AMERICAN
LAND TITLE
ASSOCIATION

June 27, 2011

Professor Elizabeth Warren
Assistant to the President and
Special Advisor to the Secretary of the Treasury
on the Consumer Financial Protection Bureau
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Professor Warren:

On May 18, the CFPB released two concepts of a mortgage disclosure which combines the requirements of the Truth in Lending Act and the Real Estate Settlement and Procedures Act's Good Faith Estimate into a single form. These drafts do a commendable job of presenting important loan information in a clear and concise manner for consumers. We appreciate the opportunity to provide feedback and allow ALTA members to directly provide feedback as well.

Last month, comments of the RESPA Task Force of the American Land Title Association[1] (ALTA) were among the more than 14,500 comments on the draft disclosures submitted through the CFPB website. Since there are understandable limitations to the website feedback tool, this letter is intended to provide information which was not able to be provided through the website tool as well as reemphasize the comments that ALTA provided.

We will discuss ALTA's thoughts on the Ficus Bank draft form including (1) that the term "non-required services" should be renamed "recommended services" or "advisable services;" (2) that improvements can be made to the estimated closing costs chart; (3) that the adjustable rate information chart should be easier for consumers to understand; and (4) that the header should be included on both pages. In addition to these comments, we have a few general questions that we hope that the Bureau might be able to answer and provide clarity to ALTA members.

ALTA Prefers the Ficus Bank Disclosure

Right before and at closing, consumers routinely ask ALTA members two questions: What will my monthly payment be? How much money do I need to bring to the closing table? The draft Ficus Bank form provides this information to the consumer in a clear manner in the "Projected Payments" section. ALTA suggests that when testing the new forms, the CFPB look for more ways to direct consumers to these important numbers. We appreciate the opportunity to reemphasize the

[1] Founded in 1907, ALTA is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. With more than 8,000 office locations throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles and conduct closings to protect the rights of 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.

1828 L Street, N.W. ■ Suite 705 ■ Washington, DC 20036 ■ (202)296-3671 ■ 202-296-3671 ■ 800-787-ALTA
E-mail: service@alta.org ■ Web: www.alta.org ■ Fax: 888-FAX-ALTA ■ Local Fax: (202)223-5843

following comments provided through the website tool regarding the initial release of a draft combined mortgage disclosure:

Rename the "Non-Required Services" Line Item "Recommended Services" or "Advisable Services"

The draft form uses the term "Non-Required Services" to disclose to consumers the closing costs that are not mandated by the lender, but are available to consumer. However, by calling a service "non-required," the form contains a less than encouraging implication that the service is of less value to consumers. This message prejudices consumers against considering these services, even when these services are often in consumers' best interests and protection.

HUD's Settlement Cost Booklet, "Shopping for Your Home Loan"[2] encourages consumers to purchase these services, including an owner's title insurance policy, indicating: "If you want to protect yourself from claims by others against your new home, you will need an owner's policy."

ALTA's RESPA Task Force strongly recommends that the section should be renamed "Recommended Services" or "Advisable Services" to encourage consumers to investigate these services and make an informed decision. In addition, the form should contemplate how to inform consumers that, depending on where the home is located, consumers will be provided these services by the seller in the sales contract at no additional cost to the consumer.

Improve the Estimated Closing Costs Chart

One of the most important pieces of information that consumers need to know when shopping for a mortgage is how much money they will need to bring to closing. While the "Estimated Closing Costs" chart on the second page does a commendable job of disclosing this to consumers, specific aspects of the chart could be improved to better inform consumers and help them negotiate and shop for their mortgage.

The current draft form does not provide enough data to compare all types of mortgage and real estate transactions. Thus the question arises, would this chart be expandable to include more fees when warranted by the transaction?

Some examples of fees that are not included in this draft but would be of interest to consumers are flood certification, survey costs, mortgage broker compensation, HOA dues, HOA transfer fees, and tax services. Throughout the country, these fees are commonplace and many are paid at closing. The form should contemplate how to disclose these and other fees.

In addition, regulations accompanying the forms need to be clear in order to instruct lenders on how to disclose certain fees under common scenarios. For instance, how would this form disclose a survey if it is going to be required by the lender? How would it disclose the

[2] http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12164.pdf

survey if it was local custom for consumers to obtain surveys? Answering these questions will make it easier for lenders to complete the disclosure correctly thus providing the consumer with accurate information.

Further, the form should contemplate how to inform consumers which of the included fees will be paid by the lender or seller. Including a general statement on the form that depending upon local custom, some of the closing costs may be paid by the lender or seller would aid consumers in negotiating with lenders and sellers for those services.

The lines in Section E for "Escrow and prepaid property taxes and assessments" and "Escrow for insurance" should be improved to explain to consumers what charges are included in the numbers. Some lenders only require one item (either insurance or taxes) in an impound account. One way to make clear which items are included would be to have descriptive check boxes identifying which items are included in the impound payment.

Lastly, more effort should be undertaken to remind consumers that these fees are estimates and can increase or decrease depending on the transaction. This emphasis will reduce consumer shock if a fee changes at closing. The form appears to indicate that the only time charges in Loan Estimate Details, Section C, would change is if you chose another provider. However, these changes may vary regardless because they are in fact "estimates".

Make the Adjustable Rate Information Chart Easier to Understand for Consumers

This box uses terms of art that are not easily understood by the average consumers. With simple improvements, the chart can help consumers understand how their interest rate is calculated and how it can change in the future.

