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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 Seventh Street, SW – Room 10276
Washington, DC 20410-0001

RE: FR–5352–A–01 Real Estate Settlement Procedures Act (RESPA): Strengthening and Clarifying RESPA's "Required Use" Prohibition Advance Notice of Proposed Rulemaking

Docket ID: HUD-2010-0044

To Whom It May Concern:

We are Consumer Advocates in American Real Estate ("CAARE") a non-profit 501(c)3 charity and national consumer organization dedicated to safeguarding consumers and removing conflicts of interest from the residential real estate process. It appears that we may be the only consumer group commenting on this ANPR. At the same time, because of our expertise and mission, we may also be the best qualified consumer group to contribute on the topic of "Required Use" as it applies to builders and other practitioners as well as HUD's open ended request for, "comment on actions in addition or as an alternative to rulemaking that would better address concerns with affiliated business arrangements in residential mortgage transactions."

HUD is right to be looking again at affiliated relationships, which in our opinion not only strip away competitive market forces, but more importantly expose investors and consumers to outrageous risks. We believe that investors who are concerned about safely loaning money should stop loaning money to mortgage firms that own title companies to close their own loans, disburse their own funds, or who report to a builder or a real estate brokerage firm. With affiliated businesses come the elimination of impartial and informed decision makers and the elimination of the checks and balances that used to be the infrastructure of the residential real estate industry. It is our belief that these inappropriate relationships called

Affiliated Business Arrangements ("AfBA's) facilitated the current foreclosure crisis in that there is no better way to ensure that a bad loan closes than to be cahoots with your own title company. The safety net of checks and balances that used to protect both investors and consumers by imposing impartial evaluators at every stage of the transaction is now gone and replaced with a chic and highly profitable marketing spin the industry calls "One Stop Shopping." And builders have abused and exploited affiliated business so thoroughly that they have made themselves a working model of what makes AfBA's so bad. The questions HUD poses in this request have far more implications than how builders interact with consumers. If these questions get answered honestly, logically and sans the marketing propaganda of the industry, they will demonstrate that AfBA's always lead to a "required use" problem. There is only one solution - reinstall the safeguards to residential real estate by eliminating AfBA's and you will reinstall confidence in the residential real estate market.

Introduction

Unlike the National Association of Builders (NAHB), we don't have $600,000 per quarter to spend on lobbying. In fact, as a 501(c)3 charity, we're not permitted to lobby as a rule. We understand that RESPA's anti-kickback provision has a giant exception carved out of it and that exception is called Affiliated Business. And we've even seen exceptions carved out of the exceptions to make it possible to directly pay kickbacks to managers at real estate firms for their success in capturing AfBA business through their "supervision "of Realtors (these same managers determine the commission splits of the Realtors they supervise). We know that some members of RESPRO pay annual dues that are at least $30,000. We've seen firsthand the marketing efforts that RESPRO, NAR, its state and regional associations, NAHB and other trade associations have put forth to put consumers, investors and legislators at ease with the total elimination of safeguards that they have disarmingly named "One Stop Shopping." It makes one think of Target. But all that money, all that marketing doesn't make One Stop Shopping in real estate the same thing as One Stop Shopping at Target. And when it comes to straight out logic, they can't come anywhere close to winning a debate on the topic.

Last year CAARE was invited by the American Land Title Association (ALTA) to debate with one of RESPRO's most respected proponents of AfBA's, Marc Sterbcow. The blind point/counterpoint was complete with biographies and pictures and ready for print when ALTA inexplicably pulled the piece from their magazine. When we approached Mr. Sterbcow to submit our work to another publication, he declined. Could it be that there is no good argument in favor of AfBA's? We've included our responses to ALTA's questions as an exhibit to demonstrate that AfBA's are truly indefensible (See Exhibit A).

What builders are doing to require buyers of new construction to use their in-house lenders and title companies is reprehensible. But what they are doing is not much different from the more subtle and possibly even worse manipulative practices of others who practice what we have renamed "One Stop Robbing," or "Sophisticated Captured Audience Marketing" (S.C.A.M.). We may not have the lobbying resources to officially change the name of Affiliated Business Arrangements like RESPRO did, but we can certainly give you an idea what we think would be a more appropriate term for these referral schemes.

Builders are not fiduciaries who owe far reaching duties to clients. Builders have only a customer "buyer beware" relationship with consumers, unlike their Realtor, lender and attorney counterparts. At least this part of their anti-competitive and anti-consumer practice is right out in the open and advertised. But isn't it an even worse form of required use when a fiduciary uses his special position of trust and influence to secretly steer his client to his own AfBA? We think so.

Make no mistake, the builder required use schemes MUST be stopped. We just wanted to point out that they are by no means alone in their blameworthiness.

In addition, there are other builder practices that need to come under HUD's scrutiny. For example, the common practice of builders offering secret bonuses and other things of value to Realtors who represent or work with buyers. This practice is widespread and violates every neuron devoted to morality. K. Hovnanian Homes (responsible for dozens of comments to HUD) pays secret $2500 bonuses to Realtors and gives them discounted continuing education credits (see Exhibit B). Lennar pays secret $5000 bonuses to Realtors, 4% commission splits (instead of the normal 3 or less) and even a free Lexus (Exhibit C). We hear about pre-loaded credit cards and lots of other incentives that are either illegal or should be.

One of our board members attended a course sponsored by K. Hovnanian Homes. The class was advertised by the Minneapolis Association of Realtors, certified by the Minnesota Commerce Department for 3.5 credits, it included a free breakfast and lunch and cost only $10. At the class, presented at a K. Hovnanian Homes development community center, there were multiple sales representatives present who were allowed to present their secret bonus program ($2500) to these Realtors and who required e-mail addresses from all present if they wanted to enter a drawing for free gifts. Although this situation was brought to the attention of the Minnesota Commerce Department, unfortunately as is often the case with local regulators, they declined to take any action.

Driving a secret wedge between the Realtor and their client is an affront to fiduciary law and may even violate the criminal bribery laws in states that have them. And our understanding of fiduciary law is that when an agent receives anything of value while working on their client's behalf, that thing of value belongs to the client, ***not the agent***. How many buyers do you know that when offered a free Lexus or a $5000 bonus would then turn around and offer to give it to their Realtor? We don't think very many. Instead, if a disclosure of these secret offers is made at all, the Realtor typically will inform the client that ***they're*** receiving a bonus and not inform the client that it is really their money (Note: we have come across honest Realtors who automatically give this money to their clients). So, even when these bonuses are disclosed, they rarely end up in the consumer's pocket where they belong. And you can be sure that these bonuses directly add to the cost of the house. Yet, this practice of builders paying secret bonuses has become the standard in the industry and we believe that it has a very negative impact on influencing the advice of Realtors as they steer reliant and trusting clients directly into the hands of builders and into their package pricing schemes.

Our fear is that HUD's rule won't go far enough and that by stopping "required use" as it is occurring today with builders, this money will only end up being diverted into the bribes being paid to Realtors and hurt consumers even more.

Our letter is necessarily comprehensive and is divided into the following sections:

***Builder Affiliations – How They're Different and Why It's Important**
***Required Use – When a Discount Becomes a Threat**
***Answers to HUD's questions about Builders and "Required Use"**
***Response to NAR's Comments – did NAR Mislead HUD?**
***Suggestions – surveys, studies and law changes**
***Exhibits**

a. ALTA's Quashed Debate Over AfBA's
b. K. Hovnanian Homes Realtor offer
c. Lennar's Realtor "loyalty" Program
d. Robert Hunter's Consumer Federation of America letter to GAO

Builder Affiliations – How They're Different and Why It's Important
Has anyone asked why it is so important to builders' to be able to be in control of the mortgage, title insurance and closing of their own transactions? Why would a builder offer a $15,000 discount that exceeds their profit on those two services by a factor of five? Perhaps the most important and least discussed problem with AfBA's is the enormous risk to which they subject consumers, investors and ultimately our entire economy. This risk is multiplied tenfold when applied to builders.

