

December 23, 2011



Mr. Rajeev Date  
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

Re: Know Before You Owe Mortgages Project

Dear Mr. Date:

On December 13, the Consumer Finance Protection Bureau (CFPB) released its second conceptual iterations of a Settlement Disclosure Form (“Mimosa” and “Sassafras”) as part of the “Know Before Your Project” implementing Section 1032(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (PL 111 – 203). We appreciate the opportunity to provide feedback on this second draft of closing disclosures.

Earlier this month, the American Land Title Association’s (ALTA) <sup>1</sup> RESPA Task Force (Task Force) provided comments to the first iteration of these settlement disclosures. Also, on December 6, 2011, the Task Force members met with a number of CFPB representatives in Washington to discuss the forms and the processes which might be used for their completion. In addition to re-emphasizing all of the comments made in our December 5<sup>th</sup> letter and matrix (attached) and December 6<sup>th</sup> meeting, ALTA’s RESPA Task Force provides the following comments on the Mimosa and Sassafras forms. We also provide our further comments to the new Mimosa and Sassafras form versions contained in the attached additional matrix (Matrix II)

### **ALTA’s RESPA Task Force Prefers the Mimosa Form**

While we continue to have substantive concerns about both form drafts (as outlined in Matrix and Matrix II), we prefer the Mimosa form, due to the inclusion of line numbers on settlement statement portion of the form. ALTA’s RESPA Task Force believes that the use of line numbers on the Mimosa form makes it easier for consumers to identify and locate key settlement items. Line numbers serve as a reference point, allowing closing agents to easily direct consumers, lenders, realtors and others to different costs when reviewing documentation of the settlement. A consumer can locate a specific line number easier than the textual description when reviewing settlement documentation with other transaction participants.. Further, the tying together of the application stage disclosure and closing stage disclosure through line numbers (as is currently done under Regulation X) helps consumers compare closing costs items between the initial and final disclosure.

However, even with the inclusion of line numbers, the Mimosa form presents considerable programming challenges due to the renumbering (or elimination) of lines and sections on the settlement

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<sup>1</sup> 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.

statement portion of the form. The renumbering of lines and sections would greatly increase the development time and costs incurred for closing system development consistent with the new forms. Existing systems are built upon layers of previous coding maintained to ensure proper functionality for the closing functions as well as the agent's other business needs. Closing systems use data points (and their reference numbers) not only to produce the documentation of the transaction settlement (currently the HUD-1) but also to produce other documents such as invoices and other accounting reports. By changing the line or section numbers, the Bureau will increase the cost of software development exponentially, requiring programmers to rebuild the connections between the Settlement Disclosure Form and other documents prepared or served by the system. To the greatest extent possible, we suggest maintaining the current section and line numbering on the HUD-1 to allow for faster and less costly software development and implementation.

### **Remove the Settlement Fee and Settlement Cost Headings**

The Task Force believes that the new segregation of closing costs between "Settlement Fees" and "Settlement Costs" in the recent form versions is extremely confusing and will likely hinder consumers' understanding of their key closing costs.

In the disclosure of closing costs, CFPB has chosen (without additional guidance provided) to separate such costs into two categories: settlement **fees** and settlement **costs**. To our knowledge, neither RESPA or TILA, or regulations concerning such statutes, make such differentiation. Further, other disclosures in the form, including APR, make no mention of either of these terms.

Also, the categorization of such closing costs is internally inconsistent by denominating a recording **fee** as a settlement **cost**, and referencing title insurance premium as a **fee** while categorizing other insurance products (homeowner's, mortgage and windstorm) as settlement **costs**. The seemingly random distinction between **fees** and **costs**, will only serve to cause confusion for consumers and settlement agents.

If the CFPB is intent on keeping these categories, CFPB will need to provide definitive guidance to the industry and software developers about which charges are **fees** and which are **costs** and their appropriate location on the settlement form. This guidance will provide software developers with location information allowing the tagging to other invoicing, accounting and reporting functions.

### **Remove the Paid Outside of Settlement Column**

The Task Force believes that the number of items normally paid outside of the closing is insufficient to justify the inclusion of separate columns and references to "By/To/When". The present method used for disclosure of items paid outside closing (showing the amount and payee in the description line) provides sufficient and clear disclosure to consumers of such limited items.

The columns as structured on the Mimosa form are confusing for consumers and industry. Consumers will likely ask questions about the short hand used to denote the payor and payee. An example is on the Mimosa form line 906 "Appraisal Fee". The "Paid By/To/When" shows "bor/affl/before". While the header term seems self-evident, consumers are not likely to recognize the meaning of abbreviations used. Further, even if abbreviations are understood, understanding of the term its self may not occur (e.g. understanding what the term "affiliate" means in the context of their transaction).

