# TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process

## House Committee on Financial Services

*Subcommittee on Housing and Insurance*

*Thursday, May 14, 2015*
*2:00 p.m.*

*Written Testimony Submitted By Diane Evans NTP, President*

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**ALTA President Diane Evans, Written Testimony for May 14, 2015**
**House Financial Services Committee – Housing and Insurance Subcommittee Hearing**

Chairman Luetkemeyer, Ranking Member Cleaver and members of the subcommittee, my name is Diane Evans and I am a vice president at Land Title Guarantee Company, a title insurance agency in Colorado. I joined Land Title Guarantee Company 34 years ago when I opened a branch in my hometown. Along with my day job, I have the privilege of serving as president of the American Land Title Association (ALTA).

Founded in 1907, ALTA is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. Our member companies include title insurers, title agents, independent abstracters, title searchers and real estate attorneys. With more than nearly 12,000 locations around the country, our member companies employ more than 108,000 professionals, ranging from small, one-county operations to large national title insurers. The majority of our members are small businesses, with the average title agency earning $156,000 in gross annual revenue and employing three or fewer people. We search and examine public records and provide title insurance products that financially protect a homebuyer's largest investment. Lastly, many of our member companies provide closing and settlement services that bring together all parties in a real estate transaction, collect and disburse funds, and record the legal instruments that complete the transaction. We provide consumers with the peace of mind that comes from knowing that a professional managed and finalized their transaction.

On August 1st of this year, the title and settlement industry will go through one of the largest and most costly regulatory changes in its history when it when it makes the changes necessary to comply with the Consumer Financial Protection Bureau's (CFPB or bureau) TILA-RESPA Integrated Disclosures (TRID) regulation.

Complying with this regulation will require more than simply updating our systems for two new disclosure forms. Getting this rule correct requires a paradigm shift in the way real estate settlements occur in this country. All of our efforts will be worth it if these new rules actually help consumers understand their real estate transaction better. After all, nobody knows better exactly how important that is than our members who sit at the table with homebuyers each day.

As president of ALTA, I have had the privilege of traveling across the country and talking to lenders, real estate agents and settlement professionals about this new regulation. The main lesson I have learned from our conversations is that the only way to implement this rule successfully is through collaboration between all the parties involved in the transaction. Unlike other regulations coming from the Dodd-Frank Wall Street Reform and Consumer Protection Act, the new timing and accuracy requirements make it impossible for industry to continue to operate in their own silos. As we prepare for August 1, industry will need to work together not only to update their software, but also reconfigure every single step of the home-buying process—from taking a homebuyer's mortgage application to closing a real estate transaction.

Another lesson I have learned from these conversations is that, while the CFPB has provided some helpful assistance and guidance to industry on implementation, we need more certainty to properly implement this rule. My testimony today focuses on two ways that Congress and the CFPB can help our industry implement the TRID regulation.

First, we urge the CFPB to allow the title and settlement industry to disclose the price of title insurance accurately to consumers on the new Closing Disclosure. For the majority of real estate transaction, the rule requires a complicated formula that will disclose to consumers an inaccurate price for title insurance. Under this new rule, the CFPB actually mandates that the correct and actual price title insurance products be withheld from consumers.

Second, the CFPB should develop and announce a plan to provide implementation support during a hold-harmless period to begin on the August 1 effective date of the regulation and continue through the end of this year. A hold-harmless period will help industry work its way through the challenges of implementation of their new processes without the fear of potential enforcement actions. Consumers need assurance that their transactions will not be disrupted due to the fear of unfounded enforcement of this paradigm shift for industry. We are working diligently to make certain we are prepared, but fear of enforcement should be the least of our concerns. More importantly, we need the flexibility to adapt real-life transactions and processes to rules written on paper.

## TILA-RESPA Integrated Disclosures

In 1968, Congress passed the Truth in Lending Act (TILA) to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."[1] The Real Estate Settlement Procedures Act (RESPA) was enacted by Congress six years later.

For nearly 50 years, these laws required lenders and settlement agents to provide consumers with similar but different disclosures at the beginning and end of their mortgage and real estate transactions. However, these laws changed when Congress adopted Section 1032 of the Dodd-Frank Act, which required the CFPB to "propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure." The bureau started this rulemaking process in 2011, issuing a final rule in November 2013 and an implementation date of August 1, 2015, which is now just 78 days away.

