] Indeed, if title companies provide the information on local recording fees and transfer taxes that are used by the lender, the lender may seek to have the title company bear the financial risk of any errors or oversights in the GFE estimate or in the GMPA package price relating to those governmental charges.

charges, and (2) there is no need for consumers to know the "details" of what services are included in the GFE estimate or GMP price, or how much the consumer is actually paying for the particular services.

While HUD may be right with regard to lender-imposed charges or third-party services that the consumer would not otherwise have to pay for in the absence of a mortgage loan, HUD's view is wrong with regard to title-related and closing services, at least in mortgage transactions involving the purchase of property. In those transactions: (1) title and closing services are provided for the primary benefit of the buyer and the seller, and would be purchased in such transactions even if there were no mortgage loan,[20] and (2) as will be discussed below, borrowers in transactions involving the purchase of property need to know such "details" in order to determine if their interests will be protected by the title-related services the lender may be willing to accept for the loan, to shop effectively, and to ensure that they will not be paying twice for the same services.

Because of these misperceptions, HUD's proposals with regard to the 1100 series charges fail to take into account that buyers and sellers have an independent interest in the selection of providers of title-related and closing services. It may be the case that, with regard to third-party services provided exclusively to the lender, the buyer/borrower cares only about the total charges she has to pay, and has no interest in what particular services the lender needs or who may provide them. For the following reasons, however, that is not the case with regard to title and closing-related services.

[20] In this regard, it deserves noting that section 106(a) of the Truth in Lending Act, 15 U.S.C. § 1605(a), defines "finance charge," which is used to calculate the annual percentage rate (or APR) on a loan, to exclude "charges of a type payable in a comparable cash transaction."

First, the HUD proposals do not require the lender to specify what title-related services are included in the Category III(D) estimate or in the GMP price, or how much of the estimate or GMP price is attributable to those services. Accordingly, if the lender has decided to accept a reduced form of title protection because it believes the additional profit it will realize on the GMP as a result of the cost savings will offset the additional risk it is taking, the buyer/borrower may not appreciate that the protection the lender has decided to accept on the mortgage loan may not meet the buyer's needs with regard to the purchase transaction.

Second, because the consumer will not know what services at what costs are included in the GFEs or in the GMP price, it may be impossible for the consumer to do an apples-to-apples comparison of offers from different lenders. For example, in the GFE context, two lenders may provide the same estimate for Category III(D) services, but Lender A may be using a non-traditional form of loan title protection that will require the borrower on her own to pay for the kind of title search, title examination, and title assurance needed to protect her interests in the purchase of the home, whereas Lender B's charge may include the kind of title search and examination on the basis of which an owner's title insurance policy may be issued (in which case the buyer would only have to pay on her own for the owner's title insurance policy). In the GMP context, this problem is even worse because all closing costs and settlement charges are lumped into a single figure.[21] Accordingly, in shopping between various lenders, there is no way for the buyer/borrower to determine what costs have been attributed to what elements of the package.

[21] Accordingly, a lender who has overestimated the government recording fees and transfer taxes that will ultimately be paid in the transaction may appear to be a "higher cost lender," even if the components of its package involving third-party services are lower than those of other lenders.

Third, the buyer and the seller may have agreed on the selection of the provider of certain 1100 series services (such as the escrow company in states where escrow closings are customary, or a title company that will provide the title and closing services) before the buyer has begun to shop for a mortgage loan. In these situations, the borrower should be given a credit against the lender's Category III(D) charge in the GFE and the price of the GMP package for those services that the borrower has independently arranged to purchase. If the lender is not required to provide a credit against the GMP price for such borrower-purchased services, the borrower may end up paying twice for the same service.[22]

Fourth, in many parts of the country the seller pays for all or part of certain title-related and closing costs. The GMP proposal, which assumes that the buyer/borrower pays for all closing costs, completely fails to reflect this widespread practice. If GMPAs do not provide a detailed itemization of the 1100 series services contained in the GMP price being offered, the buyer/borrower could end up having to pay for services that sellers currently assume.

CONCLUSION

The proposed regulations represent a major effort to restructure the way in which residential mortgage loans and settlement services are offered and priced throughout the United States. In the absence of express statutory authorization and guidance, HUD has endeavored to shoe-horn two new very new disclosure/payment regimes into the existing statutory framework that did not contemplate such regimes. While the new regimes may make sense with regard to

[22] In the GFE context, failure to disclose the individual elements of the Category III(D) estimate so that the buyer/borrower can determine what the total estimate would be without the inclusion of those services she has separately arranged to purchase could lead the consumer to select the lender offering the highest prices for the remaining services, not the lowest.

those charges that are imposed by lenders or are for services that only benefit the lender, as the discussion in this memorandum indicates, there are a host of problems in trying to include in these proposals title and closing services that are provided for the benefit of the buyer and the seller.