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**PRESENTED AT THE
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[as prepared for delivery]**

Thank you for that generous and very kind introduction. Thank you to all of you for that very warm welcome. Thank you very much.

Good morning and welcome to what I believe will be a very informative day with presentations from many talented and respected housing law professionals.

I am very pleased to be here with so many of our country's leading housing professionals. I look forward to having a chance to meet you and I look forward to working with you over the next few years.

On behalf of Secretary Jackson, Deputy Secretary Bernardi and myself, I'd like to thank the American Bar Association for organizing this conference and for the opportunity to speak to you today.

I would particularly like to thank the ABA's Forum on Affordable Housing and Community Development Law. As you know, this is the 15th year that the ABA has organized a conference on affordable housing and community development law and HUD is very grateful for the focus this forum provides on the issues that are so important to us and our program participants and beneficiaries. We feel fortunate to have this opportunity to gather with such distinguished members of the affordable housing bar. It's also worth noting just

how diverse the membership of the affordable housing bar is, with membership that includes the private sector, government, non-profit organizations, lenders, equity investors and the development community.

I want to extend special appreciation to Ron Katz, the Chair of the Forum, for all the work he has done to support and enhance the affordable housing bar. We got a chance to spend some time together yesterday morning at HUD Headquarters. Ron - I appreciate your leadership and I look forward to working with you. I also want to thank Vice-Chair Rochelle Lento, Immediate Past Chair Karen Sherman and Chair-Elect Roger Clay and the other members of the Forum. Your active participation in the ABA Forum, your leadership and your dedication and commitment to affordable housing issues are extremely commendable and most appreciated.

As many of you may be aware, the HUD Office of General Counsel is a nationwide organization of close to 400 attorneys and 300 non-attorneys with headquarters in Washington, D.C., 10 regional offices and 40 field offices around the country. The HUD Office of General Counsel is the largest legal office in the world dedicated to providing legal advice on housing and urban development issues. I am extremely honored to lead this organization as General Counsel at HUD and am very grateful to President Bush and Secretary Jackson for the trust and confidence they have placed in me.

I did not come alone today. I brought with me several members of my Office of General Counsel team. If you attended the session at our building yesterday, you may have already heard from some of them. With me today is our Deputy General Counsel, George Weidenfeller, who is the "glue" that holds the Office of General Counsel together and who has long been a steadfast and loyal supporter of the ABA Forum. I have also brought with me a number of our Associate General Counsels, including Camille Acevedo, John Daly, John Herold, Harry Carey and last, but certainly not least, Bob Kenison. In addition, I understand my good friend and colleague Assistant Secretary for Public and Indian Housing Orlando Cabrera will be addressing you later today at lunch and I am very confident you will enjoy his remarks. Assistant Secretary Cabrera brings to HUD a wealth of knowledge of housing finance issues and extensive

experience in the affordable housing area and I am truly privileged to serve with him.

I'd also like to say a few words about Secretary Alphonso Jackson and Deputy Secretary Roy Bernardi. We are very fortunate to have at HUD's helm two leaders who understood public housing long before they came to HUD. Secretary Jackson knows public housing. As many of you know, Secretary Jackson is the first HUD Secretary to ever run a public housing authority. He managed the Housing Authorities in St. Louis, Washington, D.C. and Dallas and brings a unique perspective to HUD. As many of you may also know, Deputy Secretary Bernardi is the former Mayor of Syracuse, New York where he worked tirelessly to make Syracuse a more vibrant urban center and to draw families back into that city through home-ownership programs. When it comes to public housing they both understand the complexities and the flexibility that is required. But most importantly, the Secretary and Deputy Secretary, along with all of the dedicated individuals at HUD, realize that the residents whom public housing serves are, and will continue to be, our greatest concern.

As Secretary Jackson continues to lead HUD in

- strengthening our nation's communities,
- promoting affordable housing,
- dismantling the barriers to home ownership,
- expanding homeownership opportunities for all Americans, particularly low and moderate income families,
- meeting President Bush's goal of at least 5.5 million new minority homeowners before the end of the decade,
- ending chronic homelessness,
- vigorously enforcing fair housing, civil rights and anti-discrimination laws,
- and, of course, providing housing and other desperately-needed relief to the victims of Hurricanes Katrina, Rita and Wilma,

it is for me the honor of a lifetime to serve as HUD's General Counsel.

The position of General Counsel at HUD is a wonderful opportunity and a tremendous challenge, but it is a position I believe that I have been preparing for my whole life. I have spent the last two decades in the accounting and auditing business, the legal business and, most recently, the computer software business. Today, when folks ask me what I do for a living I tell them I am in the “hope business” because that is the “business” of HUD – helping people realize their dream of affordable housing and home ownership. Serving as the General Counsel of HUD has been the most rewarding position I have ever held – not rewarding financially but truly rewarding personally. To those whom much is given, much is expected and I want you all to expect a lot from me over the next thirty months.

