March 13, 2012

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Re: Know Before You Owe Mortgages Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel

Dear Director Cordray,

Thank you for the opportunity to participate as Small Entity Representatives in the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel session on March 6, 2012 regarding the Consumer Financial Protection Bureau's (CFPB) TILA-RESPA Integration rulemaking. The purpose of this joint letter is to provide written comment and clarification in addition to our statements before the Panel last week. Our main concerns expressed below include (1) CFPB's consideration of who will complete the Settlement Disclosure Form (SDF), (2) the "3 Day Rule", and (3) the cost of implementation, all of which will significantly impact small businesses such as ours.

We appreciate the difficulties the CFPB faces in achieving Congress' mandate to integrate the disclosure required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). If done carefully, this project can meet the CFPB's dual goals of helping improve consumers understanding of their mortgage transaction and facilitating industry compliance with TILA and RESPA. The draft forms and regulatory outline put forward by the CFPB for the Panel meeting represent a strong first step toward reaching these goals, but we believe the minor adjustments discussed below are necessary to avoid any unintended consequences for the entire real estate transaction, harm consumers by reducing their choice of service providers and unnecessarily high costs of implementation for small business title and settlement providers.

The title industry estimates that using the current versions of CFPB's draft forms in accordance with the regulatory outline will increase costs to small business settlement providers by as much as $800 per employee in upfront implementation and training costs; $2,360 to train lenders, Realtors and other customers; a 20% increase in their yearly software maintenance fee; and a 20% decrease in annual revenue due to decreased productivity. An itemization of these costs is detailed in Exhibit "A". These significant additional costs are due mainly to four distinct problems with the draft forms and regulatory proposal: 1) the reformatting of the settlement statement, 2) the lack of uniformity in lender practices, 3) the requirement to provide the settlement disclosure three days in advance of closing, and 4) the logistics of coordinating delivery of the settlement disclosure when some costs are known only to the lender while other costs are known only to the settlement agent. In addition, if a model form is adopted rather than a single, promulgated form, the estimates listed above would significantly increase.

The Important Role of Title and Settlement Agents in Real Estate Transactions

Settlement agents serve as the independent, third-party facilitator of the real estate transaction. In this role, settlement agents serve two major purposes. First, we ensure that the transaction closes quickly, honestly and in accordance with all the parties' instructions. We handle the funds deposited by the borrower and the lender, disburse monies to the appropriate parties in the transaction and document the closing of the entire real estate and mortgage transaction, including providing the Uniform Settlement Statement (HUD-1) to the borrower, lender and seller (as applicable), as required by RESPA. Second, we serve as the last resource for consumers' questions about their transaction.

Settlement Agents are Overwhelmingly Small Businesses

In a 2010 survey of its membership, the American Land Title Association estimated that over 88% of the nearly 21,000 titles and settlement agents across the country qualify as a "small business" according to guidelines of the Small Business Administration which defines a small business settlement agent as having than $7 million in annual revenue. In fact, roughly 60% of settlement agents gross less than $500,000 in revenue and have five or fewer employees. These companies will be greatly impacted by the CFPB's proposed regulatory outline.

Federal Mortgage Disclosures are One Part of a Larger Real Estate Transaction Governed by State Law and Local Practice

Settlement – or closing as it is known in some parts of the country —designates the point in time at which the contemplated transaction is concluded, title to the property is transferred from seller to buyer, a mortgage (or "deed of trust") is given by the buyer/borrower to the lender and the funds from the buyer and lender are transferred to the seller. While the settlement process differs from state to state (and in some cases county to county), the timely and efficient outcome is virtually the same in every jurisdiction. This complex process is accomplished quickly and efficiently for one main reason: an independent, third party professional has already pulled together all of the documentation and other requirements necessary to close the transaction.

The buyer and the seller negotiate a target closing date when reaching a purchase agreement. This date is fluid and will typically change at least once depending on the underwriting of the loan, the results of the title search or changes to the agreement due to the walkthrough and inspection. For consumers, delays to closing can prove costly as they require the consumer to pay to extend their rate lock, increase payoff amounts and interest paid on lines of credit or put the entire transaction at risk if the purchase agreement states time is of the essence. Because of this potential negative financial impact on the consumer, seller, lender, settlement agent, real estate agent and other service providers, all parties will typically seek to close immediately once all the underwriting and walkthroughs are completed.