The process of building a home is a complicated and highly legalistic process fraught with risks for investors and consumers. Unpaid subcontractors whose claims result in mechanics liens that show up after closing and lien the house, an underlying blanket mortgage over the entire development that the builder neglects to pay off at closing and therefore fails to secure a partial release of the buyer's house, not completing the house to the mortgage investor's requirements so that the mortgage loan can contractually fund, using escrow money from one property to fund the construction of another property, overlooking construction defects, disputes over work orders and much, much more affect the transaction that some real estate attorneys equate to the complexity of building a downtown skyscraper.

We ask you, what better way is there to ensure that a builder's homes all close and money is disbursed the way that the builder wants it to then to own his own mortgage and title company? The whole idea behind having separate title and mortgage firms is to provide unbiased checks and balances at each of those stages of the transaction. If the house isn't complete and no lender would allow money to disburse until complete, what do you think will happen if the builder is in charge of that decision? Of course his deals will close on time, but at what cost? With those two entities in the builder's back pocket that are supposed to provide key safeguards to the transaction, why not just give the builder a blank check and forget about the façade of safeguards altogether? Once the builder owns the firms charged with providing the checks and balances, it becomes meaningless to even have a title company that is supposed to be reading and following closing instructions. And perhaps the most

ironic thing is that the builder is passing on the risk to the investor and the title insurance underwriter.

For a builder, having an AfBA is profitable not because of the fictitious efficiencies it creates, but rather because of the shortcuts it allows him to take. Listen to the K. Hovnanian representatives deliver their "talking points" over and over again in their comment letters and you will start to understand what we mean. When loans close at the builder's title and mortgage company, they say that there is far better communication and the loans close on time. They talk about how efficient it is for the builder to be able to communicate directly with the lender. Of course it's more efficient – if you want to commit fraud. Think for a second about to whom those companies report - the builder! Better communication isn't a good thing when you're a mortgage or title officer and your boss communicating with you is the builder.

If you're a builder and you're looking at a half million dollar sale and the only thing standing between your money and you is the title company, and you happen to own the title company, all you have to do is "communicate effectively" with your title company and the problem goes away. If you're a builder owned title company employee and you come across a terrible title defect that the builder created for which no underwriter would insure and no title company would close – what do you do? You seek guidance from your boss who happens to be the builder in this situation and you do what he says – you close it. Everyone is happy (almost) – the buyer gets their house, the builder gets his money, the title company makes their boss happy and the mortgage officer gets a big commission. Both the investor and the title insurance underwriter have no idea that they were exposed to additional risk, so they're happy too. And that title defect that might be a subcontractor who didn't get paid, or an underlying mortgage that didn't get paid off – what happens to them? Well if the builder has played his cards right, he'll sell another house and pay them off later before any damage is done. It's a Ponzi scheme on a scale that would make Mr. Madoff cringe.

Investors who provide builder mortgage companies funds should be asking builders' mortgage companies the following questions: 1. Do you write loans on your builder's houses? 2. Do you use an affiliated title company to examine title and write title policies on your builder's houses? 3. Do you use an affiliated title company to disburse funds on your builder's houses? If the answer is yes to any of these questions, then those investors should walk away.

Title insurance underwriters should be asking their builder title agents similar sets of questions, but they won't because these days the only source of business for underwriters are AfBA's. To them the conflicts don't matter anymore because they have raised their premium structures so high that the defalcations don't seem so bad anymore.

Required Use – When A Discount Becomes a Threat

Just by walking into a builder's open house, the smoke and mirrors of a giant conspiracy against the home buyer begin. Because as soon as the builder's Realtor shows the buyer around, that buyer loses his ability to go out and find his own Realtor to help negotiate the purchase. There are no disclosures warning consumers of this trap, there are no laws that

make this so, all there is the Realtor Association's internal arbitration rules on "procuring cause" that take away another Realtor's ability to share in the commission. And when that happens, it's a hidden commission dispute that forces an unwitting buyer to use the builder's Realtor to negotiate and write up the offer and prevents him from hiring his own.

And for those majority of buyers who search on the internet to try and save money by doing the work themselves, they too lose their right to representation as soon as they walk into an appointment with the seller's agent to see the house of their dreams. Yet Realtors and builders continue to bate that trap (without disclosures) with open houses and listing information on the internet.

Even the buyers who choose to use their own buyer's agent aren't safe because builders have fixed that game too. Builders take huge amounts of money off the buyer's negotiating table and secretly offer it to the very person whom the buyers are trusting to help them sort through decisions such as whether to buy new or pre-existing. Builders routinely offer secret "bonuses" to buyers' Realtors for convincing their clients to buy the builders' houses.

Buyers don't stand a chance in new construction, and that is especially true when they are working with a builder who routinely abuses RESPA with expectations that if they get caught violating RESPA, the consequences will come nowhere near the profit they are likely to make – it's just a cost of doing business. But it's not the builders who are the subject of outrageous penalties, it's the consumer. And builders misleadingly call these penalties "discounts" in order to trick and trap consumers into losing yet another set of safeguards. These "discounts" fit the description of a RESPA abuse called "Required Use" and need to be eliminated from the marketplace.

Consider the average cost of origination and title fees in the United States is approximately $2,739 on a $200,000 loan (2010 closing cost survey from Bankrate.com). Taking into account the overhead of employees, commissions, rent and other costs of doing business, let's generously over estimate that the average net profit per closing is $547 (20% of the gross) for those services. That means a package deal derived from mortgage and title only has $547 of profit from which the builder could offer discounts.

Last we heard, it was bad business to share employees among builder, mortgage and title companies; and that employees are the most expensive part of running any service business; and that whether or not an office is under one roof, rent is still measured and sold by the square foot. In other words, the so-called savings that come from owning both a mortgage and title company aren't really that much. Perhaps they could share a copier.

The true savings to a builder in owning his own mortgage and title company is the shortcuts it allows him to take in funding his own loans (as discussed in the previous section). In fact, almost all the comments proffered by builder AfBA's cite how they don't have to worry about an outside provider fouling up the mortgage or closing. Fouling up the closing usually happens when there is a severe title defect or lending underwriting condition that hasn't been satisfied and the title and mortgage providers aren't willing to close. To us, this doesn't speak to the bad services coming from outside providers; rather it speaks to the dangers of

allowing the fox to guard the henhouse. The so-called streamlining that takes place is nothing more than the perception that occurs when you remove the checks and balances on one of the most risky transactions in residential real estate. And as those multitudes of K. Hovnanian Homes keep saying, carrying costs may certainly be reduced if the builder is closely "monitoring" and "supervising" the closing of their own loan. Of course there are no delays and all his deals close - the builder owns the mortgage and title companies that are supposed to stop the bad deals! The builder has bought the safety mechanisms that legitimately delay and kill his transactions that shouldn't close. But should any builder be allowed to do that???! All he has to do is login to the computer of his mortgage or title company that he owns or instruct his employee to ignore appraisal or underwriting conditions to get a loan closed. If those two companies report to the builder, exactly where are the impartial checks and balances? And what builder is going to tell his title company or mortgage company not to close or fund a loan on his own house when he would likely incur extraordinarily high carrying costs? A builder may have a half million dollars or much more on the line if his deal doesn't close. Should he really be the person in charge of evaluating underwriting, title and disbursement conditions?