With the final rule, the CFPB created two new mortgage disclosure documents. A three-page Loan Estimate will replace the current up-front Truth in Lending disclosure and Good Faith Estimate. A five-page Closing Disclosure will replace the final Truth in Lending disclosure and the HUD-1 Uniform Settlement Statement. The bureau also imposed new timing and accuracy requirements for these new disclosures that may have a significant impact on a consumer's real estate transaction.

[1] 15 U.S.C. §1601.

The biggest change that will affect the closing process is the rule's new timing requirement for delivery of the new forms. Today, most consumers receive their HUD-1 at the closing table or at most 24 hours beforehand. However, the new rule requires that consumers receive their Closing Disclosure documents three days prior to closing. If certain things change within this three-day period,[2] the consumer must receive an updated disclosure and wait an additional three days before closing. This three-day disclosure requirement in actuality becomes a seven-day requirement if the lender chooses to deliver the Closing Disclosure to the consumer by any means other than hand delivery. Getting the Closing Disclosure to the consumer three days prior to closing requires lenders and settlement agents to rework all of their current processes completely, which also means all transaction fees must be finalized much earlier in the process.

Additionally, TRID will not apply to mortgage applications already in process when August 1st arrives. Also, the new disclosures will not apply to all consumer mortgages. Because of these two reasons, lenders and settlement agents will need to maintain dual systems and train their staff to comply with differing sets of disclosure requirements for various transactions. This is costly and confusing for industry, not to mention the consumer.

**Industry Efforts to Prepare for August 1**

Getting ready for August 1st is an enormous challenge that will not come cheap to the industry or to consumers. According to the CFPB's own estimates, implementing this new process will cost our industry $67,800,000 per year over the next five years. For lenders the cost is even higher, at $207,000,000 per year for the next five years. With a total price tag of more than $1.3 billion dollars, the cost of implementing this regulation comes out to $34 per mortgage transaction over the next five years—and this doesn't even include the costs of new tools to help facilitate the collaboration that will be required by this regulation. This is a lot of additional expense that will mostly be absorbed by small businesses[3] or the consumer, all with the intent of improving consumer understanding of their mortgage. I sincerely hope the results are justified.

Last month, ALTA conducted a survey that asked our members about their readiness for these changes. The more than 550 people from across the country who responded to our survey include title agents, underwriters, real estate attorneys and abstracters. The results present a helpful glimpse into our industry's preparedness for August 1, highlighting a few areas where the industry needs help from the CFPB.

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[2]The final rule requires a new three day waiting period in three instances: (1) a change in the annual percentage rate of 1/8 of a percent for transactions with a regular payment stream (or ¼ of a percent for transactions with an irregular payment stream); (2) a change in one of the rules three specific loan products or five specified product features; or (3) the addition of a pre-payment penalty. This is a vast improvement over the proposed rule where virtually any change except deminimis ones under $100 aggregate would have caused a new waiting period.

[3] According to the CFPB final rule, 85% of lenders, brokers and settlement agents impacted by this rule qualify as small businesses. 78 FR 80094.

After reviewing the survey results, I am confident that ALTA's members will be ready to close transactions under this rule on August 1st. My assurance comes from the 92 percent of respondents who stated that they are on schedule for implementation or are confident that they will be prepared by August 1. I am proud of these results because of the extraordinary efforts ALTA and others have undertaken to help the industry prepare for August 1.

A key component of being prepared is updating software systems in order to share data and produce the new disclosures that will be required comeAugust 1. I am encouraged that slightly more than half of our survey respondents have either already seen their updated software or have scheduled a demonstration.

Software developers have been working tirelessly since 2013 to update their products. I can tell you this is no small feat. According to one title company that uses internally-developed software, the cost to update their systems for TRID has been over $490,000 and has required the efforts of six full-time employees over a 12-month development cycle. With the need for significant staff training on the new processes needed to meet these regulatory requirements, it is crucial that companies complete installation of new software well ahead of August.

However, I fear buyers and sellers will face potential delays to closing—especially in the first few months of this new regulation.