During the negotiation process, the buyer and seller will also select a settlement agent. Consumers can shop around to select a settlement agent to perform the settlement functions, or they can rely on a recommendation from their real estate agent or lender. While variances occur throughout the country, a settlement agent is typically an attorney, a title company, or an escrow company.

The settlement agent acts as a clearinghouse collecting all the necessary documentation, including the deed, mortgage, title and homeowners insurance policies, payoffs (if there are liens on the property that must be released) and pest inspection reports. The settlement agent also handles the exchange of monies, including any earnest money deposit, mortgage funds and personal funds of the parties and forwards payment to any previous lender, other lien holders, tax collectors, municipalities, credit card holders, surveyor fees, realtor fees, inspection fees and pay all of the other parties who

performed services in connection with their closing. Lastly, the settlement agent prepares the HUD-1 Settlement Statement which documents all costs for both the buyer and seller associated with the transaction and in some portions of the country, also instructs the settlement agent for the appropriate disbursement of funds, and therefore is signed by the parties to the transaction.

RECOMMENDATIONS

The CFPB's draft disclosure forms and the regulatory outline will be costly for small settlement agents to implement and could put small agents out of business by making the lender responsible for producing the settlement disclosure. However, we believe that if the CFPB adopts the following recommendations, it will improve the CFPB's draft disclosure forms and regulatory outline, prove less costly for small businesses to implement and less disruptive to the larger real estate transaction.

Problem: The integrated settlement disclosure presents costly logistical hurdles because some costs and information are known only to the lender while other costs are known only to the settlement agent

Solution: Bifurcate the settlement disclosure form into a lender and settlement agent provided sections

CFPB's regulatory outline indicates it is exploring two different options for allocating responsibility for providing the Settlement Disclosure, the lender or the settlement agent. Depending on which policy choice CFPB makes, the impact upon smaller settlement agents will range from significantly debilitating to catastrophic. However, there is a third option (unconsidered in the CFPB's outline) that if implemented would achieve CFPB's desired goals and inflict little to no harm on small business settlement agents, bifurcation of the Settlement Disclosure.

Without bifurcation, if the settlement agent will continue to provide the Settlement Disclosure (which is our preferred approach), their software system must be adapted to accept nearly 3 pages of additional disclosures not currently contained in system. The programming costs would be significant and the time table for **development would far exceed the 18-month window mentioned above**.

Similarly, if a lender's system is chosen (which would not be ideal), significant amounts of information would need to be provided by the settlement agent to the lender, including transactional information having no bearing on the loan. Settlements will likely move in house to the lender or larger competitors, eliminating an entire business line for smaller settlement agents, likely leading many to staff layoffs or business closure.

Regardless of who delivers the Settlement Disclosure, small business settlement agents would likely be replaced in the marketplace by lenders or larger competitors who are able to effectively absorb the significant software development costs. Smaller settlement agents will be at a competitive disadvantage because they will have lower staff productivity due to the manually transfer of information between the lender and settlement agent.

To avoid this drastic impact on smaller settlement agents, we suggest that a reordering of the pages of the Settlement Disclosure into lender prepared and settlement agent prepared sections or parts would be the most efficient and least impactful resolution. The CFPB's current draft Settlement Disclosure Form contains approximately 3 pages of lender known information (either required currently by TILA or by Dodd-Frank) that could be segregated into a "Part A" completed by the lender using the existing or revised lender systems. The portions of the current CFPB draft form resembling the current HUD-1 should

be moved (and changed as suggested above) into a “Part B” to be completed by the settlement agent using the information already in the settlement agent’s system.

Under this design, the lender would prepare their part and then transmit that part to the settlement agent along with the closing instructions. The settlement agent would add their part and provide the completed form to the consumer at settlement. This would clearly delineate the responsibilities of the lender and settlement agent based on the information they typically possess during the process.

Problem: CFPB’s draft settlement disclosure form requires unnecessarily costly software programming that could be passed on to small settlement agents.

Solution: Maintain the formatting and line numbering from the pre-2010 HUD-1 Settlement Statement.