We refuse to believe that a builder's mortgage and title company are going to be as strict at following underwriting standards or better at closing loans than outside providers. And we refuse to believe that in this day of electronic data sharing whereby a builder can securely logon to an outside lender's or title company's website (without the ability to do anything improper) and see exactly what is happening with their loan, that having an in-house company would streamline that process. And there is nothing to lead us to believe that outside mortgage and title services would be less eager to earn a builder's business than the in-house company which is "spoon fed" their leads.

It may be that an outside lender with appraisal conditions might refuse to fund a loan, per standard underwriting instructions, on a house that is not yet complete. It may be true that a title company will condition the closing of the loan upon the paying off of an underlying blanket mortgage by the amount attributable to that parcel. But all mortgage and title companies should do those things – that's their jobs. So other than being more exacting and not taking unauthorized risks, outside lenders and outside title companies are on at least equal footing with those of the builder. In fact, the outside service providers are likely much larger with more highly specialized and trained staff to handle the more difficult closings than those of the builder. And unlike the builder's mortgage and title services, outside providers have to compete to earn their business and actually do provide the safeguards needed for these more risky transactions.

So that leads us to the question: Assuming that everything is being done legally by in-house and outside lender and title companies, and assuming that in-house and outside providers maintain an equivalent skill level and equally desire to please and inform their clients, where exactly are these so-called savings?

We don't believe that there are any legitimate savings to the builder that justify discounting title and mortgage to the tune of $15,000 (more than five times the gross receipts of mortgage and title services on an average transaction).

From the consumer's perspective, they're being swindled. They are being penalized – choose your own mortgage and title company and we'll charge you an extra $15,000. They're being asked to decide between having impartial and independent safeguards in place to protect them or getting an extra $15,000 if they're willing to risk it. And it's not just their money at risk either. It's the investor's who is providing the money and the title insurance underwriter's money who has to pay the claims for shoddy title work. No consumer should have to make that choice.

It would appear that when HUD defines a "true discount" they define it as being "below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process." We believe that HUD should expand that definition to also exclude discounts that exceed the costs plus a reasonable profit of the mortgage and/or title services. Without this latter exclusion you will have no way to determine what constitutes a true discount.

For example, if the builder is offering a $15,000 discount if the buyer uses the builder's mortgage and title "package" you will have no way of knowing if the builder has jacked up the price to make that offer. These offers typically exist in perpetuity and are built right into the first price when the home is first offered for sale or to build. You need a benchmark.

The cost of the build job does not vary based on whether or not the buyer uses the builder's mortgage and title services. That's a myth put forth by the builders who claim that carrying costs are less when they close their own deals. There is no data that indicates that using an outside mortgage and title service results in unskilled or untimely work. The costs of their builds are the same and their carrying costs are the same regardless of who funds or closes the loan.

We believe that builders, if they are continued to be permitted to own AfBA's, should not be allowed to discount their title and mortgage services below the cost plus a reasonable profit. To do otherwise is to penalize the buyer (and their investor loaning the money) for insisting on impartial and independent decision makers in one of the most complex residential transactions possible. In fact, because of the enormous risks present with builder owned lenders and title companies, we don't believe that a builder should be permitted to be affiliated with these types of safeguard firms at all.

"Required Use" It's Not Just for Builders

Required use is not just something attributable to builders either. Realtor firms do it by locking out competition so that consumers and professionals aren't exposed to other mortgage and title firms, paying large bonuses to managers to influence the advice and counsel of their agents, basing commission splits upon capture rates secretly and verbally behind closed doors, discounting rent to 100% commission agents… Where it was easy to catch a RESPA violator in the past because there were paper trails, that is no longer the case as kickbacks have become much more sophisticated and are now almost always verbal. The perversions of paperless conspiracies to accomplish illegal but undetectable kickbacks pervade the industry because AfBA's are legal. AfBA's allow the owner of these One Stop

Shops to control all the checks and balances – and that simply makes no sense and drives an irresistible urge to provide benefits to people who refer business.

The unfairly earned profits of controlling clients' settlement service decisions are so enormous that running a real estate brokerage can become a loss leader for their over-priced title and mortgage services. And that is especially true today when brokerages are paying 95% of the commission splits to keep their top agents.
Because Realtors are typically fiduciaries, even legal kickbacks under the RESPA AfBA exception are often illegal for them under state common law. But few firms care and few if any states enforce these laws because it is politically unpopular. And because the profits are so great and the potential risk is so small, firms find that it is a good business decision to violate their clients' fiduciary duties in favor of the enormous profits that come from exploiting their vulnerable and trusting clients.

On the other hand, a builder does not owe fiduciary duties to buyers where a Realtor does. A builder works under the principle "buyer beware" and Realtors operate under the principal "beware for your buyer."

RESPA really needs to be bifurcated into rules that treat these two types of professionals differently because a Realtor can "require" their clients to use their in-house services by breaching their fiduciary duty and providing self-serving "advice," whereas a builder has no such duty and its advice is considered to be nothing more than just a "sales pitch."

A trusting real estate buyer client who is moving to a new state and who is unfamiliar with the pricing of title or mortgage services will rightfully rely upon their Realtor's guidance – rightfully in that it is their legal right to expect that their reliance is properly placed – their Realtor is a fiduciary. Even buyers who have bought several houses typically have no idea how to shop and compare title and mortgage services and often rely upon their Realtor's advice (this comes from the NAR's own 2008 Harris Survey). So if a buyer allows the Realtor to select the mortgage and/or title services, and the Realtor selects his in-house services, then that Realtor has just violated his fiduciary duty not to self-deal and essentially "required" his buyer to use his services. Since the buyer relied upon the Realtor's guidance and that guidance was inappropriately and improperly influenced, the buyer didn't receive any advice at all. Rather the buyer was tricked into using the in-house services which is the equivalent of being required to do so. If that Realtor's advice (or the broker's advice) has been improperly influenced by financial incentives or disincentives and the buyer relies upon that advice and that advice leads them to an in-house mortgage or title company, then that buyer has also been the victim of required use. This is especially true when the buyer's Realtor is also receiving a secret bonus from the builder.

By all definitions of the word, it is a conspiracy. This interfering with the impartiality of a trusted advisor is possibly an even more sinister form of required use in that it requires a conspiracy against the client.

Answers to HUD's Questions About Builders and "Required Use"

