



April 8, 2014

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Gregory W. Meeks
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

RE: Statement for the Record

Dear Chairman Capito and Ranking Member Meeks:

The American Land Title Association¹ appreciates the opportunity to submit this statement for the record for this hearing entitled “Who’s In Your Wallet: Examining How Washington Red Tape Impairs Economic Freedom.”

ALTA members provide two primary services to consumers and financial institutions. First, the industry prepares and writes title insurance policies protecting both purchasers and mortgagees of real property. This service falls outside the Bureau’s regulatory and supervisory authority as part of the business of insurance. Second, title professionals act as third-party settlement agents in real estate and mortgage transactions. This service is within the Bureau’s authority pursuant to the Real Estate Settlement Procedures Act.

We have been grateful to have a good working relationship with the Bureau since work began on the recently finalized integrated mortgage disclosures required under Section 1032 of Dodd-Frank, which started before the Bureau opened in July 2011. While we have not agreed on every decision made by the Bureau, they have always been open and willing to listen to the concerns of our industry as they finalized these new rules.

¹ The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA represents more than 4,500 member companies. ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstractors, title searchers and attorneys, ranging from small, one-county operations to large national title insurers.

The importance of the Bureau working with us increases as the industry begins implementation of these rules and ALTA is actively educating the industry on changes to their business practices and compliance requirements. It is important for Bureau staff and leadership to attend conferences, roundtables and other industry forums. When Bureau staff attends industry meetings and our biweekly information exchange on industry compliance with the mortgage disclosures rule it provides a valuable forum for Bureau staff to hear directly from the people they regulate. This allows staff to get important information about how their rules are working in real life and what issues need clarification.

While ALTA members are not directly supervised by the Bureau, we are indirectly regulated through the Bureau's oversight of both depository and non bank mortgage lenders. As ALTA and its members have sought to gain a better understanding of the Bureau's expectations for lender oversight of third party service providers under its CFPB Bulletin 2012-03, we have not seen the same level of openness from the Bureau as we have experienced from its regulatory function. The result is that businesses are shooting in the dark as they are attempting to invest in systems and processes to protect consumers.

To provide feedback to the business that are struggling to comply, a formal mechanism for more robust communication and outreach between the Bureau and businesses it oversees directly and indirectly about compliance expectations should be established. This could help align business practices to key consumer protection goals and provide regulators with a tool to encourage and incentivize good actors and industry best practices.

Regulatory uncertainty hinders businesses from effectively and efficiently growing and complying with new consumer protection rules. The cost of regulatory uncertainty is most acutely felt by the small businesses that make up the majority of the title and settlement industry. While the Bureau did an admirable job providing industry with clear guidance in its integrated mortgage disclosures rule, despite being almost 1900 pages, there are still areas of uncertainty that make this rule more difficult for the industry to implement this rule.

While the Dodd-Frank Act mandated that the Bureau integrated the disclosures required under RESPA and TILA, it did nothing to integrate the differing underlying substantive requirements of those two statutes. To address this, the Bureau attempted to reconcile those differences where it felt it had authority, but for some areas it left both regimes in place leading to uncertainty about which statute governed. The best example of this problem is the issue of liability.

Both RESPA and TILA have different penalties for violations and mistakes related to their disclosure requirements. In short, TILA includes a private right of action and statutory penalties while RESPA does not. Since the new integrated mortgage disclosures include items that are required under both statutes, the issue of which statutes liability provisions govern each provision in the rule is important. However, despite ALTA requesting such a breakdown in its

comment letter to the Bureau, the Bureau chose not to provide a breakdown and instead require the industry to guess which liability rules govern each provision of the integrated mortgage disclosures rule.

ALTA strongly supports the small business provisions in the Dodd-Frank Act, including the requirement that the Bureau conduct a Small Business Advocacy Review Panel (SBAR) pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) when a rule is expected to have a significant impact on a substantial number of small entities. This process is vital to ensuring that the Bureau's regulatory goals are met in a way that is not overly burdensome on small business. However, ALTA believes that the SBREFA process is ineffective in helping the Bureau understand the impact a rule will have on small business and discovering potentially less impactful alternatives.

A number of process-oriented changes to the panel procedures are necessary to make the SBARs more effective. First, the Bureau should give small entity representatives participating in the SBAR ample notice of the meeting so that they can make appropriate and cost effective travel arrangements. On February 21, 2012, the Bureau sent official invitations to small entity representatives for its March 6, 2012 SBAR panel on this rule. By providing only two weeks' notice, the Bureau made it unnecessarily costly for small entity representatives that do not live in the Washington, D.C., area to attend the panel meeting in person. For example, one ALTA member who attended the panel spent over \$1,400 to attend the meeting. This is a substantial sum for a small business owner. The Bureau should aim to give participants at least one month's notice so they can make the appropriate travel arrangements.

Second, the Bureau should work with industry trade associations to better prepare the small entity representatives for the SBAR meeting. One of the main goals of the SBAR panel is to uncover how costly a regulation will be to implement for small business and to identify less-costly alternatives. There are many factors that go into an effective cost estimate (including differences in regional practice and vendor practices) or information about alternatives that can reduce costs for small businesses that are not known to a small business owner unless they have the assistance from their trade association or their vendors. Conducting outreach to trade associations before holding the panel (including inviting trade associations to observe the panel meeting in person) ensures that the SBAR gets the most accurate cost data available.

Third, the Bureau should make the SBAR panel report public once it is complete. By publicizing the report earlier in the regulatory process, the Bureau can provide crucial information to industry stakeholders. This will allow industry to develop more useful data for the Bureau to consider about the impact of their proposals on small business.

Fourth, in addition to the above process-oriented changes, the Bureau also should consider broadening the way it looks at the impact of a regulation on small business. The SBAR

panel focused heavily on the direct costs of this rule on small business, such as software costs, productivity and training but glanced over the parts of this rule that could have indirect but very serious costs on small business. These indirect costs can be extraordinary, including potentially preventing small business from being able to compete in the future marketplace.

An example is the panel's review of the proposals related to who completes the Closing Disclosure. Under the rule, the Bureau makes the lender ultimately liable for the accuracy of the Closing Disclosure even if they partner with a settlement agent to complete the form. While the panel focused on the direct costs of their new form, the indirect costs (namely that lenders would be incentivized to limit the number of small entities with whom they work) will be much more devastating to small business. The Bureau should take greater care to determine whether a proposal will cause business-model shifts that could be harmful to small-business competitiveness.

Lastly, the SBAR is a one shot event that comes late in the regulatory process. The SBAR occurs after the Bureau has decided on the need for a regulation, conducted research to support the regulation, and developed the substantive pieces of the regulation and just prior to a regulation being formally proposed in the Federal Register. This is fairly late in the game and precludes the Bureau from considering, researching and testing alternatives that will be less costly to small business before publishing their proposal. A more effective process would be to have the Bureau consult with small businesses throughout the entire regulatory process.

That is why we support the establishment of an advisory board for small businesses that are non-depository institutions similar to those established for outreach to community banks and credit unions. Advisory boards provide clear, formal and open channels of communication between Bureau staff and industry. Additionally, policymakers should consider creating formal advisory opinion process at the Bureau. This will allow businesses to obtain feedback from the Bureau about new products and processes. This will allow businesses to address consumer protection issues before they invest in a new product.

ALTA appreciates the opportunity to provide this statement for the record. Should you have any questions about this statement, please do not hesitate to contact Justin Ailes, Vice President of Government Affairs at 202.261.2937.

Sincerely,

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

Michelle L. Korsmo
Chief Executive Officer