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MEMORANDUM

To: Dallas/Fort Worth Association of Mortgage Brokers  
From: Robert A. Long, Jr. & Richard L. Fruehauf  
Re: **Legal Challenges to RESPA Rules**

This memorandum identifies and analyzes potential legal challenges to federal regulations governing the process of applying for and obtaining home mortgages. The U.S. Department of Housing and Urban Development (“HUD”) has published a proposal to amend its regulations, known as the “RESPA Rules” or “Regulation X,” governing the mortgage process.<sup>1</sup> Regulation X is supposed to implement the provisions of the Real Estate Settlement Procedures Act, Pub. L. No. 93-533, 88 Stat. 1724, 12 U.S.C. § 2601 *et seq.* 1974) (“RESPA”). HUD’s proposal to amend Regulation X is subject to legal challenge. The proposed amendments would, among other things: (1) discriminate unfairly against mortgage brokers; (2) harm competition between mortgage brokers and lenders, to the detriment of borrowers; and (3) confuse and mislead borrowers concerning the relative costs of services provided by mortgage brokers and lenders. Indeed, HUD’s *current* regulations are vulnerable to challenge on similar grounds. In addition, HUD’s proposal appears to exceed its authority under RESPA.

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<sup>1</sup> See Department of Housing and Urban Development, Proposed Rule, “Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers,” *67 Fed. Reg.* 49134 (July 29, 2002) (amending 24 C.F.R. Part 3500).