1. This series of questions starts off with a false presumption that there are cost savings and discounts attributable to packaged settlement services. Such discounts are a fiction. CAARE is concerned that HUD has been persuaded by unscientific, self serving "surveys" and "studies" put forth by those who benefit from their tailored results. If you examine any of this so-called research carefully, you will find glaring problems with either the way the data was gathered or their conclusions. The fact is, AfBA's create an incentive for their owners to discourage comparative shopping by using one AfBA to steer into another. They encourage higher prices, not lower prices. Owner's of AfBA's count on the fact that they can charge more, not less, because they have a captured audience. The lack of competition that results from AfBA's causes prices to go up and quality of service to go down. And with AfBA's you get the added "feature" of being the decision maker on your own transactions to ensure that your commission is paid in a timely manner.
    a. It would appear that HUD is already aware of most of the types of "incentives" that are used to trap buyers into using builders' in-house services. In addition to the types of incentives mentioned, HUD should also consider the secret incentives builders pay to Realtors to alter the advice provided to consumers. As mentioned in the above section, this is another form of required use. These secret payments to influence the advice of a trusted advisor constitute nothing less than a full blown conspiracy against the buyer. We've attached a couple of those secret incentive plans as Exhibits B and C.
    b. It is our understanding that buyers are typically greeted by a high pressure builder representative when they enter the builder's model. The sales tactics typically include a discount package that is expiring soon and people are encouraged to take advantage of and sign up for the deal that same day. We are unfamiliar with the exact timing and details necessary to answer the remainder of this question.
    c. It is our understanding that buyers typically receive a hard sell in that the "discount" will expire if they don't commit immediately to using the in-house title and mortgage services. And in many cases, the house won't even close for up to six months later. For a buyer to commit to a lender 6 months prior to their lock date is unreasonable. It doesn't even allow for accurate shopping. There is too much room for lenders playing rate games because the rates won't matter in 6 months anyway.
    d. Most of the data that HUD seeks is unavailable because builders are the sole conservator of that data. With that being said, we have heard that many buyers succumb to the high pressure tactics described in "c" above and feel that they have no choice but to not shop and compare mortgage and title services. We believe that surveys of home buyers need to be conducted by an entity without a vested interest in the outcome to properly gather the data HUD seeks.
    e. It is our understanding that consumers who use builder AfBA's do pay higher interest rates and closing costs than unaffiliated service providers. This information is obtainable through surveying home buyers for all their closing documents and comparing those who locked their interest rates on the same day. When a home builder uses an affiliated lender, there's more opportunity

for them to persuade the appraiser to appraise the home for more. A higher appraisal means the sales price can be higher.

f. We believe that the only type of real incentives that exist in the marketplace are for volume buyers of settlement services such as managers of REO or Relocation properties. And there is evidence that even some of them make very bad decisions in signing national contracts. We don't believe that there are ANY benefits to captured audience marketing schemes. Although they may be sold to HUD and the consuming public as "One Stop Shopping," we don't believe that they serve any purpose other than to manipulate consumers into situations where their counselors are improperly influenced and their ability to make an informed decision on selecting these services is flawed.

2. Forward loan commitments sound like a dangerous proposition for consumers that would be highly susceptible to manipulation. But we also understand the perceived need consumers might have to lock in an interest rate when their house might not be completed for three to six months and market conditions could drastically change. Examining these arrangements seems wise and we believe that the best way to do this would be to perform detailed surveys (where documents are collected) on buyers who live in new builder developments where these arrangements are prevalent. It won't take long to determine if these buyers were charged a premium that exceeded the market rate for a loan with a similarly long lock.
3. The series of questions in "Other Issues" is not likely to be answered accurately from the public. Rather, a full blown independent investigation is needed to get accurate information. However, some things should be mentioned.
    a. Although a scientific study of MLS data including sold data combined with surveys of home buyers in affected new construction development might provide HUD with the answers it seeks, we believe that there is just too much potential for manipulation of the pricing and incentives to get answers that are 100% reliable. Plus, if the builder has influence over their own lender and their lender has influence over an appraiser, it may be the case that mortgages are always appraised at the purchase price whereas it may not be the case if the buyer is penalized with a higher price without the incentives. In other words, a transaction that doesn't use the AfBA services may not close and that data might not be available.
    b. It would seem that simple math would demonstrate that the builder includes their incentives in the cost of the house. For example, the average closing costs for both origination and third party fees in the U.S. are $2739 according to a recent Bankrate.com survey. And as stated earlier, even a 20% net profit would only amount to $547.80. And since there are NO substantial financial benefits to the builder, other than inappropriate shortcuts to getting loans funded, that $547.80 is all there is. If the builder is giving away $15,000 worth of incentives, then at least $14,452.20 is built into the cost of the house. In other words, the house has been inflated by at least $14,000 in order to give away the $15,000. And since builders know that home buyers have little choice but to accept these contracts of adhesion, their capture rate is likely very high. Buyers simply have no choice.

c. Large builders that offer these incentives have many ways to get around HVCC (Home Valuation Code of Conduct) and affect appraisals, so this question becomes irrelevant. However, HUD should consider contacting appraisal trade associations and experts in that field for information on this issue.
d. To determine the performance of affiliated originated mortgages it would be necessary to conduct a scientific study that takes into account other similarly priced homes in similar neighborhoods in the same geographic location. There are many variables that could taint such a study.
e. We have no information on this.
f. We don't believe that any disclosure will help the consumer who is placed in the impossible situation of having to choose between a $15,000 discount or being penalized for selecting their own mortgage and title services by not receiving the discount.

4. Nothing to contribute
5. It is disturbing to see HUD using the marketing term, "One Stop Shopping" invented by the industry to deceive the conflict ridden nature of this practice that was originally called "Controlled Business Arrangements" by RESPA. The official name of this practice after RESPRO lobbied successfully to have the name changed is now "Affiliated Business Arrangements." Despite this change, AfBA's are still considered a conflict ridden practice that requires the use of disclosure statements. The term is NOT "One Stop Shopping" and we respectfully request that HUD discontinue using this term.

   It also appears that HUD's question presumes that AfBA's offer some sort of benefit to consumers. There is NO accepted data that supports this assumption. To the contrary, the reason that there are AfBA consumer disclosures is to alert consumers to the conflicts of interest of this practice. And even those disclosures do not go far enough in that they don't disclose how AfBA's can diminish the effectiveness of safeguards.

   This question is likely to elicit the submission to HUD of many industry funded surveys and studies that are not available for public scrutiny and therefore should be highly questioned. In fact, we've attached a letter from Robert Hunter of the Consumer Federation of America in regards to one of these studies done by RESPRO which study actually made it into a GAO report to Congress. His letter (Exhibit D) points out the manipulations used to gather that data including the fact that the data was collected from their own membership and then given to their highly paid "independent" contractor for analysis. In fact, if you closely examine any of the studies as performed by the industry trade associations who funded them, whether it be from NAR, RESPRO or others, you will find that each of those studies employed highly manipulative tactics to garner exactly the results that they desired. These studies must be renounced for the self-serving propaganda that they are.

   If a study on AfBA's were to be properly conducted, the types of information it would need to gather would be the true capture rate of AfBA's which is often

understated (often if one affiliate does not capture the business, another AfBA further down in the hierarchy of AfBA's will capture it), whether AfBA's have affected the increase in title insurance pricing that title insurance underwriters have inflicted on consumers nationwide, if AfBA's are responsible for an increase in claims, if they routinely provide reissue credits and other standard discounts, a true price comparison using HUD-1's independently gathered from AfBA's and non-AfBA's from similar geographical locations, and much more. And when consumers are surveyed on the topic of AfBA's, they should be first provided with a thorough explanation of the risks associated with AfBA's and those AfBA's should NEVER be referred to in the study as "One Stop Shopping" which consumers associate with the price savings that they might get at Target which efficiencies have not been proven to cross-over to the residential real estate industry.

We believe that many consumers do not know what title insurance is, let alone how to shop for it. In fact, we believe that most consumers rely solely on the fiduciary advice of their hired counselors on the topic – their Realtor. And that those Realtors are steering them into AfBA's that cost far more than unaffiliated firms that have to compete on price and service. In addition, we believe that if surveyed, most consumers even after closing would have no idea what they paid for and if they paid too much for their settlement services.