As General Counsel, one of my most important initiatives is to significantly enhance regulatory transparency at this agency. If you compare HUD with other agencies such as the SEC, we can do a much better job in the area of regulatory transparency.

Regulatory transparency is the notion that government actions must be visible and accessible to the governed in a way that allows meaningful input from and communications with the governed. It is also the notion that those being regulated should know what they need to do to comply with the law. Regulatory transparency is the key to developing more effective and efficient regulations and regulations of a higher quality. Believe it or not, agencies don’t always have the answer. Regulated entities have an enormous capacity to identify, understand and express views on their obligations under the law and they should be listened to. Increased participation by folks with different experiences and the subsequent process of compromise by competing interests is the foundation of our incredibly successful and dynamic democracy.

To quote Justice Louis Brandeis: “Sunlight is said to be the best of disinfectants; electric light is the best policeman.” In my opinion, a regulatory process with greater participation and transparency:

- Increases predictability,
- Fosters trust,
- Raises the confidence of those regulated,
- Promotes regulatory quality,
- Increases compliance,

- Reduces compliance friction,
- Supports accountability,
- Enables the regulated entities to have sufficient clarity to take action without fear of violating the law,
- Leverages the private sector's knowledge with no attendant cost to the government,
- And, finally, is closely linked with the good governance agenda and demonstrates our continuing commitment to democracy

So what are the key elements of regulatory transparency and why are they important?

First, the proposed regulation and the process by which it is developed, drafted, adopted and implemented must be accessible and visible. Regulated entities must have timely access, through physical and electronic means, to regulatory information. They should also have access prior to promulgation of final regulations and, where possible, in advance of the public comment period on the proposed regulations. What is of paramount importance is giving regulated entities ample time to analyze and digest rules put before them for comment. That also means that the agency must take public comments seriously and be held accountable to ensure that valid concerns are addressed and don't disappear into a file somewhere. Accessibility doesn't just cover the period before the regulations take effect. Regulations in effect, and any related supplementary guidance, must be readily accessible to the public and regulated entities so that they can, not only access the regulations they may be subject to, but analyze these regulations in the context of related regulations or supplementary regulatory material, and suggest improvements to the agency.

Second, the proposed regulation must be intelligible. It must be clear and understandable enough so that you don't need to be a lawyer to understand it. We must do our best to avoid ambiguity or confusion in our regulations. It must be easy to follow and presented logically. We need to avoid unintended discriminatory effects that can occur if the ability to understand and process the information is dependent on age and educational background. Regulated entities bring to the table real world experience in implementing regulations we develop draft and seek to promulgate. Not only must the regulation be

intelligible, but its application to unique and unprecedented situations must be determinable. The Office of General Counsel at HUD can achieve this through the issuance of guidance in the form of no-action letters, staff legal bulletins, interpretative letters and exemptive and waiver relief when appropriate. The existence of and ready access to guidance from HUD can be tremendously helpful to our program participants and beneficiaries.

Third, there must be a rationale behind the proposed regulation. By that I mean the agency must explain why the proposed regulation is needed and the purpose it will seek to serve. This not only helps regulated entities understand the requirements they may be faced with, but it also allows the community and regulated entities to respond with their opinion on the necessity of the proposal and recommended alternatives. Sometimes, as you know, the proposal stems from statute and, at times, a statute can be very prescriptive and there is little discretion to be exercised by the agency. In addition, the agency should, for those rules that regulate conduct justify the cost of the regulation by performing analyses of major regulatory proposals to determine if the benefits will exceed the costs and whether alternatives can achieve the same goal with less cost.

Fourth, we must be consistent in how we apply the regulations. The regulations should be the same in parts of the country. The regulations should also be consistent across the government. In other words, the public should not be held to violate one agency's policies when it adheres to the requirements of another agency.

Fifth, we need to increase agency accountability for the issuance of regulations and guidance. We need to ensure that procedures are in place as to who is authorized to issue guidance. Staff should not be engaged in ad-hoc decision making which can have the effect of ad-hoc rule-making. Procedures need to be in place to ensure that regulations and guidance are issued only by those authorized and are appropriately coordinated internally within the agency. We also need to ensure that we avoid creating unwritten rules, policies and guidance.

Communication is obviously a critical element of the process and it is achieved by consulting with the regulated entities from the very start

of the regulatory process, before the formal comment process begins. The communication with the regulated entity needs to continue after a rule is issued. This can be achieved through informal and formal guidance offered by the Office of General Counsel or the HUD program offices, training and briefing sessions, roundtables, advisory committees and industry briefings on new regulations with the goal of disseminating the information to as wide an audience as possible. Regulations have to be published in the Federal Register, but this is not always the most convenient source that members of the public go to for information about agency regulations - they go to the agency's website. Speaking as someone with a background in the technology industry, I am a firm believer that the Internet is an invaluable method for not only posting regulatory information, but also allowing regulated entities to easily search for regulations as well as guidance and advice issued by the Office of General Counsel on implementing the regulations.