Since this regulation was finalized, the title insurance and real estate settlement industry has focused on cross-industry collaboration to help insure the success of the CFPB's mandates. We have been working closely with the Mortgage Bankers Association, the National Association of Realtors, the American Escrow Association and other partners to lead by example and educate our members on this new rule through a series of collaborative forums across the country.

Each forum has brought together lenders, title insurance professionals, and technology and legal experts to review the rule and offer our attendees guidance on preparing for implementation. We have already conducted forums in Los Angeles, Miami, Dallas, Chicago and Washington, D.C. Because of high demand, we will host a sixth forum in Denver next month.

This same level of preparation has been happening throughout the industry. I can tell you that my own company has already trained over 1,000 real estate agents, 300 lenders and their employees as well as the employees of some 60 homebuilders. While this training has diverted a significant amount of our staff away from their regular jobs, it will be well worth it if we can help get all of our partners ready.

Even with the confidence that our members will be prepared, I am concerned because much of the final training and implementation will take place during what the National Association of Realtors has determined is the busiest time of the year for real estate closings—

right when thousands of families will be relocating prior to the new school year.[4] Some of the disruption could be mitigated if the bureau would adopt two recommendations.

**Fix the Inaccurate Disclosure of Title Insurance Premiums to Homebuyers**

The ultimate purpose of TRID is to help consumers better understand their mortgage transactions. Educating homebuyers about their loans is important to our members as well. For the most part, the new disclosures will focus on the most important pieces of information consumers want to know about their real estate transaction. However, these disclosures will fail to meet their goal in one crucial area: helping consumers understand the costs associated with title insurance.

Unfortunately, the new disclosure forms prohibit our industry, by law, from disclosing the actual cost of the title insurance policies. This is because the CFPB has created a formula which—in most states—incorrectly discloses the cost of title insurance. This is the only item that will be inaccurate on these new forms. Furthermore, the CFPB created a formula that is wrong in most states and prevents industry from using the best information reasonably available to them.

In the majority of states, when a homebuyer purchases a lender's title insurance policy concurrently with an owner's title insurance policy, the lender's policy is typically issued at a discounted rate. This is often called "simultaneous issue pricing." This discount is offered because much of the title search, examination and underwriting that goes into preparing a lender's title insurance policy also supports the owner's policy.

However, in all transactions, TRID requires lenders and/or settlement agents to disclose the lender's title insurance premium at its full rate on the Loan Estimate and Closing Disclosure documents— even though this discount exists and directly benefits the homebuyer. Consequently, TRID then requires the owner's title insurance premium to be inaccurately disclosed on the forms. As the example from California shows below, the result is that (in most states) the Closing Disclosure will not provide consumers with the accurate cost of title insurance.

[4] Hale, Danielle. "Part 1: EHS in 2014 by the Numbers – Popular Closing Dates." *Economist Commentaries: National Association of Realtors*, 12 Jan. 2014. http://economistsoutlook.blogs.realtor.org/2015/01/12/part-1-ehs-in-2014-by-the-numbers-popular-closing-dates/ (last accessed 09 Apr. 2015).

## California

Here is how the rule works when applied to a transaction
where the sales price is $200,000 and there is a $190,000 loan:

| The Rule | vs. Reality |
|---|---|
| **OTP on Closing Disclosure = $676.00**<br>(OTP Premium) $902.00<br>(LTP Simultaneous Premium) + $409.00<br>(Full LTP Premium) – $635.00 | **OTP Actually Charged = $902.00**<br>(OTP Premium) |
| **LTP on Closing Disclosure =$635.00**<br>(Full LTP Premium, with no discounts for Simultaneous Issue) | **LTP Actually Charged = $409.00**<br>(LTP Simultaneous Premium) |

**Terminology Key**:
**OTP**: Owner's Title Insurance Policy
**LTP**: Lender's Title Insurance Policy

**LTP Simultaneous Premium:** a discounted lender's title insurance premium that is issued in accordance to promulgated state rates or insurance company filed rates when both a lender's and owner's title insurance policies are simultaneously issued

We urge the bureau to address this issue immediately and allow the lenders and settlement agents to disclose the actual price of title insurance on the disclosures. If the bureau does not fix this issue, the disclosures will be wrong and fail to meet the goal of TRID to provide consumers better information regarding the costs of obtaining a mortgage. And it's not just consumers who are confused by the bureau's formula. According to ALTA's survey, 52 percent of industry respondents did not understand or were not sure how to properly disclose the simultaneous issue rates on the new disclosures.