In NAR's own privately funded Harris Study they quote that, "Approximately 70-80% of surveyed home buyers indicated that they followed their real estate agent's recommendation in selecting the services needed to purchase a home. The service industries that benefited from these referrals were home inspection, title insurance, home warranty, mortgage lending and homeowner's insurance." ***If Realtors are abusing their position of trust and reliance for the self-serving purposes of steering clients into their own AfBA's, then why would anyone think that they wouldn't also overcharge them?***

6. Even without the added confusion of AfBA's (and their manipulative incentives and disincentives), consumers do not have the necessary information and representation to properly compare the prices of ancillary mortgage or title services. In addition, even after the so-called package discounts that AfBA's offer consumers, we believe that independent providers' every day prices are often less. AfBA's are in the business of captured audience manipulation and there is no reason to think that any more than a handful might provide a true discount to consumers. They have no incentive to do so. One AfBA refers to the other and the goal is to capture as much business as possible and charge them as much as possible. And because consumers don't have a clue how to shop and compare these services, these arrangements are extremely lucrative because they can charge practically whatever they want. This is especially true for title services which are largely an unknown concept to consumers.

   If AfBA's were competitively priced, then they would advertise this fact on their websites. However, in our limited research of AfBA's, most real estate brokerage and mortgage companies that own title companies don't mention that there is such an affiliation on their websites. If they did, consumers might be alerted that they have an

interest in shopping these services. Most title AfBA's that actually websites, do NOT post their prices or have a fee calculator on their websites, while most unaffiliated title companies do. Also, most AfBA title companies (with the exception of some of the very largest brokerages) don't mention that they are affiliated with a lender, builder or real estate brokerage. The success of AfBA's lies in the ability to steer unwitting, vulnerable, uninformed and trusting consumers into their AfBA's. Advertising the affiliation would defeat that purpose. ***If these AfBA's are so beneficial to consumers, then why do most firms that have AfBA's fail to disclose it anywhere on their websites?*** In fact, we have found that most hide the relationship.

We believe that HUD should first require that all AfBA's disclose their affiliations, the potential harm of those affiliations and their pricing on their websites. Just about every title insurance underwriter website ready title fee calculators available so that websites can automatically calculate title fees – a title fee calculator should also be required. Then, HUD should be very careful about analyzing any potential offers of package deals as most are nothing less than a blatant attempt to capture business using the same sort of tactics that builders have used.

If HUD wants to encourage competition, and feels that it must allow package pricing (we think it's a bad idea as it encourages the use of conflicted safeguard services) then force AfBA's to offer discounts on each of their services individually that NEVER fall below the cost of the service, plus a reasonable profit. If a real estate brokerage wants to offer a package deal on mortgage and title, then limit them to showing discounts on each service separately that never exceeds the cost, plus profit, of any one of the services for mortgage and title services.

Response to NAR's Comments – Did NAR Mislead HUD?

<u>The National Association of Realtors</u>

NAR brings up a good point when they suggest a possible "bright line test" might be when the face value of the incentive exceeds the value of the services provided. They are on the right track, but the test should be expanded to be a test of when the face value of the incentive exceeds the cost of the services provided, ***plus*** a reasonable profit. We think that no one should be able to offer services at or below cost as it would result in an unfair business practice that surely would eliminate competition. Any discounts should clearly articulate how much a consumer would have paid for mortgage and title services had they not also purchased a house from the builder, Realtor, etc… At the same time, builders must be prevented from turning around and using this incentive money to "bonus" or bribe Realtors for influencing them to buy the builders' houses as they currently do.

NAR is in a difficult spot. They need to represent their membership which means representing opposing views of their members on "Required Use." Their failure to take a strong position on this topic should send a message to HUD that NAR won't fight HUD on fixing the "Required Use" section of RESPA. Their allegiance to their membership prevents them from taking a strong position, but it also has forced them to take some indefensible positions in the past too, i.e., wanting to keep banks out of real estate while at the same time defending NAR's membership's ability to own mortgage companies.

However, NAR's internal conflict does not grant them license to mislead HUD.

Ms. Vicki Cox Golder, President of NAR, wrote in her last comment letter to HUD while defending her membership's ability to collect fees from Home Warranty Companies (HWC's) that, ***"Moreover, NAR takes strong exception to the interpretive rule's statement that somehow real estate brokers and agents occupy a special or unusual role in the settlement service process where home warranty sales are concerned. Real estate brokers and agents are not in a "unique position of influence" over consumers….Just because a real estate broker or agent may interact first with a consumer interested in the purchase of a home does not mean that the agent has a special kind of influence or that the buyer or seller is more likely to purchase a product because a real estate agent promotes it…. Just because a real estate broker or agent may interact first with a consumer interested in the purchase of a home does not mean that the agent has a special kind of influence or that the buyer or seller is more likely to purchase a product because a real estate agent promotes it."***

Her statements were made with the intention to influence HUD's decision on that Interpretive Rule regarding HWC fees. And coming from the President of the largest trade association in the United States, we believe that influence should come with some responsibilities to at least keep her facts straight. Although we understand that defending her membership's ability to accept kickbacks from HWC's may serve her membership, that does not mean she can credibly turn around and contradict herself on key points while writing a comment letter to HUD on the current issue.

In her current letter to HUD, Ms. Cox Golder cites the NAR funded and widely publicized Harris Study from which we have obtained excerpts (like most NAR studies, the Harris Survey is NOT publicly available). As it turns out, the Harris Study, which NAR relies upon for its lobbying efforts and makes freely available to legislators and regulators, appears to say something very different about the Realtor's role in influencing buyers' selection of home warranty companies. If what we have obtained is accurate, we believe the Harris Study also states: *"**Approximately 70-80% of surveyed home buyers indicated that they followed their real estate agent's recommendation in selecting the services needed to purchase a home. The service industries that benefited from these referrals were home inspection, title insurance, home warranty (emphasis added), mortgage lending and homeowner's insurance."***

If true, this is a seriously misleading contradiction coming from a trade association that is trusted nationwide for statistics and guidance to news organizations, legislators and regulators. Do Realtors occupy a special or unusual role when it comes to recommending these services or not? We are pretty sure that they do and we hope that HUD will take this contradiction into account in both this issue and the previously commented HWC matter.

Obviously, the Harris Survey was designed to obtain the answers NAR was seeking – after all, it was done by a Trade Association. It doesn't take much in the way of analytical skills to see that the questions posed were designed to get the answers they wanted. For example, their study intentionally disarms consumers by referring to AfBA's as "One Stop Shopping"

(a marketing term for which they have spent millions) and their survey assumes that consumers understand the risks and problems with AfBA's – they don't.

Similarly, in a "study" performed by RESPRO (a sister trade association to NAR in that they share a lot of the same members) to demonstrate the unlikely proposition that AfBA's cost about the same as independent title companies, they gathered the "data" themselves from their own membership.

We are tired of seeing misleading data being waved like flags by NAR, RESPRO and other trade associations. We are tired of seeing secret studies and surveys being given ONLY to legislators and regulators without the benefit of public scrutiny. We are tired of hearing about how NAR and others work so closely with HUD on these topics while the same courtesy is not provided to non-profits like CAARE. The residential real estate industry is not going to instill confidence in the American consumer or investors so long as trade associations are in such a cozy position of influence.

NAR needs to get back to its roots and start embracing the ideals upon which it was founded. NAR needs to look to all its individual agent members and not just the big corporate giants for input on these topics. Years ago NAR would stand up to things like controlled business, dual agency and other terrible conflicts of interests because they felt these were impossible relationships. That is no longer the case and I suggest that when NAR speaks, that they're credibility should be shadowed by the fact that NAR very likely doesn't even know what their membership really wants.

Suggestions – Surveys, Studies and Law Changes

We would like to see HUD arrange to have some studies and surveys on AfBA's. It would be nice to see HUD turn to consumer groups like CAARE for guidance on these issues.

