



November 10, 2009

The Honorable David Stevens  
Federal Housing Commissioner  
451 Seventh Street, SW  
Room, 9100  
Washington, DC 20410

Dear Commissioner Stevens,

As you know, the American Land Title Association (ALTA) has been a leader in the real estate industry's effort to effectively, efficiently and timely implement the new rules adopted by the Department of Housing and Urban Development ("HUD") for the documentation of residential real estate transactions under the Real Estate Settlement Procedures Act (RESPA). On April 28, 2009 members of ALTA's RESPA Implementation Task Force (the "ALTA Task Force") met with HUD representatives to seek guidance in multiple areas in which it had questions and concerns. On June 12, 2009, the ALTA Task Force transmitted to HUD a written list of questions and concerns discussed with HUD at the April 28 meeting. In addition, on August 13, 2009, the ALTA task Force transmitted an updated and supplemented list of questions and concerns. On October 6, 2009, members of the ALTA Task Force again met with HUD representatives in Washington DC to discuss a dwindling but persistent list of unresolved issues and concerns. The ALTA Task Force has attached its most recent chart of outstanding issues to this letter. While we are appreciative that HUD has continued to work with us by answering various questions on our previous versions this list (either during our in-person meetings or through certain issuance of responses to certain "Frequently Asked Questions"), several questions on our list remain unanswered. With fewer than 60 days until mandatory use of the new promulgated forms, procedures and practices, we are concerned that the lack of guidance in these areas will cause delays and/or inadequate documentation of transactions.

Of particular concern is one of the questions posed to HUD both in our original meeting and submission as well as the subsequent meeting and submissions. On these prior occasions, HUD representatives indicated that they would consider the situation and advise of their determination and guidance. To date, no such determination or guidance has been forthcoming.

The issue concerns the treatment of the section in both the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement denominated "Title Services and Lender's Title Insurance". For the purposes of estimation at the GFE stage, the new Rule combines all settlement services involving the closing of the transaction and the issuance of title insurance for

the lender into a single item, with a non-segregated total shown in GFE Box number 4. Unfortunately, as was pointed out in both our written submissions and our meeting discussions, the services now combined into this single number are often not performed by a single person or entity.

Two examples of existing practice will illustrate the practical problems involved in compliance with the new rule. In Southern California, the closing of transactions is frequently handled by independent escrow companies licensed by the California Department of Corporations. These entities are not permitted or licensed to issue title insurance policies and may not quote the fees necessary for such products. A dilemma therefore occurs: first, in the issuance of a GFE, the lender must show a list of providers that can perform the functions under GFE Box 4. The instructions make no allowance for the bifurcation of this number or of the services required. Further, even if two providers could be listed, the GFE form does not allow for separate service components (e.g. settlement fee and lender's title insurance) as separate components of GFE Box 4.

A second example of existing practice is the state of North Carolina. In North Carolina and many eastern states, the closing of the transaction (as well as various ancillary and attendant functions) may only be performed by an attorney. However, as with the California escrow agent above, the attorney is not an agent for the issuance of title insurance and is not permitted to quote or negotiate its fee. As with the California example above, the rule's operation in these instances is unclear since multiple closing functions are being lumped into a single number.

Also problematic in these examples is the choice of providers for these services. While the rule allows and encourages consumers to shop for services in this category, such shopping would be thwarted if the list of potential providers were incomplete or unable to provide all of the services required in the category. Also, the rule provides no guidance in the event one of the service providers (i.e. settlement agent) is borrower-selected, whereas the remaining service(s) (lender's title insurance) is performed by the provider shown on the lender required provider list. Since the fee shown in GFE 4 is but one number, no method of separation is allowable, described or provided. Further, appropriate tolerance computation is restricted since separation of the single number is not permitted, possibly impacting tolerance computations and penalties.

In our initial transmittal and the discussions at our first meeting, the ALTA Task Force offered a resolution to these problems. While possibly requiring either technical or other amendments to the Rule, the suggestion provided a workable alternative, consistent with the treatment of various other expense items under the GFE. For this resolution, ALTA recommended that GFE category 4 contain an area for the listing of individual services necessary for the completion of the tasks contemplated under this item. The item would operate substantially similar to GFE Boxes 3 and 6 where itemization of individual services (and their respective charges) are permitted, with the total amount of all such charges combined into the single GFE Box amount. In so doing, lists of providers could be provided for individual services, thus allowing the determination of borrower selected providers for tolerance computations. Further, separation of component charges would allow for accurate tolerance computations for each individual service.

While open to other reasonable alternatives to the resolution of these issues, we are concerned that no suggested solution has yet been offered. ALTA Task Force members have been training our membership (as well as the real estate and lending community in general) on the new rule virtually non-stop since its publication. Our members have spent hundreds of thousands of dollars on system upgrades and training. ALTA formed its implementation Task Force to act as an effective voice in this training process, but also to act as a filter for the volume of questions HUD was likely to receive. However, without adequate guidance on the above specific issue (as well as the remaining issues indicated in the attached chart), we are concerned that effective and compliant implementation of the new rule cannot occur by the implementation date.

We ask HUD's consideration and action on these issues as quickly as possible.

Sincerely,

A handwritten signature in blue ink that reads "Kurt Pfothauer" with a horizontal line extending to the right.

Kurt Pfothauer  
Chief Executive Officer