We find no consumer benefit gained by reordering the sections or altering the line numbering on the Settlement Disclosure Form from the existing HUD-1 Settlement Statement and its previous version. However, these changes do come with substantial costs to the settlement industry and its small businesses in particular. We suggest the panel recommend that CFPB revert back to the format and line numbering of the HUD-1(prior to the 2008 rule).

The CFPB’s current draft of Settlement Disclosure Form contains heading and numbering systems substantially dissimilar to versions of the HUD-1 Settlement Statement promulgated by HUD over the last 35 years. These changes of location or numerical reference cause significant system programming issues and are one of the largest drivers of software development costs and implementation time.

Based on discussions with the industry’s software providers, these changes will require significant programming time and expense **of roughly $1.5 to $2 million dollars per software provider and require at least 18 months of programming and testing**. Further, since most software system providers recently absorbed the costs of the 2008 RESPA changes to their software, many have informed their customers that they will have to pass on these costs to the customer. For small business and other subscribers this cost increase (itemized in Exhibit A) will likely run into the thousands of dollars based upon current estimates.

However, if the CFPB chose to revert back to the historical numbering of the pre-2008 HUD-1 Settlement Statement for documenting the transaction’s receipts and disbursements on the integrated form, costs to small businesses would likely be minimal, if any. The software coding for thepre-2008 HUD-1 Settlement Statement was retained in most software systems and would require minimal software development costs to bring them back into use. While the current version of the HUD-1 Settlement Statement possesses the less costly line numbering, it also includes references to the Good Faith Estimate which would need to be eliminated through software coding.

Problem: Small settlement agents unnecessarily incur at least half an hour of lost productivity per closing due to discussing appropriate compliance requirements with lenders due to regulatory uncertainty.

Solution: CFPB should promulgate mandatory forms with clear and detailed completion instructions and rules to increase uniformity in lender and settlement agent practices.

A lack of uniform compliance practices by lenders adds unnecessary costs for settlement agents. Because of uncertainty surrounding the current requirements of TILA and RESPA, each lender utilizes differing formats of the TILA disclosure and places cost items in different locations on the HUD-1 Settlement Statement. This uncertainty forces settlement agents to waste at least 30 minutes per transaction negotiating with the lender to ensure proper compliance. Rather than have small settlement providers bear these unnecessary costs, CFPB should provide clear, concise and authoritative guidance to lenders and settlement agents, mandating the format of the disclosures and the placement of each cost item on the form.

A promulgated form, as currently provided by HUD in their RESPA regulations, is preferable to the model disclosure regime currently allowed under TILA. Having one promulgated form allows settlement agents to work with a number of lenders because despite variation in lender practice related to where cost items are located on the form, the settlement agent must only maintain the capability to produce a single form design. However, if CFPB adopts model forms as TILA currently allows, then small settlement agents will have to maintain the ability to produce each lender's desired format for a settlement disclosure. This capability will be extremely costly and potentially prohibitive to small settlement agents.

This type of environment will drive small businesses out of the market and lead to only a few larger settlement agents capturing the majority of the business available. However, a promulgated form will virtually eliminate this small business concern.

In addition to a promulgated form, clear, concise and authoritative guidance and instructions will dramatically reduce costs for small settlement providers. In 2008, HUD published the current regulations governing RESPA. This regulatory regime was a wholesale and sweeping change from the previous regulation and changed business practices in existence for over 30 years. While HUD provided some guidance (primarily by means of publically available FAQ's), it was not sufficiently responsive to industry inquiries, leaving many questions unanswered. Further, informal guidance provided at trade or professional meetings was so limited as to provide no reduction in cost for small entities.

The lack of specific information regarding the 2008 rule, on a formal and public basis, prevents businesses from reliably gauging if an action is compliant under the regulation, or if a violation has occurred. This uncertainty has increased the time to process a loan application and added layers of internal decision making and ultimately increased costs to consumers.

The use of a promulgated form by all lenders along with clear and concise guidance and instructions, will significantly reduce, if not eliminate, this small business concern.

Problem: A "Three Day" rule will produce operational inefficiencies and costs for small providers

Solution: Limit application of "Three Day" disclosure rules to TILA information

The effect of the CFPB's "Three Day" rule will be to delay closings by three days rather than force lenders and other service providers to move their timelines up three days. This mandatory delay will almost always lead to higher costs for the consumer and small settlement agents.