For example, a survey of home buyers should be done that first educates them on how AfBA's are an exception to the anti-kickback rule and asks them pointed questions without using disarming industry created marketing terms such as "One Stop Shopping" or "bundled" services. Ask consumers if they would have preferred it if their Realtor had provided them with three comparison quotes. Ask consumers who did follow their Realtor's suggestion to use an AfBA if they were concerned about not following their Realtor's advice for fear of "rocking the boat" and upsetting other parts of the transaction. Ask the consumer if they conducted any price comparisons on their own. Ask consumers if they even know what title companies do. We believe that most home buyers typically don't even know how much was paid to their own Realtor.

Conduct studies of closings on transactions that have occurred in new construction developments. Foreclosure rates, fees and interest rates charged and a lot more data could be obtained.

Conduct surveys of real estate attorneys in marketplaces where they have been eliminated from residential real estate transactions. Of those who are still working with real estate

consumers determine how many get their referrals from real estate professionals or also represent real estate professionals. Find out how many are concerned about getting blacklisted if they report bad conduct taking place in their marketplace. Ask about the relationships between appraisers, lenders, builders, Realtors and title companies.

Conduct studies of websites of AfBA's compared to those of independent firms to see the differences in the amounts and types of information that are both provided to consumers and hidden from consumers.

Look carefully at industry sponsored studies that HUD has previously relied upon and look for inconsistencies in the way that data was collected, in the way survey questions were presented, etc…

Identify the safeguards that each settlement service provides to the residential real estate transaction and determine if those safeguards can afford to be compromised by an affiliation with another party who might have a stake in the outcome of the transaction.

Look closely at how title insurance rates have escalated over the last two years and then take a look at how title insurance underwriters get and do their business. There is a correlation that needs to be investigated. Today, underwriters can charge whatever they want because no longer do they need to appeal to independent agents who tend to negotiate prices lower. Do underwriters really look at claims when they set their rates or do they just look at what their competitors are charging? Most of the title insurance market is now comprised of controlled business arrangements which means that their agents are now AfBA's that want to collect higher commissions and therefore want higher title insurance premiums. Mix in the LandAmerica consolidation that resulted in many (if not all) of Fidelity's brands setting their prices the same and you've got a marketplace that is amenable to high similar pricing schemes with no relationship to the actual risk and with no competition on price.

Let us help design studies and surveys – we can't afford to do these ourselves and we want to help.

In regards to laws, there are other more expansive RESPA provisions we would like to see changed including, but not limited to:

1. A six year statute of limitations for RESPA violations;
2. A liquidated damages provision that has some "teeth;"
3. An elimination of bonuses for office managers who attain high "capture rates" for their affiliated businesses. These managers have a huge influence over the Realtors that they supervise in that they often set commission splits, dole out leads and otherwise control individual Realtors' livelihoods. These legalized kickbacks have as much a negative impact on the consumer as if kickbacks were being paid directly to Realtors in exchange for referrals;
4. More expansive RESPA jurisdiction including residential consumer transactions that are not tied to federally funded loans;

5. Stricter RESPA provisions for regulated persons who are also fiduciaries. Fiduciaries are very different than non-fiduciaries and RESPA cannot apply to both in any reasonable fashion as they create conflicting results with state laws, not to mention they end up with illogical results. Since when can a fiduciary legally engage in self-dealing?

Conclusion

We believe that the required use problem that HUD has identified in builder transactions is a serious issue that is in dire need of immediate action. We also don't believe that the proposed rule comes anywhere close to solving the problem. Builders are in a unique position in that they often have hundreds of thousands (sometimes millions) of dollars riding on just one transaction closing with only the lender and title company standing between them and their money. Even if the so called "discounts" were real, it makes no sense to compensate consumers for risking their financial welfare. A builder who owns a mortgage and title company can't be in a position to decide which lender and title issues are going to stop his own closing. We are amazed that this very obvious contrary relationship has gone on as long as it has. It needs to be eliminated.

At the same time, this situation should draw the spotlight onto other forms of required use that is created when Realtors are trusted to guide consumers in the mortgage and title selection process and abuse that trust to steer their clients into their own firms. Just like a constructive fraud can be created from an omission of an important fact, so can you construct "required use" from a fiduciary steering their clients into an AfBA.

Respectfully submitted on behalf of American residential real estate consumers.

Sincerely,

Douglas R. Miller

Douglas R. Miller
Executive Director,
Attorney,
Real Property Law Specialist, Certified by the Minnesota Bar Association

Exhibit A. CAARE's Contribution to the ALTA Debate Article that was Quashed by ALTA

CAARE Response To Debate Questions

1. The impact of affiliated business arrangements has long been debated in the Title insurance industry. Basically, you're for them or against them. To start off, would each of you offer your view on how AfBAs impact the title insurance industry?

AfBAs market themselves to consumers as being a consumer-friendly "one-stop-shopping solution." However, when parties that have a huge financial stake in the furtherance of the deal (namely real estate brokers, loan officers and builders) can influence or control vital checks and balances (namely independent title examination and auditing functions of closing), this so-called "convenience" comes at a cost, eroding or even negating important checks and balances that exist to protect the consumer. By their very nature, AfBAs create an anti-competitive atmosphere that has an eerie resemblance to America's oil, coal and steel industries, whose monopolies once operated with impunity, to the detriment of the consumer and the free marketplace. The current conduct of many AfBAs (i.e., the boycotting of independent title companies that refuse to participate in the "controlled business model") has an equally eerie resemblance to the "Robber Barons" of the late 19th and early 20th Centuries, who suppressed competition in the quest for control.

Competition drives efficiency, lowers prices, and delivers a higher quality of service. Anti-competitive activity drives complacency, lowers quality of service, raises prices, and in the hands of unscrupulous parties, can even lead to outright fraud.

2. Do AfBAs increase efficiencies and streamline communications between real estate partners?

First, is "streamlining" communication important? If it relates to such things as data input, today's innovative software platforms make this type of "streamlining" much easier and more error-free – so that's a good thing. However if "streamlining" refers to AfBAs communicating among themselves at the expense of the consumer, or obviating participation by their "partners," it is a very *bad* thing. Many AfBAs severely limit an outside firm's ability to use their data creating artificial inefficiencies that don't normally exist. This might be useful for AfBAs to capture business, but it unnecessarily requires the re-entering of data and frustrates consumers who may want to utilize an independent title company in the transaction (which after all is their legal right). There are several "off-the-shelf" titleware programs that enable ALL parties (not just AfBA partners) to seamlessly integrate data across different platforms. Why then, do AfBAs tend to ignore these "open platforms" in favor of their restricted ones?

"Increased efficiency" is one of the chief ways AfBAs defend their operations to the consumer, however when this so-called "efficiency" is accomplished by their refusal to share data and means that all partners are working toward one overall objective, namely closing the deal no matter what, what does the consumer ultimately sacrifice in exchange for so-called simplicity?

3. Can AfBAs interfere with the objectivity of the title company's title examination and closing process?

In our opinion, the terms "objectivity" and "AfBA" are mutually-exclusive. Because of their very nature, most AfBAs (including real estate, mortgage and builder firms) have a huge interest in the outcome of a given transaction, leaving them little objectivity when it comes to properly managing all aspects of the deal (including title exam and closing).

If they own a title company, there is almost nothing to stop unscrupulous brokers, builders or lenders. In many situations, the easiest way to facilitate a fraud *is* to *own the title company*. AfBAs are incentivized to get the deal done, rather than getting it done right. And once the claim is shipped off to their underwriter, whatever "creativity" they may have employed is often obscured to lenders, and end-use consumers.