ALTA believes that the best way to address this issue is to modify the Official Interpretations to allow our industry to disclose title premiums based on the same standards they must use for disclosing all other costs. This would let lenders communicate to the consumer the actual costs based on the best information reasonably available to the lender. We believe the appropriate solution is for the bureau to modify the Official Interpretation as follows:

**Comment 37(f)(2)-4:**

Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium **based on the best information reasonably available to**

**the creditor at the time of disclosure.** ~~without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy~~. This amount may be disclosed as "Title —Premium for Lender's Coverage," or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.

**Comment 37(g)(4)-2:**

The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3)**, except that the creditor may instead disclose the premium subject to any special rate available based on the simultaneous issuance of a lender's and owner's policy, if such purchase is known to the creditor when issuing the Loan Estimate.**

The owner's title insurance premium is calculated by taking the full owner's title insurance premium **subject to any special rate that may be available based on the simultaneous issuance of a lender's and an owner's policy**~~, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage~~.

**Comment 38(g)(4)-2:**

In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is calculated by using the full owner's title insurance premium **subject to any special rate that may be available based on the simultaneous issuance of a lender's and an owner's policy**~~, adding any simultaneous issuance premium for issuance of lender's coverage,~~ and then deducting ~~the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3)~~.

While we appreciate that the bureau is attempting to show consumers the marginal cost of purchasing on owner's title insurance policy; we are greatly concerned about the confusion it will cause consumers. Additionally, we believe the bureau's requirement that our industry inaccurately disclose consumers' costs for title insurance will expose ALTA members to unreasonable consumer complaints. Plus, the rule will actively dissuade homebuyers from purchasing financial protection for their largest investment.

Additionally, title insurance is regulated at the state level. The bureau's rule potentially puts members of the title and settlement industry at risk of violating state regulations. Under state insurance laws, title insurance companies are only allowed to charge the policy premium rates promulgated or filed with the state. If the bureau declines to fix this problem, our industry will likely have to address such states' legal requirements by providing a second disclosure to the homebuyer showing the actual premium cost. These additional disclosure forms will likely contribute to homebuyer confusion regarding the actual costs of their title insurance policies, closing costs and homeownership in general.

In those states where it's common for a seller to purchase an owner's title insurance policy for the buyer, the total disclosed rate for the owner's policy will be insufficient to cover the seller's contribution because it will be artificially deflated. An adjustment will be needed to accurately disclose the extra amount of cash the seller will need to provide to the borrower to cover the actual amount of the owner's policy.

The bureau has refused to provide written guidance as requested by our industry. In ALTA's survey, 62 percent of respondents stated that they were unsure about how to make this adjustment when they know it inaccurately states the actual cost a consumer will pay. Without this guidance, lenders and settlement agents risk potential enforcement actions and must decide for themselves how to make this adjustment. This continuing lack of clarity will result in consumers being caught in the middle, facing potential and unnecessary delays at closing time. It will also force lenders and settlement agents to guess about what the CFPB will find acceptable. We urge the bureau to provide formal written guidance on how to make this adjustment.

**Need for Formal Hold Harmless Period from August 1 to December 31**

Unfortunately, our industry's comprehensive preparation efforts may not ensure that consumers' real estate closings will not be disrupted beginning August 1. The Bureau's reluctance to provide more written guidance throughout the implementation period, and the unforeseen issues that always arise with a regulatory change of this magnitude, make a hold-harmless period crucial.

A hold-harmless period will allow our industry to adapt its business processes to comply with this regulation without the fear of potential enforcement actions. This will allow the industry more flexibility in meeting consumer's needs as we transition to new TRID processes. While the goal of slowing down a consumer's transaction may seem worthy, delays can also cause unnecessary cost and disruption to a homebuyer. As with any new rule or change, tolerance to those attempting to comply in good faith needs to occur in aiding the successful implementation.