We agree with the CFPB's goal to provide consumers with greater certainty as to the terms of their loan and the cash needed to close the transaction prior to settlement, but there are better ways to achieve this goal than requiring the provision of the Settlement Disclosure three days in advance of closing.

If small settlement agents are required to prepare and deliver the entire Settlement Disclosure form to the consumer three days in advance of settlement they will incur increased costs related to allocating staff time to 1) collecting settlement cost/loan information from the lender and other service providers and 2) answering questions from consumers in advance of the formal settlement. The cost of collecting information to complete the disclosure will likely be high at the beginning of implementing the new regulation, as it is a large sea change from the current practices of most of the people connected to real estate transactions including lenders, settlement agents, attorneys, appraisers, pest inspectors, homeowners associations, etc. The cost of providing staff to answer consumer questions prior to settlement will be ongoing after the initial implementation phase. This cost will be fairly problematic for small settlement agents because it in essence requires them to duplicate the settlement process, first informally for the consumer and then at the official closing.

Beyond the cost to the settlement agents, a larger cost will be borne by the consumer in the form of increased transaction costs due to a delay in closing. Many transactions we currently process involve payoff of consumer and credit card debt; delays of closing in such situation can increase payoff amounts significantly given the often high interest rates such financing contains. The consumer, seller, lender, settlement agent, real estate agent and other service providers will be negatively impacted (financially) by this rule.

Due to the highly variable nature of real estate transactions (as distinct from loan transactions), predicting exactly when the transaction will be ready to close, and whether the transaction will have at least one settlement cost change in the three days prior to the scheduled settlement date is impossible. In addition, many transactions have last minute adjustments to the settlement statement predicated by or agreed to by the consumer.

To reduce the cost and potential consumer harm discussed above and meet the CFPB's goal, we believe CFPB should make the following two changes to the "three day rule":

1. **Require lenders to provide an updated Loan Estimate three days prior to closing.** TILA requires that the creditor send an updated disclosure of loan costs to the consumer three days in advance of consummation if the APR changes more than 1/8 of one percent from the initial disclosure. We believe this requirement is valuable to the consumer and should be continued. In addition, the concept of tolerance, making lenders responsible for their settlement cost estimates they provide on the Good Faith Estimate (soon to be Loan Estimate) should ensure that the cash to close estimate provided by the lender three days after application should make that information more reliable. Thus, if the lender were required to provide an updated Loan Estimate (or Settlement Disclosure Part A as discussed above) three days prior to settlement, the consumer should have with reasonable certainty the cost of their loan and the cash need to close.

2. **The CFPB should define fees that can change within three days of settlement to exempt changes in those costs from trigger a re-disclosure and three day waiting period**. This exemption should be based on the attached list of costs that typically change within three days prior to closing.

Beyond these two steps, the CFPB could also require that lenders cure any tolerance violation at the closing table instead of the current RESPA regulation's 30 day post closing window. With this change, the consumer would know the cash needed to close with a high degree of certainty by reviewing the Loan Estimate provided three days before closing. If a cost (subject to tolerance) did fluctuate dramatically in that period, then the lender would be responsible for the difference between the estimate and the final disclosure.

Most importantly, this approach would provide the same certainty to the consumer without the increased cost to small business.

Problem: Mandating that the integrated disclosure be maintained in a standard machine readable format will be cost prohibitive for small settlement agents.

Solution: Provide an exception to the machine readability requirement for small settlement agents.

In its outline CFPB indicates it is considering requiring copies of all Loan Estimates and Settlement Disclosures provided to borrowers be available and maintained in a standard, machine readable, electronic format. Currently we believe the vast majority of small business closing agents maintain the HUD-1 form in either paper or scanned image, but not in a machine readable format.

Requiring a machine readable format will require software upgrades for small business settlement agents. The cost to obtain this technology would be prohibitive to small settlement agents. The CFPB should provide an exception to the machine readability requirement for settlement agents that fall under a particular threshold of closings or revenue. This would be similar to what the IRS requires for electronic versus paper reporting of 1099-S forms by settlement agents. Without the exemption, small agents would not be able to compete with larger competitors who can offer this functionality.