How can title examiners work objectively if they take their marching orders from a real estate broker who only gets paid if/when the deal closes? Investors who lend money should recognize that, by their very nature, AfBAs negate one of the most important defenses to mortgage fraud, which is the inclusion of an independent and unbiased title company providing vital investigative functions such as

title exam and auditing functions such as funds disbursement and closing.

4. Describe the quality of title work, in your view, that is generated by AfBAs. Are there more, less, the same amount of claims compared to non-affiliated agents?
While there is no hard data tying any specific claims volume to AfBAs, there appears to be a direct correlation between increased claims and increased AfBA transactions over the last ten years. After only a bit of analysis, this correlation makes sense.
First, AfBA owners are not (themselves) experts in title or closing, increasing the likelihood that bad risks will be assumed.
Second, a broker's bad risk liability only threatens one minor aspect of his business (i.e., the title company), not his main source of business (i.e., the brokerage). So if he takes a bad risk and is unsuccessful in passing it off to his underwriter, he can simply "jettison" his title company, while keeping his main source of revenue – his commissions – intact.
Third, an AfBA's primary incentive is to get the *whole deal* closed, because the stakes are high. That is to say, while a title agent might have $1000 in fees in a typical closing, an AfBA could have a $40,000 commission on the line.
All these factors make a strong case for why an AfBA might be more prone to take considerable risk, and therefore, engage in practices that generate a higher number of claims.

5. It has been argued that title companies engaged in AfBAs don't have to compete for their business. Do you view AfBAs as pro-competition or do they lessen competition for AfBA title company participants? Whether there's less competition or not, what does this mean for consumers?
Today, competition for title business is limited to that which escapes AfBA control. In many markets, brokerage capture rates are around 70%. Another 20-25% goes to AfBAs that are controlled by lenders, builders or attorneys. This leaves a miniscule fraction for independents. And when independents do get an opportunity to compete, AfBAs "compete" by lowering their fees (also known as "dumping" in other industries).
Due to the transaction structure and product complexity, title companies market primarily to those who have "front line" dealings with the consumer, namely brokers, lenders and builders. The efficacy of the entire system relies on title selection advice being objective. However, AfBA "partners" (i.e., brokerages) view outside title companies as competition and use their power to steer clients to their own title company. That creates an impossible situation for independents that now look to brokers as both marketing prospects and as competition.
The AfBAs' monopolistic power has even caused underwriters to raise premiums by requiring underwriters to make "preferred provider" payments and by dictating lopsided commission splits. It's a take it or leave it proposition for underwriters who are then left with no choice but to raise rates. And who pays? The consumer.

6. Do the typical government-approved AfBA disclosure statements adequately serve their purpose for consumers?
First, it is important to recognize that AfBA's are required to make disclosures because they possess serious conflicts of interest that impede their "partners" ability to advise consumers on selecting a title company. Independents and professionals who recommend them don't have to make these disclosures, since they have no "relationships" that stand between them and acting in the consumers' best interest.
Second, the fact is that most consumers don't even know what a title company is let alone know enough to give their informed consent to waive their rights in selecting one. Asking consumers to waive their right to competitive pricing and objective investigative and closing work is a lot to ask in a disclosure statement. And yet AfBAs routinely ask consumers to "sign away" these important rights as though it was standard operating procedure. So why bother disclosing something that consumers are not likely to understand? The better choice is not to engage in the conduct in the first place. If you can't disclose it, then you shouldn't be doing it.
What would happen if the AfBAs did a "full disclosure?" We hazard to guess that very few consumers, so informed, would ever knowingly agree to them.

7. Is it misleading to advertise AfBAs as "One Stop Shopping" to consumers? Do AfBAs save consumers money in settlement costs or does the alleged reverse competition result in higher prices?

"One stop shopping" is a marketing slogan that "bundles" the very things that make AfBAs *bad* to make them sound *good*. You might as well call dual agency "One Stop Shopping." The parallels are striking. And "One Stop Shopping" is not even a unique differentiator. Regardless of whether an AfBA or independent is selected, all the ordering of services is almost invariably done by real estate professionals, not consumers. And from the consumers' perspective, most real estate services come to them, with the exception of the one stop they do have to make – the closing. On the subject of "misleading," RESPRO manufactured the term "AfBA" to "rebrand" a practice formerly known as "controlled business," which carried too many negative connotations.

AfBA's cannot claim they save anyone money, despite surveys designed to prove that point (based on data supplied by RESPRO's own membership). In reality, they cost more and drive up prices for everyone (see Q. 5).

As for competition, most consumers don't even know that they've been steered into an AfBA until the closing. When consumers rely on AfBAs to select their title company and the selection process is anything but objective, how can they possibly know if they are getting a fair price? And in the AfBA scenario, who would encourage the consumer to do research to see if the "price" (whatever that may be) is competitive?

8. To wrap up, make your case as to why AfBAs improve or harm the marketplace and what changes, if necessary, should be made?

Any "business arrangement" that gives financially-interested parties undue influence over critical checks and balances ought to be viewed with utmost scrutiny. Our economy is suffering enormously because of the mortgage and housing crisis, and while there is plenty of blame to go around, the real estate industry must assume a significant share of it.

We believe America's real estate industry suffers from a serious endemic flaw, in which the selection of title companies, home inspectors, appraisers and even attorneys, is controlled by parties with a huge financial interest to see the deal go through, no matter what. Current practices give brokers a nearly monopolistic control over "who's in and who's out" of the deal in regards to services providing checks and balances. This power becomes almost omnipotent through the outright ownership of title companies, giving AfBAs control over vital investigative, auditing and decision-making processes. This is all detrimental to a healthy real estate industry and the millions of homeowners who depend on it.

For all these reasons, it is time to eliminate AfBA's and return integrity to our real estate industry.

Exhibit B. E-mail Solicitation Sent Only to Realtors by K. Hovnanian Homes

7615 Smetana Lane Ste 180
Eden Prairie, MN 55344

You are receiving this promotion as part of the Move® eFlyer program, designed to connect REALTORS® with motivated home builders in their areas. (Read our PRIVACY POLICY).

Should you wish to unsubscribe from this builder's eFlyer updates, please click here.

Exhibit C. Lennar's E-mail Sent to Realtors Only – free Lexus.

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LENNAR'S 2010 REALTOR® Loyalty PROGRAM

LENNAR REALIZES THAT A MAJORITY OF OUR SUCCESS RELIES ON YOU, THE REALTOR®.

So to reward you for all of your hard work we created Lennar's 2010 Realtor Loyalty Program, and loyalty definitely pays. The Realtor who sells the most new homes during our 2010 Realtor Loyalty Program will win a 2-year lease on a new Lexus HS250; second place will get a 7-day trip to the Caribbean for two; and third place will receive a 3-day Caribbean cruise for two. Better yet, your loyalty could earn you a very generous bonus commission.

