



September 22, 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 Project

Dear Mr. Date:

In May, the Bureau began the “Know Before You Owe” project to fulfill Dodd-Frank’s requirement to develop new combined mortgage disclosure forms that merge the requirements of the Truth in Lending Act (TILA) and the Real Estate Settlement and Procedures Act (RESPA).

In many respects, the “Know Before You Owe” project is successfully identifying ways to improve the disclosure of loan costs by making them more transparent. However, suggestions for how to disclose some settlement costs, in particular title insurance and attorney fees, have not reached a desired level of transparency and lack the necessary flexibility to avoid consumer confusion. We fear that this will unnecessarily lead to consumers paying higher settlement costs.

The American Land Title Association’s RESPA Task Force has worked with the Bureau throughout this process by providing feedback at meetings, commenting through the online portal and suggesting alternative methods. In each of the previous form iterations published by the Bureau over the last several months, ALTA’s Task Force has noted and expressed its concern over the form’s disclosure of owner’s title insurance costs. In the latest round of forms released on September 12, that frustration continued, both for the manner of disclosure for owner’s title insurance and other fees whose payment responsibilities can vary by state and locality. We recognize that owner’s title insurance is one of the lesser known items for consumers, and unfortunately the current form version does little to enhance a borrower’s understanding of the product or its costs. We want to work with you to improve consumer understanding of these charges.

To do this, ALTA suggests adding a separate line item on the initial disclosure that states: “Owner’s Title Insurance (if paid for by Borrower to protect the Borrower)”; or “Owner’s Title Insurance (if borrower paid)”; or similar language.

Since owner’s title insurance is not purchased as a requirement of the loan, but as part of the larger transaction, this charge should not be subject to lender tolerance and could be disclosed in the “Prepays and Escrow” section on the current form version.

Further, to enhance consumer understanding that lender's title insurance provides no protection to them, we suggest similar disclosure in connection with that item, such as: "Lender's Title Insurance (to protect the lender)."

In many parts of the country, Owners Title Insurance is paid for by the seller by custom or negotiation. However, the lender must disclose the owner's title insurance charge on the Good Faith Estimate, regardless of whether the buyer will ultimately incur such a charge. Further, in accordance with current RESPA regulations, the closing agent must disclose the policy premium as a charge paid by the buyer on the HUD-1, also regardless of whether the borrower incurred the charge. If the seller has actually incurred the charge, existing regulations require appropriate adjustments be shown on the Settlement Statement. This practice is irrational, confuses consumers and special effort must be done to explain this to consumers at closing. Other examples of charges that could be paid for by the buyer or the seller depending on the state or locality include certain real estate taxes, home warranties and inspections.

Our suggested method allows appropriate disclosure in all jurisdictions, regardless of local practice. If local law or practice determines that the costs of owner's title insurance are likely paid by the borrower in that jurisdiction, disclosure of an appropriate estimate for such coverage would be shown. Conversely, where local practice provides that the seller bears the expense of such coverage, a cost estimate of "0" would appear. Using this approach would allow the form to more accurately identify whether owners title insurance is purchased in connection with the transaction and disclose the cost of that owner's policy to the appropriate party. This method also reduces the confusing practice of charges and credits that is currently required.

Another practice that varies nationwide is whether an attorney is involved in closing the transaction. Depending on the state in which the property is located, and in some cases which county or locality, the closing may be performed by an attorney, a non-attorney title agent, or a corporate or individual escrow agent.

If the new combined TILA/RESPA form includes a standard line for "buyer's attorney" as a "Service you can shop for" as is currently expressed in the form, consumers in those areas where attorneys are not customarily involved in closing the transaction may be misled into believing that an attorney must be retained to perform the closing, when in fact their closing could be conducted by a non attorney title agent or escrow agent. Rather than tailoring this form for the relatively few states in which an attorney closes the transaction, the form should be flexible enough to reflect market practices in each state. We suggest the form be flexible to not include this standard line in those areas where attorneys are not customarily involved in closing the transaction.

Real estate practices vary state by state and county by county. While this fact makes the task of designing a national disclosure form more difficult, a national disclosure form should be flexible enough to prevent a "one size fits all" scheme on consumers. We urge the Bureau to provide sufficient flexibility in the forms to allow them to reflect the consumer's actual transaction. We are ready and willing to work with the Bureau to devise ways of accomplishing this goal.

We request that you meet with members of ALTA's RESPA Task Force so that they may assist in the Bureau's efforts in this process. We look forward to working together to help consumers make educated decisions when shopping for a mortgage loan and related real estate settlement services.

Sincerely,

A handwritten signature in black ink that reads "Anne L. Anastasi". The signature is written in a cursive style with a large, stylized initial "A".

Anne L. Anastasi, CLTP  
President