SMALL BUSINESS RELIEF FROM ADOPTING SUGGESTED CHANGES

If the suggestions above are adopted by CFPB, we believe implementation costs and training will be significantly reduced or eliminated, causing a substantial reduction or elimination of many of the costs set forth on Exhibit A. Also, the implementation time for the settlement agent portion of the a bifurcated Settlement Disclosure will likely **decrease from a period in excess of 18 months to 12 months.**

Lastly, separate and apart from the important changes suggested above, the CFPB should take care to not propose rules which can only reasonably be achieved by larger players in the settlement industry. One of the unintended consequences of the recent revisions in the 2008 HUD RESPA Rule lenders now limit the settlement agents with whom they work to close transactions because of increased liability. Not only will small settlement agents be hurt by this inability to compete, but consumers will be harmed as well from the lack of consumer choice, ultimately leading to higher costs. The basic tenet of Section 4 of RESPA should ultimately guide CFPB's direction: that "the form prescribed under this section shall be completed…by the person conducting the settlement." We strongly believe that a neutral third party conducting the settlement is absolutely necessary for CFPB to achieve its dual goals of improving consumers understanding of their mortgage transaction and facilitating industry's compliance with TILA and RESPA.

We appreciate the opportunity to present our thoughts and ideas to the Panel and welcome the opportunity to provide additional guidance as the Panel considers its recommendations.

Sincerely,

Steven Buckman
Pam Day
Celia Flowers
David Windle

Exhibit A

Implementation costs		
Cost	**Reason**	**Detail**
$150 per employee	Software Update	
$350 per employee	Software Training Fee	
$300 per employee	Lost Productivity due to training	Estimate 2 days of training at $18.75 per hour (median wage for a title abstractor according to the Bureau of Labor Statistics)
$1405.80	Provide training to lenders	Estimate 9 days at $20.15 per hour (median wage for a title abstractor management according to the Bureau of Labor Statistics)
$967.20	Provide training to realtors and other customers	Estimate 6 days at $20.15 per hour (median wage for a title abstractor management according to the Bureau of Labor Statistics)
Recurring Costs		
Cost	**Reason**	**Detail**
20% increase	Yearly Software Maintenance Cost	
20% decrease	Revenue lost	We are estimating an additional 15 minutes per closing. With an estimate of 8 closings per day per closer, this extra time will cost 2 closings per day per closer.

Exhibit B

If Settlement Statement is Required Three Days Before Closing and Closing is Delayed the Following Charges Would Change

- Prorations
  - Real Property Taxes
  - Assessments
  - Sewer Fees
  - Home Owner's Association Dues and Fees
  - Leases and Rents (*i.e.* seller remaining in possession after close for short period of time)
  - *Etc.*
- Interest on Payoffs
  - Existing Loans
  - Judgment Liens
  - Delinquent Real Estate Tax Liens
  - *Etc.*
- Late Charges if Payoff Deadline Missed
- Prepaid Interest on the new loan
- Expiration of Interest Rate Lock on borrower's new loan which could result in an increase in the interest rate or the need for additional funds to buy the interest rate back down.

Other Reasons Charges Could Change

- Last minute negotiations between the parties
  - i.e. buyer walk through may result in issues that buyer wants seller to pay for or that the parties agree to split
  - i.e. buyer and seller are still negotiating the contract until time of closing
- REO Seller requirements that were unclear on the Purchase Agreement
- REO Seller change their mind on what can and can't be paid by buyer or what can come back to the buyer.
- REO Seller fails to clear title requirements and closing is delayed and buyer is charged additional fees by the REO seller. (in addition proportions described above may change.)
- Short sale instructions from lender receiving payoff don't arrive until last minute.
- Demands received at the last minute
  - Lender
  - REO Seller
  - HOA
  - Real Estate Agent (i.e. administrative fee for broker paid by buyer)
- After buyer's inspection buyer demands credit from seller that exceeds lender's allowable seller credits and lender adjusts the loan amount
- Buyer's cash to close is more than lender verified buyer had and lender adjusts the loan amount
- Buyer's cash to close is less than a government loan program requires and lender adjusts the loan amount
- Borrower's cash back from closing exceeds lender's guidelines and lender adjusts the loan amount

- Borrower doesn't want to bring cash to closing so loan amount must be increased to cover payoffs and closing costs