## **Include a Section for Miscellaneous Disbursements**

The Task Force suggests including a section for miscellaneous disbursements similar (or preferably identical) to the 1300 series on the current HUD-1. This section is necessary to capture disbursements such as credit card payments, home warranty premiums and similar items paid by either buyer or seller. While some of these costs typically have no direct connection to the loan transaction, they frequently occur during both purchase and refinance transactions. Without ways to accommodate documentation of these disbursements on the form, closing agents will need to produce an inconsistent and additional disbursement sheets to handle the accounting for these charges.

## **Segregate the Responsibility for Completing the Combined Form**

While we recognize the statutory changes requiring CFPB to provide combined Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) disclosures, the Task Force continues to believe that the CFPB should separate or segregate the responsibility for completing the loan information and settlement cost portions of the combined form. This is necessary to appropriately delineate the differing disclosure responsibilities (loan terms and cost disclosures versus disclosure of the actual settlement accounting) and the parties (lender versus settlement agent, respectively) responsible for the completion of each section. .

## **Fix the Unintended Consequences of Tolerances, Changed Circumstances and Provider Lists**

As discussed in our earlier letter and matrix, as well as discussions occurring during our December 6 meeting, tolerance requirements, and the attendant use of “changed circumstance” to create multiple GFE’s and the anti-competitive aspects of a lender provider list, as required by current regulations, have led to unanticipated and undesirable consequences for both consumers and settlement providers. In our experience, including tolerance concepts in the disclosure form (without even minimal description of their operation) provides a disservice to consumers. The current practice of sending multiple Good Faith Estimates (between 7 and 9 per transaction) has served to obscure costs even further for consumers and is often not being used in accordance with the parameters set under RESPA. Further, the marketplace adaptation of tolerance requirements and “changed circumstance” on the part of lenders has created serious consequences for our small business members. As recommended in our December 5 letter, we believe that the reliability of initial cost estimates provided by lenders at the beginning stage of the transaction is more appropriately regulated by CFPB outside of the closing process.

## **Reduce the Volume of Summaries and Disclosures on the Form**

The Task Force believes that the CFPB may have reached a tipping point where the sheer volume of individual disclosures and summaries (many seemingly added beyond the requirements of RESPA or TILA) has caused the form to be unduly long and of questionable value to consumers.

Many of the seasoned professionals on our Task Force found the disclosures confusing and lacking a flow. Summaries of various items or categories are followed (often on the same page) with the detail of those very same items. In our view, many of the summaries used could be eliminated by a clearer itemization of the summarized items in the closing statement portion of the form.

While we believe the adoption of our suggested bifurcation of the form into manageable lender and settlement agent parts, as first suggested in our December 5 letter and matrix, will alleviate some of our concerns, the volume of information communicated in the current versions will likely encourage flummoxed borrowers to provide little or no attention to many of its provisions, including those of utmost importance to their understanding of the transaction, its terms and costs.

On behalf of the Task Force and all ALTA members, we appreciate the efforts of the CFPB. We appreciate, as well, your receptiveness to our comments and will continue to provide constructive feedback on future versions of the forms.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, with a large initial "M" and "K".

Michelle L. Korsmo  
Chief Executive Officer

**AMERICAN LAND TITLE ASSOCIATION SDF DRAFT 2 COMMENTS (MATRIX II)**

Issue	Comment	Suggested Resolution
<b>SASSAFRAS FORM<sup>1</sup></b>		
A. Form Design/Format/Delivery	Page 1 - The Settlement information and Transaction & Loan information contains font which is too small. Pertinent data, such as the Sales Price- should be more visible, especially if the information is incorrect- the buyer and seller both need to confirm the Sales price at the very beginning of a closing. An incorrect Sales price could result in an incorrect loan amount- if loan is a percentage of sales price.	Reduce the Font in the loan terms section slightly to allow for Settlement info, etc at the top to be enlarged.
	Page 2 – <b>This page is divided into sections: Settlement Fees and Settlement Costs.</b> We know of no requirement (or benefit) for this distinction. In fact, such segregation may cause consumer confusion (i.e., a recording <u>fee</u> is shown as a Settlement <u>Cost</u> ; payments for Mortgage Insurance, Wind Insurance and Hazard Insurance are all shown as a Settlement <u>Cost</u> while Title Insurance is denominated a Settlement <u>Fee</u> . Further, consumer have a much greater opportunity to shop for title insurance than they do for mortgage insurance, and the cost of mortgage insurance will invariably be much higher.	We believe the segregation of the form into Settlement Fees and Settlement Costs is not required, beneficial or appropriate and removal of these subtotals should occur, similar to the format of Page 3 of the Mimosa form. If segregation nevertheless occurs, we would need guidance or a predetermined list of which fees/costs fall into which category or if we would need to accommodate it on a line by line basis and have the users tag it accordingly. We would also need to know if the sections are expandable and what items are actually “hard coded” and which ones can be typed.
	Page 2 – <b>Positioning of Seller’s Column:</b> positioning the seller’s column in the middle of the page causes confusion.	Position the seller’s column to the right of all other borrower impacted columns