We remain appreciative that the bureau has provided our industry with 21 months to reform our processes and train our staff to meet these new regulatory demands. Not only has this time been crucial for our vendors as they completely redevelop their software programs to meet the new requirements of this rule, it has also been crucial for lenders, whose training the bureau estimates will take at least 2.8 million hours. Most of the time, this training can only begin once the updated software has been delivered.

However, we know from implementing past regulations that there will be a learning curve. Unforeseen issues will surface once the new forms are used in real homebuyer transactions. Just like with sports, no matter how much you practice there are always going to be some adjustments you need to make during a game or match. This new rule completely changes the game in respect to the home-buying process. It will take greater collaboration between all the players—title and settlement agents, lenders, Realtors, attorneys, homebuilders, appraisers and others—to get deals completed efficiently and compliantly with the ultimate goal of better serving the consumer. This will take time. It will take practice. It will require adjustments. Therefore, we request that the bureau publicly commit to making August 1 through December 31 of this year a hold-harmless period for enforcement.

The title and settlement industry remembers well the challenges that were experienced in January of 2010 with the implementation of just one new form, the 2010 HUD-1 settlement statement. Even with that relatively easier regulatory change, there were many questions in the first few months about how to appropriately disclose certain costs and where certain items were disclosed on the form. Thankfully, HUD provided for a hold-harmless period to help our industry work out these kinks. While there were some delays, industry was able to work together to resolve these conflicts and, more importantly, to help consumers' transactions move forward without fear of unnecessary enforcement.

On behalf of myself and our ALTA members, I want to thank you, Chairman Luetkemeyer, and Financial Institutions Subcommittee Chairman Neugebauer, for your leadership on this issue. We appreciate the opportunity to make the case for a hold-harmless period to CFPB Director Cordray. I also want to thank Congressmen Pearce and Sherman for sponsoring HR 2213, which would establish a formal hold-harmless period until the end of this year. I ask the other members of this committee to join them and cosponsor HR 2213.

In the absence of a hold-harmless period, it is likely that many mortgage lenders (or their investors) and settlement service providers will take an overly cautious approach to risk management. For example, uncertainty about what type of evidence is sufficient to verify that the consumer received the Closing Disclosure on time is likely to lead industry to factor in additional timeframes when delivering disclosures to consumers. It is the uncertainty surrounding the three-day advance disclosure requirement that led 87 percent of our survey respondents to say that they believe there is a higher risk that closings will be delayed in the first few months using the new disclosures. In fact, after learning all the new processes and requirements, the potential for delays to closing were the second biggest concern our survey participants had about implementation.

To be truly effective, a hold-harmless period needs to be accompanied by a commitment from the CFPB to work with industry to gather data about implementation. The bureau should also provide written guidance to address common industry implementation hurdles that emerge between now and the end of the year. The bureau's Official Interpretations, compliance guides and webinars on the regulation have been very helpful to industry but they are not comprehensive. Written guidance is needed in many areas to clarify the regulation. We urge the bureau to commit the resources to providing this written guidance as soon as possible.

We are also grateful that CFPB staff has participated in each of our collaborative forums. Bureau staff was able to hear directly from industry about some of the many implementation challenges faced by those affected by the new rules. Staff members have provided informal answers to many of the frequently asked questions at the forums. While the unofficial and unwritten dialogue the bureau provided at the forums has been helpful, it is not something that industry can rely upon and does not alleviate the uncertainty. As one attendee from our Chicago forum stated, “[I was] disappointed with CFPB representatives and their disclaimer. We came to get answers, but the CFPB would not commit to anything they said.”

**Conclusion**

The title industry is working diligently to prepare for this sea change to the real estate closing process. While we support the CFPB’s efforts to improve consumers’ understanding of their mortgage and real estate transaction, we need more support from the bureau to ensure that the goals of this rule are met through its implementation. As the industry that sits across the table from buyers and sellers every day, we speak with the knowledge and authority of what happens in real-life transactions.

I appreciate the opportunity to discuss why creating a hold harmless-period and allowing the correct disclosure of actual title insurance premiums will aid the industry as it implements the TRID regulation. ALTA is eager to serve as a resource to this Subcommittee, and I am happy to answer any questions.