



November 10, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2014-0028 or RIN 3170-AA48

Dear Ms. Jackson:

The American Land Title Association (ALTA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau) proposals to address the timing for issuing disclosures after a rate lock and the placement of the required disclosure for construction to permanent loans under the TILA-RESPA Final Rule (Rule). ALTA values the Bureau's willingness to listen and work with industry professionals to find solutions to problems and to modify the Rule when its requirements will cause unnecessary confusion for consumers. ALTA supports the proposed changes and urges the Bureau to address another provision of the Rule that will lead to consumer confusion: the Rule's requirement for inaccurate disclosures of title insurance premiums on the Closing Disclosure form.

The Rule requires the lender or settlement agent to inaccurately disclose the price for title insurance on both the Loan Estimate and Closing Disclosure. Rather than disclosing actual costs of title insurance premiums, the Rule requires consumers to make a complex calculation to determine their title insurance premium. In the Rule's preamble, the Bureau recognized that in approximately half the states, the Rule requires inaccurate disclosures of title insurance premiums that do not reflect the actual costs a consumer will pay.² These inaccuracies stem from the Rule's requirement for lenders and settlement agents to disclose the full loan title insurance policy rate, even though in the vast majority of transactions, consumers will actually pay a discounted "simultaneous issue" rate due to the purchase of an owner's title insurance policy.

¹ The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA represents more than 5,300 member companies. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations to large national title insurers.

² 78 F.R. 79963.

In about half the states (either by regulation or rate filing), title companies will offer a discount on the lender's title insurance policy when both a lender's and an owner's policy will be purchased in a single transaction. This discounted pricing is commonly referred to as "simultaneous issue" pricing. Typically, the simultaneous issue discount is offered on the lender's policy, while the owner's policy remains at its full cost.

Despite this common practice, the Rule does not allow settlement agents or lenders to disclose the discounted simultaneous issue price for the lender's title insurance policy on the Loan Estimate and Closing Disclosure forms. The Bureau stated in the Rule's preamble that "the clear disclosure of the required cost for the lender's title insurance alone, and the additional incremental cost to be paid by the consumer for the optional owner's title insurance premium outweighs the benefit of a technical disclosure of the owner's and lender's title insurance premiums."³ While this may make sense at the Loan Estimate stage when consumers are deciding whether to purchase an owner's title insurance policy, the opposite is true once the decision has been made and the consumer comes to closing. At closing, consumers are best served by seeing all the actual costs they will pay on the Closing Disclosure.

We fear that this requirement will cause unnecessary confusion for consumers. Consumers will be advised to bring excessive cash to closing, only to be refunded the overstated amount based on actual receipts and disbursements. Neither the Rule nor its Official Commentary provides a means to adjust cash-to-close to accurately disclose title insurance fees to the consumer. Consumers will also find it more difficult to shop for title insurance since disclosures will show prices grossly different from the industry's filed rates. Additionally, title and settlement agents will have to provide additional disclosure forms to consumers at closing to show the actual title insurance costs and to prove compliance with state law governing industry filed rates. We estimate that title and settlement agents in 21 states, accounting for approximately 58% of existing home sales in 2010, will have to provide additional disclosure forms in order to comply with state law.⁴ This practice will negate the Bureau's goal of making closing costs more transparent to the consumer earlier in the closing process.

The Bureau's rationale is even more confusing for the majority of states where the seller pays, or is likely to pay, for title insurance. These 31 states accounted for approximately 68% of existing home sales in 2010.⁵ The Rule requires lenders and settlement agents in these states to

³ 78 F.R. 79964.

⁴ The Rule's requirement that the Closing Disclosure provide inaccurate charges for title insurance premiums is inconsistent with state law or regulation in approximately twenty-one (21) states: Alabama, Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, Texas, Utah, Washington, Wisconsin and Wyoming. These states accounted for approximately 58% of existing home sales in 2010.

⁵ There are approximately thirty-one (31) states where the seller pays or is likely to pay for owner's title insurance on behalf of the consumer: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New

knowingly and purposely disclose inaccurate title insurance costs to the consumer, despite knowing that there is no likely scenario where the consumer will pay the full lender's policy premium. Not only does the Rule cause confusion for the consumer about what they are likely to pay in these situations, but it will also cause confusion for the seller about how much they will contribute to the title insurance costs. Further, by showing the higher-priced full loan title policy rate in those jurisdictions where the owner's title insurance policy is paid for by the seller, the borrower's cash-to-close number, an important improvement to the disclosure forms, is rendered inaccurate and overstated.

If the Bureau does not address the Rule's provisions requiring inaccurate title insurance disclosures, industry professionals will be compelled to provide additional disclosure forms or settlement accounts of the transaction to disclose the actual fees charged for title insurance. This document will be necessary to help the industry prove to state insurance regulators and potential class action plaintiffs that they charged consumers the correct rates under state insurance law. We fear that these additional forms will add complexity to a transaction that we, along with the Bureau, hoped to simplify for consumers.

ALTA urges the Bureau to address its complex policy on title insurance fee disclosures in order to reduce consumer confusion quickly as the industry is completing its implementation efforts. ALTA suggests the Bureau modify its policy through amending the Official Interpretations of the Rule to allow for accurate disclosure of title insurance fees on the Closing Disclosure form. We look forward to continuing to work with the Bureau on this issue and to help promote a smooth implementation of this important consumer safeguard. Should you have any questions about this response, please do not hesitate to contact Steve Gottheim, legislative and regulatory counsel, at steve@alta.org or 202-261-2943. We will follow up with Bureau staff to further discuss this issue. Thank you for taking this opportunity to listen to our concerns.

Sincerely,



Michelle L. Korsmo
Chief Executive Officer