If we can emulate some of the "best practices" in regulatory transparency that are in use at other agencies like the SEC, I believe that program participants would be more confident when engaging in their activities. They would be more creative. They would be able to spend less time with enforcement issues. Perhaps, because of diminished compliance risk, their cost of capital may be reduced when they need to raise money. In essence, they would be able to more effectively and efficiently execute their affordable housing mission. Isn't that what we all want?

It should go without saying that HUD wants local housing authorities to take action, to be entrepreneurial and to spend their subsidies so as to improve their communities and increase the supply, quality and access to affordable housing. Of course, as lawyers, we also need to be comfortable that our clients' actions are in compliance with applicable law. I want to make that as simple as possible.

We need better processes to institutionalize and publicize our guidance through *timely* and *active* disclosure. We need better processes for consultation with the housing bar. We also need better protocols for determining when our guidance should be issued in the form of a no-action letter, an interpretative letter, a staff legal bulletin or through rulemaking.

That is where I want to go. We are already spending a considerable amount of time in the Office of General Counsel developing potential regulations that would implement regulatory transparency at HUD. Among other things, we are considering implementing a no-action letter process.

In one of my past lives, I was a securities lawyer and practiced extensively before the Securities and Exchange Commission. During that time, if I had a client that wanted to proceed with a transaction, but it was unclear whether such a transaction was in compliance with the securities law because the law was ambiguous, I had the option as a securities lawyer of preparing a request for a no-action letter to the SEC. The no-action letter would explain to the SEC what my client was seeking to do, what the applicable law provided, what the SEC had said in previous no-action letters and why I thought the proposed transaction was in compliance with applicable law and regulations. The letter would seek the SEC's concurrence and their commitment not to recommend enforcement action against the client if the client proceeded with the transaction as described in the letter. It may also be the case that, during the course of preparing such a letter, I would discover that there were so many no-action letters almost exactly on point that I felt comfortable advising my client to proceed with the transaction without the need for a no-action letter.

I ask you – why can't we have a similar process at HUD?

I understand that people may be skeptical that a federal agency, especially an agency such as HUD, would embrace such an ambitious transformation. I also understand that this project is extremely bold, but I fully expect it to be one of the most important undertakings of my tenure and I hope that it will be one of my many legacies here at HUD.

I do not expect that such a significant transformation of how we interact with the housing bar will occur without some institutional resistance.

I am fully aware that the implementation of regulatory transparency can have its challenges:

- “Information monopolies” will need to be broken.
- People need to accept an end to unwritten rules, unwritten policies and unwritten guidance.
- Folks will need to accept an end to ambiguity.
- More outreach will be needed.
- The potential for an increased work burden – in either time or money – may strike fear in those who have to implement the new processes that will drive regulatory transparency.
- The goal of regulatory transparency may not be viewed by all as a priority.
- There may be biases against regulatory transparency.
- There may be territorial issues as to who should control the issuance of guidance.
- Transparency is not inexpensive.
- There may at times be some legal impediments such as the hurdles that accompany the establishment of industry advisory committees.
- We will need to apply transparency judiciously so as to avoid information overload also known as the “white noise effect.”
- There may be an insufficient appreciation by some at the agency as to the benefits of regulatory transparency.

These issues left unaddressed will not simply disappear, but we cannot let them deter us from moving forward. We’ve already seen the progress that can be made when able and committed individuals set their sights on the target.

Since I was sworn in as General Counsel, my office has made significant progress in achieving the goals I have outlined. We are in the process of overhauling the Office of General Counsel website, making more information about relevant laws and regulations and existing statutory or regulatory guidance readily available and easy to find. We are more closely scrutinizing the quality and sufficiency of the information that is contained in HUD notices and ensuring that they are timely published in the Federal Register. Responding to the President’s Executive Order 13392 on FOIA, we are working on a plan to improve how we respond to FOIA requests and how we can more proactively make more information available on our website. We are also putting more contact information online so individuals can know how to reach actual people at HUD.

Shining sunlight on the regulatory process at HUD and being more transparent in how we issue regulatory guidance will result in more accountability, fairness and consistency as well as regulations of a higher quality. It will help foster trust between us and those we regulate. It will also reduce compliance friction and help your clients to more easily comply with our rules and regulations and engage in transactions with a higher degree of confidence. I look forward to working with you and all of our partners to make this happen.

I would like to again thank the American Bar Association and its Affordable Housing Forum for organizing and hosting this forum and thank all of you for taking time from your busy schedules to be here today to share ideas for how best to serve your clients and, more broadly, how we as lawyers can play our part in improving the quality of, and access to, affordable housing.

I look forward to working with all of you in the months and years ahead.

Thank you.