



December 5, 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 November 8, the CFPB released two concepts of a closing disclosure which combines the requirements of the Truth in Lending Act and the Real Estate Settlement and Procedures Act's HUD-1 Settlement Statement into a single form. We appreciate the opportunity to provide feedback on the first draft of the closing disclosure and to allow ALTA members to directly provide feedback as well.

Last month, the RESPA Task Force of the American Land Title Association<sup>1</sup> (ALTA) submitted comments through the CFPB website. Since there are understandable limitations to the website feedback tool, this letter and the attached chart are intended to reemphasize the comments that ALTA provided through the website, summarize our major concerns and provide additional feedback to CFPB. The attached chart outlines our initial concerns with the first draft of the closing disclosure as well as suggested solutions.

ALTA's RESPA Task Force is a diverse group of 12 members who represent a cross section of title industry participants from across the country from varying sectors of the industry including software vendors, settlement agents and title insurers. The Task Force first met in 2009 to assist ALTA members as they implemented the November 2008 RESPA Rule issued by HUD.

As it reviews each draft disclosure issued by the CFPB for feedback, ALTA's Task Force focuses on two questions: how should the closing disclosure benefit a consumer; and, how should real estate settlement providers utilize the form?

---

<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.

## **Two-Part Disclosure Form**

ALTA encourages CFPB to separate the closing disclosure into two distinct parts: one for completion by the lender and the other for completion by the closing or settlement agent. Some of the information disclosed on the form is known by the lender and other information is in the possession of the settlement agent. Appropriately dividing the form into two parts will allow the lender and the settlement agent to separate their responsibilities under RESPA and TILA.

In addition to appropriately separating responsibility, software programming will be improved under a two-part disclosure. Every lender and settlement agent software system will need to be updated in order to accommodate the new form. Even if the form is separated into two parts, software concerns will remain and require a lengthy implementation period so that software systems can be reengineered to accommodate this additional data. A number of additional issues identified on the attached chart would be resolved if the form were divided into two sections.

## **Make the Form a Final Disclosure**

It is not clear under the current draft forms whether the disclosure is intended to be a pre-closing document or final disclosure form. We encourage CFPB to make the closing disclosure a final disclosure form and clarify the language and references to reflect that function. Currently each draft form states at the top of page one that, "This form is a statement of final loan terms and actual settlement costs." However, at the end of each document, the signature line indicates that, "By signing below, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form or applied for this loan." These two statements are inconsistent. If the final costs are being disclosed, then the consumer has accepted the loan and the closing has occurred.

## **Itemize for Transparency**

In some parts of the final disclosure, charges are aggregated into a single fee (sometimes referred to as "roll up lines"). Care should be taken to provide sufficient itemization to allow a lender's calculation and completion of the TILA finance charge calculation. In short, the form should allow the lender to show its work. Additionally, in our experience with closings using the current 2010 HUD-1, consumers prefer and more easily understand fully itemized charges rather than a single figure representing a total of many undisclosed charges.

## **Reform the Use of Tolerances**

Current tolerance requirements have led to several unanticipated and undesirable consequences for consumers, lenders and settlement agents. Many lenders issue multiple versions of the same initial GFE disclosure when no changed circumstance exists to authorize such an action. This creates unnecessary borrower confusion regarding which version of the disclosure is accurate. If consumers are given a new disclosure with each changed circumstance, at some point they become inundated with data and the disclosures lose their usefulness.

It is unclear whether lender tolerance requirements are included under this form or the extent to which they are included. Experience with the present tolerance rules established in the 2008 RESPA rule indicates that tolerance requirements, if imposed at all, should pertain only to the lender's own charges.

If CFPB wishes to continue the tolerance concept, revised closing disclosures should be issued with clearly defined tolerance rules and fee comparisons. We encourage CFPB to exclude owner's title fees and transfer tax from tolerance computation since these charges are often paid for by the seller, rather than the buyer. Finally, in the "Limits on Increases" section, CFPB should evaluate the necessity of terms such as "provider" and "affiliate" and whether these terms are important to the computation of tolerance.

### **Provider Lists Hurt Competition**

ALTA encourages CFPB to discontinue the use of provider lists in connection with these forms. Provider lists under the 2008 RESPA rule are a source of confusion and should be reformed or eliminated by CFPB. Rather than being used as an initial shopping document for consumers, provider lists are often used to direct business to a single, often lender-affiliated, provider.

While the "Provider List" concept requires a lender to offer the consumer at least one choice in provider for each service that the consumer can select, the list has become a preferred or suggested list and has not facilitated additional consumer shopping. Instead, the list has stunted consumer shopping for these services, causing significant impact to consumers and many small businesses, including smaller title agencies and similar small service providers.

### **Connect the Initial Disclosure to the Final Disclosure**

We were also perplexed to find little crossover between closing cost concepts the initial disclosure form and those in the final closing disclosure. This carryover allows consumers to identify what they were quoted as an estimated cost in the initial disclosure to what they are actually charged in the final closing disclosure. One example of this is "shoppable services". The distinction between "shoppable" and "nonshoppable services" clearly delineated in the initial disclosure, but is absent from the final closing disclosure.

### **Improve Paid Outside of Closing (POC)**

The chart which indicates a detailed break-out of columns with the headings of: "Amount", "Paid by", "Paid to", and "When" in the "Paid Outside of Closing" (POC) section of the final closing disclosure are unnecessarily confusing. Current regulations do not require "when" payment is made to be disclosed and the reason for this column is unclear. If this section is to simply disclose those items paid outside of closing, then simple data entry of these figures is much easier to accomplish. However, if each line of the section is connected to other parts of the form for purposes of tolerance or other calculations, software programming will be extraordinarily complicated. Software providers have legacy logic that could assist in the

programming work but absent any instruction on how to complete these forms, they do not know how these fields should function.

In addition, the POC chart reduces the amount of space that can be used on the form for fee itemization and description. We recommend a return to previous and current versions of the settlement statement which effectively describe POC funds paid by whom and to what party, without the need for an additional and alternative POC chart on the form.

### **Work with Software Providers**

Additional formatting issues present significant obstacles to adopt and use the closing disclosure form. We encourage CFPB to engage a roundtable of software systems providers, including those who create and maintain lender operating systems as well as title and settlement operating systems. These providers will have the best insight as to which concepts are practically achievable, at what cost and in what timeframes.

### **Conclusion**

On behalf of all ALTA members, we appreciate the efforts of the CFPB to better engage and inform consumers throughout the mortgage loan process. ALTA is grateful that the CFPB has taken a collaborative approach by working with the industry stakeholders because we firmly believe that this combined mortgage disclosure form can 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. It is in all of our collective interests to ensure that the nation's real estate market is stable for years to come.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, written over a light blue horizontal line.

Michelle L. Korsmo  
Chief Executive Officer

Enclosure