



June 10, 2014

The Honorable Jeb Hensarling  
Chairman  
House Financial Services Committee  
2149 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
House Financial Services Committee  
B301C Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

Thank you for holding today's markup. ALTA members encourage the House Financial Services Committee to pass bipartisan legislation to improve how the Consumer Financial Protection Bureau (CFPB) regulates all providers of financial services but especially the small businesses that make up the overwhelming majority of ALTA members. We believe that consumers and our members will benefit from these improvements.

At a May 21 hearing before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, ALTA President Rob Chapman testified that, "that when the Bureau operates in a transparent, open, and iterative manner, the results are generally positive...however, when the Bureau makes unilateral decisions, rolls out initiatives, rules, or processes in a more closed deliberation, the results are far more likely to be problematic." As the complexity of regulatory oversight increased because of the Dodd-Frank Act, we urge Congress to work in a bipartisan manner to help ensure that the way the Bureau operates results in better compliance by business and stronger protections for consumers.

### **Support the Bureau of Consumer Financial Protection Small Business Advisory Board Act (HR 4383)**

ALTA and its members applaud the work of Rep. Robert Pittenger (R-NC) and Rep. Denny Heck (D-WA) on bipartisan legislation that would create a permanent Small Business Advisory Board at the Bureau, similar to those already established for outreach to community banks and credit unions. Advisory boards provide clear, formal and open channels of communication between Bureau staff and industry.

The Bureau created an advisory board for community banks and credit unions because it does not have regular contact with these institutions since it only supervises depository institutions with more than \$10 billion in assets. Establishing a similar advisory organization for nonbanks will allow these smaller institutions to report, advise and consult with the Bureau on a regular basis.

This board would allow for more formal outreach to small businesses throughout the regulatory and supervisory process in contrast to the one-time small business review panels that occur only during the rulemaking process when a rule is expected to have a significant impact on a substantial number of small entities. While Dodd-Frank's requirement that the Bureau convene a Small Business Advocacy

Review Panel (SBAR) pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the process is late in the game and makes it more difficult for the Bureau to consider, research and test alternatives that will be less costly to small business before publishing their proposal. By consulting with small businesses throughout the entire regulatory process through an advisory board, the Bureau will better understand the impacts of its actions on small businesses and discover potentially less impactful alternatives.

ALTA supports the feedback offered by Ranking Member Waters to ensure minority and female owned small businesses have adequate representation on this board. Our members support the committee approving HR 4383, and moving the bill to the full House of Representatives.

### **Advisory Opinions Improve Outcomes for Consumers and Institutions**

ALTA and its members are encouraged by the introduction of the Bureau Advisory Opinion Act (HR 4662) by Rep. Bill Posey (R-FL) to establish procedures for the use of advisory opinions by the CFPB.

An advisory opinion provides greater certainty to those businesses who comply with federal consumer financial law. An advisory opinion process can complement the Bureau's enforcement role, by encouraging and promoting good practices to industry. Consumers will see better outcomes if the Bureau spends more time advising people in the industry how to best follow the law.

Other federal agencies issue advisory opinions. This type of guidance, issued in response to a specific request, would improve certainty about whether a proposed design, operation, or maintenance of a consumer financial product or service would be prohibited under federal consumer law. Similar to how other federal agencies operate, in each opinion, the Bureau would apply legal standards to a set of facts and since each opinion applies to specific individuals or entities in specific situations, no third parties are bound by, nor may they legally rely on, an advisory opinion.

These advisory opinions should be made available to the public through the CFPB website. However, before publication of an advisory opinion, the CFPB should redact specific information about the requesting individuals or entities, and about any individuals or entities associated with the requestor, to the extent that it is reasonable to prevent release of any confidential business information or trade secrets.

Directing the Bureau to establish procedures for issuing advisory opinions to financial service providers would reduce unnecessary regulatory compliance costs for the title industry. We look forward to working with Rep. Posey and others to facilitate a dialogue with the Bureau on the use of advisory opinions.

### **Improve Transparency of Bulletins and Other Informal Guidance**

The Bureau should improve the transparency of the process used to create bulletins and other guidance documents by encouraging public feedback to these actions. Substantive or legislative rules issued by the Federal agencies must undergo a public notice and comment rulemaking under the Administrative Procedures Act (APA). Comments are published in a public forum to promote transparency of rulemakings. These regulations benefit from public input and feedback and produce more effective regulations that meet the intended policy outcomes with fewer unintended consequences for small businesses.

Even though policy statements, guidance, and bulletins are exempt from public notice and comment rulemaking since they are intended to restate existing law, these documents can have a profound impact on industry and compliance. CFPB policy statements, guidance, and bulletins would benefit from public feedback.

Whether a comment is provided to the CFPB on a rulemaking or a bulletin or other guidance document, this feedback should be made available to the public. Every day Members of Congress welcome public comment on the legislative proposals the House and Senate consider to enhance their formulation of a position on an issue. In many cases, soliciting transparent public comments on an issue promotes discussion that leads to better long term policy outcomes.

By publishing public comments on their website when a Bulletin is issued, the CFPB will provide an avenue for small businesses and others to reduce unintended consequences and produce better policy outcomes for consumers and industry.

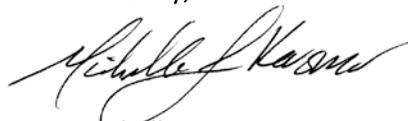
The Bureau Guidance Transparency Act (HR 4684) introduced by Rep. Marlin Stutzman (R-IN) is a good start to improving the transparency of the process used to create bulletins and other guidance documents. ALTA and its members look forward to working with Rep. Stutzman and the committee on this important bill.

## **Conclusion**

ALTA and its over 5,000 members encourage members of the committee to work in a bipartisan way to design the Bureau to operate in a manner that is responsive to the thoughts and opinions of small businesses around the country.

We thank the committee for considering our comments during the legislative process, and we look forward to working with you and all Members of the House Financial Services Committee on practical solutions to improve transparency at the CFPB.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michelle L. Korsmo  
Chief Executive Officer