One way to improve consumers' understanding of the chart is to use more descriptive terms to help them understand the calculations. We suggest changing the term "Index" to "Base Index", and the term "Margin" to "Added Margin". These terms better describe these numbers and showcase to a reader how the two numbers work together to set the interest rate.

Another suggestion would be to add an additional line after "Added Margin" titled "Adjusted Interest Rate" to show the consumer the arithmetic used to calculate their interest rate. This line would be a calculation that shows that their interest rate is the "Base Index" + "Added Margin". Further, instead of just listing "Prime" as the "Base Index," the form could also list the current "Prime" rate and corresponding date so that consumers could visually see how their interest rate is determined.

Include the Bank Information Header on Both Pages

Finally, we found that the basic information contained in the header (bank name, loan officer, etc.) provides good reference information that help consumers identify which lender's disclosure they are reviewing and should therefore be included on both pages. While the draft form is envisioned as a two-sided, single sheet of paper, consumers will likely receive the form as two, single-sided sheets of paper, either in a hard copy form or electronically. Including the header on the first and second page for instances when the two

pages are separated would help consumers keep track of which lenders disclosure they are reviewing.

In addition, by placing the header on the second page, consumers will have an easier time comparing terms contained on the second page between lenders.

Including the "Important Dates" information in the header might be useful to make these dates more prominent to consumers. These dates are specific to each loan and would logically fit with the rest of the lender information.

General Questions

In addition to the aforementioned comments, ALTA has additional questions which we believe can help consumers and industry better understand the goals of this RESPA/TILA reform. We noted that not included in the released combined mortgage disclosures were any concepts of a new Uniform Settlement Statement (or HUD-1) as required by Section 4 of RESPA (12 USC § 2603).

As part of their responsibilities as independent, third-party facilitators of real estate transactions, ALTA members prepare and provide to consumers the HUD-1, which discloses to consumers their final mortgage transaction and real estate transaction settlement costs, including origination, closing, recording, tax and other charges associated with the transaction. While ALTA members do not routinely issue the initial disclosure provided by the GFE or Truth in Lending statement, they do routinely issue the final disclosure HUD-1 which includes final costs for estimates provided on those forms.

These two documents are closely tied together, and under the current RESPA rules, effective since January 1, 2010, the GFE and HUD-1 are specifically designed to work together to disclose mortgage and closing costs to consumers. Since the initial disclosure and final disclosure are so closely tied together, the absence of a corresponding HUD-1 or closing statement concept form gives rise to the following questions:

How will the new initial disclosure interact with the current final disclosure HUD-1?

Effective disclosure requires that consumers obtain necessary information throughout the mortgage and real estate transaction. Thus there should be some interplay between disclosures that provide initial estimates of a transaction and the disclosures that provide final costs.

ALTA's RESPA Task Force attempted to address these questions in draft disclosure forms that they developed at the request of CFPB staff earlier this year. In ALTA's draft disclosures, we took care to ensure that the forms looked as consistent as possible to make it easier for consumers to compare the initial and final disclosures. This consistency allows consumers to easily discern how accurate some estimates are, and this permits them to ask appropriate questions to understand the differences in quoted charges of their mortgage and real estate transactions.

Consistency in the look and feel of the two disclosures also has a corresponding benefit by improving consumer comprehension of costs at closing. A closing can be a confusing process for

many homebuyers, but we believe the more familiar they are with the forms and the terms before they arrive at the closing table, the easier and better the closing process will be for them.

Will these two documents "talk" as they are supposed to under current regulations? How will consumers be encouraged to use the disclosures?

Under current RESPA regulations, the GFE and HUD-1 work hand-in-hand to guide the consumer throughout the mortgage and real estate transactions.

Many of the line items on the HUD-1 include references to the GFE. Further, many of the estimates in the GFE are linked to the final figures in the HUD-1 through the concept of tolerance. ALTA recommends that the CFPB conduct consumer testing on the value of these links for consumers.

Will the new HUD-1 look more like the current RESPA rule's Settlement Statement format or will it revert back to the previous RESPA rule's Closing Statement?

One of the drawbacks of the current HUD-1 is the lack of a simple closing statement or disbursement sheet. Because of this, many ALTA members produce their own separate, non-uniform closing statement in order to show all disbursements into and out of escrow. This type of transactional statement is beneficial to ALTA members for reconciling their checkbook and to consumers who want to see who is being paid as well as to law enforcement to identify fraud. ALTA strongly encourages CFPB to produce a new HUD-1 Settlement Statement that serves as a disbursement sheet to identify all disbursements into and out of escrow.

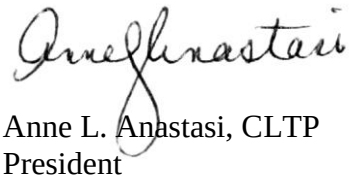
How will CFPB encourage consumers to use these new forms?

The 2010 revision of the GFE included a tool on page 3 to assist consumers in shopping for a mortgage loan. Regardless of the effectiveness of this tool, it was indicative of the form's purpose as a shopping document. Repeatedly, the Bureau has stated that it wants the combined disclosure to be simpler and to assist consumers in shopping for and understanding their mortgage loan.

How does the Bureau envision this draft achieving this goal? Will other information be given to consumers to help them understand the terms and estimates included in the form?

ALTA has been encouraged that the CFPB has taken a collaborative approach by working with the industry stakeholders because we firmly believe that this combined mortgage disclosure form should benefit consumers and industry stakeholders. ALTA will continue to provide feedback on future versions of the forms. Together we can help consumers make educated decisions when shopping for a mortgage loan and related real estate settlement services.

Sincerely,



Anne L. Anastasi, CLTP
President