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GRAND PRIZE

LEXUS HS250 - 2 year lease*

SECOND PLACE PRIZE
7 Day Caribbean Vacation for 2*

THIRD PLACE PRIZE
3 Day Caribbean Cruise for 2*

REWARDS UPDATE - To date, these are our top performers:

1ST PLACE (8 Sales)
- Vipul Goel - *Marketlink Realty / Eagan, MN*

2ND PLACE (4 Sales)
- Nevin Raghuveer - *Re/Max Results / Edina, MN*

3RD PLACE (3 Sales)
- Tina Lackner - *Re/Max Results / Woodbury, MN*
- Lalitha Edpuganti - *Imagine Realty / Minneapolis, MN*

4TH PLACE (2 Sales)
- Amy Jurek - *Re/Max Advantage Plus / Savage, MN*
- Carrie Schmitz - *Keller Williams / Maple Grove, MN*
- Chuck Hannema - *Edina Realty/ St. Paul, MN*
- Dayna Murray - *Keller Williams / Wayzata, MN*
- Jeff Martineau - *Coldwell Banker Burnet / Wayzata, MN*
- Lisa Boe - *Keller Williams / Woodbury, MN*
- Shirley Larson - *Coldwell Banker Burnet / Apple Valley, MN*
- Stephanie Tensing - *Edina Realty / Plymouth, MN*
- Tim Sheetz - *Re/Max Results / Woodbury, MN*
- Virginia Ng - *Coldwell Banker Burnet / Plymouth, MN*

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Second qualifying sale	$500
Third qualifying sale	$1000
Fourth qualifying sale	$1500
Fifth qualifying sale	$2000
Sixth qualifying sale	$2500
Seventh qualifying sale	$3000
Eighth qualifying sale	$3500
Ninth qualifying sale	$4000
Tenth qualifying sale	$4500
Eleventh qualifying sale and each additional sale thereafter	$5000

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UAMC

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Exhibit D. Letter from CFA to GAO about Problems with RESPRO Study

Consumer Federation of America

1620 I Street N.W., Suite 200, Washington, D.C. 20006

November 2, 2007

Ms. Orice C. Williams, Director
Financial Markets and Community Investment
U.S. Government Accountability Office
Washington, DC 20548

Dear Ms. Williams:

Re: April 2007 GAO Report on Title Insurance:
"Actions Needed to Improve Oversight of the Title Industry
And Better Protect Consumers"

Thank you very much for the work you and GAO did on this important study. If fully implemented, your recommendations will result in significant savings for consumers. Kickbacks and other inefficiencies in this non-competitive market -- a market that suffers significantly from the "reverse competition" phenomenon -- mean that consumers are paying billions too much for title insurance,

I write to urge you to verify the validity of a questionable study by Real Estate Services Provider's Council, Inc. (RESPRO) that is cited in your report. If the validity of the study cannot be confirmed, which I believe is highly likely, I urge GAO to retract references to the study in its own report and to make clear that GAO cannot vouch for the RESPRO study's conclusions

GAO cites the RESPRO Study with the following comment on page 33, "A recent study sponsored by RESPRO, an industry group that promotes ABAs, [Affiliated Business Arrangements] concluded that title agents that are part of an ABA do not charge consumers any more than title agents that are not part of an ABA." Although the disclaimer about the self-interest of RESPRO in promoting ABAs appears clear, the GAO also states in its report that it performed due diligence into the studies it included in the GAO Report.

For example, on page two of the GAO report the authors state that, "We reviewed available studies of the title insurance industry and discussed their results with the authors." The report also says on page 60, "We discussed the studies' results with the authors and raised questions about their methodology and conclusions to further broaden our knowledge of the varying approaches in analyzing title insurance markets."

It is my belief that references to the RESPRO study may have been an error as there are several significant reasons for suspecting that the study may have serious methodological flaws. The

GAO reference to the RESPRO study may also be having unanticipated consequences in states that are considering title insurance regulatory changes. In fact, several states that are examining issues involving ABAs are now also citing the RESPRO study in drawing their conclusions. These states may be relying upon the GAO's due diligence in concluding that the study's conclusions are valid, particularly the RESPRO Study's conclusion that ABAs cost about the same as independent title companies.

Consider the report released by the Washington State Insurance Commissioner's Title Insurance Task Force ("Title Insurance in Washington – Improving Competition and Consumer Choice)." The Washington report cites the GAO report many times throughout. At footnote 81, page 22, the Washington study states "Studies sponsored by the Real Estate Services Providers Council (RESPRO), a national organization representing affiliated businesses, have found that affiliations do not increase consumers' closing costs. The most recent study, in October 2006, analyzed data from 2,236 closings in nine states (not including Washington) in 2003 and 2005. Using regression analysis to isolate any effect of business affiliation on cost to consumers, the study found that affiliations did not affect either title insurance premiums or other title-related closing costs (Martin and Ludwick, "Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs: An Economic Analysis," CapAnalysis Group LLC, October 10, 2006, available at http://www.respro.org/docs/CAP%20RESPRO%20Study%20(2).pdf). RESPRO-sponsored studies have not identified any cost saving to consumers due to affiliations, but have assumed that the convenience of "one-stop shopping" makes affiliations beneficial in a less quantifiable sense."

Although it is possible that Washington State took steps to verify the methodological soundness of the RESPRO report, this report does not say so and does not offer evidence to that effect. I don't believe that it is an unreasonable conclusion that Washington may be "piggy backing" off the stated due diligence of the GAO when they cite the RESPRO Report for some very disturbing and important conclusions. There has not been an unbiased study done to determine whether ABA's can benefit consumers or that they cost less, yet the Washington Study reaches this conclusion based upon its examination of the RESPRO Study.

To clarify this matter, I request that GAO release to CFA and the public information about just how much or how little it examined questions of potential data bias in the RESPRO report. If legislators and regulators believe that GAO conducted due diligence into the methodologies of RESPRO's Study, and are relying upon that verification process instead of their own, they may be wrongly concluding that ABAs cost about the same as independents.

All methodologically sound studies must start with the careful collection of data. The data upon which the RESPRO study was based was supplied by RESPRO members who had an enormous interest in the outcome of that study, as GAO implied at page 33 of your report. RESPRO didn't use an independent source to collect the data. Moreover, I am advised that they refuse to provide the data to the public, even with private information redacted.

Such disrespect for transparency in data collection renders the RESPRO Study suspect. For example, the data could have been manipulated to obtain predetermined results with the intention of misleading the GAO and others. I can think of at least two ways in which RESPRO members could have skewed the evidence in a manner that would have gone unnoticed and resulted in erroneous conclusions. The first would be if these members used HUD-1's from ABAs where a

reissue credit was issued. That would result in an artificially low title insurance premium. Second, the HUD-1's supplied could have been supplied from transactions in which the ABA was matching fees of an independent title insurance company, which is apparently a common practice when ABAs are placed in a competitive situation.

There is no valid evidence that I am aware of that ABAs cost about the same as independent title companies. In fact, based on my knowledge of the title insurance marketplace, I would conclude that the opposite is much more likely. No study by any organizations should be regarded seriously enough to merit inclusion in a GAO Report if the data used to reach its conclusion is not independently collected and available for public scrutiny.

I encourage GAO to review the data from the RESPRO study and compare it to the actual fees charged by ABAs throughout the country. It would not be difficult to go evaluate the marketplaces where the data originated and verify whether or not HUD-1s represent the typical fees charged by these ABA's.

Doug Miller, owner of an independent title company in Minnesota who testified before the Housing and Community Opportunity Subcommittee of the House Financial Services Committee on the same day as I did (April 26, 2006), claims that he has conclusive proof that ABAs cost more than independent title insurance companies in his state. In fact, his company's website has a price comparison of eleven different firms (at http://www.title-1.com/tools-compare2.htm) demonstrating as much as a $457 difference in closing costs between his firm and one of the largest ABA's he competes with, Burnet Title. And unlike RESPRO, Mr. Miller can back up his data with written quotes and HUD-1s from both his firm and his competitors. He can show that his HUD-1s match up to the filed premium rates and the quoted fees of his competitors.

If you have not studied the underlying data collection process, I encourage GAO to issue a statement that state policymakers can consider that GAO does not support the conclusion that ABAs “do not charge consumers any more than title agents that are not part of an ABA."

Yours truly:

J. Robert Hunter
Director of Insurance