<sup>1</sup> Many of the items shown in the Sassafras Form section are equally applicable to the Mimosa Form

	Page 2 – <b>Column References:</b> Navigation and reference to appropriate portions of the form are impaired due to lack of letter or numerical references to the columns.	Add letter or numerical references to the columns.
	Page 2 – <b>Line Number Column References -</b> Removing the line number references on Sassafras is going to cause confusion to both the settlement agents as well as the consumer	Revert to the numbering/headings contained in the present HUD-1 form.
	Page 2 – <b>Lack of Misc. Disbursement Section:</b> Similar to the earlier version, no space is provided for miscellaneous disbursements required in the transaction such as credit card payments, home warranty premiums, etc. paid by either buyer or seller, some having no direct connection to the loan transaction.	Revert to the numbering/headings contained in the present HUD-1 form.
	Page 2 – <b>Totals Across Columns –</b> Totals indicated for “Total Settlement Fees Paid by Borrower”, “Total Settlement Costs Paid By Borrower” and Total Closing Costs Paid By Borrower” are each position in the middle of two columns (with one being the seller’s column. Also, no wording is provided to determine how such figure is derived.	We believe the segregation of the form into Settlement Fees and Settlement Costs is not required, beneficial or appropriate and removal of these subtotals should occur, similar to the format of Page 3 of the Mimosa form.
	Page 2 – <b>Real Estate Broker Fees -</b> Does the real estate broker fees section expand? What if there is a third agent or other fees being paid by or collected by the brokers. Also, in Texas they have verbiage that must print in the 700 section to disclose parties that were paid out of the broker’s commission. Where would they go?	
	Page 2 – <b>Taxes and Other Government Fees -</b> do not show other documents commonly used (i.e., release). Is this section expandable as we	

	have constant requests for additional lines.	
	Page 3 – <b>Calculating Borrower’s Cash to Close:</b> the box for cash to close in the upper left corner is unnecessary. The same detail and wording is included on the same page of the form.	Remove “Calculating Borrower’s Cash to Close” Box.
	Page 3 – <b>Limits on Increases:</b> No indication made as to appropriate completion of transaction if “Over Limit?” column results in a “yes”. Also, references in both the zero and 10% tolerance sections to section “D.” are confusing.	For the reasons set out in prior communications, tolerance should become a regulatory matter than a closing matter.
<b>Mimosa Form</b>		
	Page 1 - The Settlement information and Transaction & Loan information contains font which is too small. Pertinent data, such as the Sales Price- should be more visible, especially if the information is incorrect- the buyer and seller both need to confirm the Sales price at the very beginning of a closing. An incorrect Sales price could result in an incorrect loan amount- if loan is a percentage of sales price.	Reduce the Font in the loan terms section slightly to allow for Settlement info, etc at the top to be enlarged.
	<b>Page 1:</b> Since this is page 1 of 5, is it intended for Seller to receive and view copies of this very private information?	Group pages that only borrower will receive into one section so that they may be deleted from the Settlement Disclosure the Borrower sees.
	Page 2 – <b>Closing Cost Summary:</b> the box for closing cost summary in the upper left corner is unnecessary. The same detail and wording is included on the following page. No indication is made as which closing cost items are being	Remove Closing Costs Summary box. Delineate financed closing costs on closing costs itemization page (page 3)

	financed; therefore ability to determine correctness lacking.	
	<b>Page 2 – Did Your Closing Costs Increase?</b> This section does not explain which costs are included and what they cannot change FROM. The GFE? Which individual costs? Same with the 10% increase which costs are included here-the total isn't clear and there is no indicator on page 3 that points to that section on page 2.	Relocate and add more detail
	<b>Page 2 – Down Payment Summary:</b>	We believe the separate inclusion of this section is not required, beneficial or appropriate and removal should occur. The same or similar detail and wording is included on the same page of the form.
	<b>Page 2 – Originator Fees Summary</b>	We believe the separate inclusion of this section is not required, beneficial or appropriate and removal should occur. The same or similar detail and wording is included on page 3 of the form.
	<b>Page 3 – Paid Outside of Settlement:</b> the number of items normally paid outside of the closing is insufficient to require the inclusion of separate columns and references to "By/To/When".	The present method of disclosure of items paid outside closing (showing the amount and payee in the description line) provides sufficient and clear disclosure to consumers of such limited items. Remove two "Paid Outside of Settlement" Columns.
	<b>Page 3: Line 1100 and 1500</b> These lines have only fees paid by the borrower, have too much information are difficult to decipher and don't fall within the columns	Delete these lines.
	<b>Page 3: Line 1400</b> The description Initial Escrow Payment will be unclear to an unsophisticated borrower especially on the west coast where escrow refers to the	Return to the term "Reserves Deposited with Lender"

	settlement process.	
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