AMERICAN
LAND TITLE
ASSOCIATION

November 6, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

re: Docket No. CFPB-2012-0028 or RIN 3170-AA19

Dear Ms. Jackson:

The American Land Title Association (ALTA)[1] appreciates the opportunity to comment on the Consumer Financial Protection Bureau's proposed rules and forms under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) (the "Proposed Rule"). The new rules, as proposed, combine certain disclosures provided to consumers in connection with applying for and closing on mortgage loans. We support the Bureau's efforts to streamline and revise the disclosure forms using clearer language and improved visual design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close a loan. ALTA believes that a well designed set of forms and regulations can improve not only consumers understanding of their transactions, but also the operations of ALTA members who provide these disclosures at closing.

However, as currently drafted, the Proposed Rule misses this mark and will have the unintended consequence of dramatically altering the processes and relationships within the settlement process—to the detriment of consumers. The result will limit consumer choice, concentrate risk among fewer settlement providers and potentially eliminate the role of the independent third-party settlement agent. The impact of these outcomes on consumers could be devastating.

[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 4,100 member companies. With more than 8,000 offices throughout the country, 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 abstracters, title searchers and attorneys, ranging from small, one-county operations to large national title insurers.

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ALTA believes that the single best thing that the Bureau can do to protect consumers in the mortgage and closing arena is to preserve the traditional role of the independent third-party settlement agent. This letter will outline a number of changes that will help achieve this goal.

- First, we discuss the important protections that independent third-party settlement agents bring to consumers, lenders and the public.
- Second, we encourage the Bureau to select alternative 2 under Proposed 1026.19(f)(1)(v) and modify that alternative to ensure that lenders and settlement agents maintain the same responsibilities and level of collaboration as they have today in providing disclosures to consumers.
- Third, to prevent the application of the three-day waiting period required under proposed 1026.19(f)(1)(ii) from operating to consumers' detriment, we suggest broadening the exceptions for re-disclosure under 1026.19(f)(2).
- Fourth, we strongly urge the Bureau to clarify that—notwithstanding the fact that the combined disclosure forms merge portions of RESPA and TILA—other components of the two statutes and regulations remain distinct, specifically the liability and penalty provisions.
- Fifth, we encourage the Bureau to help consumers make better informed financial decisions by encouraging them to investigate whether a service is in their best interest rather than predisposing them to bias by labeling the service "optional."
- Sixth and finally, to reduce the extremely high costs of compliance as well as the 24 months needed to implement the rule, we urge the Bureau to make simple formatting changes to the disclosures and to provide the industry with uniform design specifications.

1. Independent third-party settlement agents are vital to protecting consumers' interests in the settlement process.

As the Bureau recognizes, "people who conduct settlements, such as settlement agents and closing attorneys, play *a valuable role* in the real estate settlement process".[2] (emphasis added) By serving as the independent third-party facilitator at the settlement table, "settlement agents may be able to assist consumers with issues that arise during a real estate settlement as, or perhaps more, effectively than creditors."[3]

Overview of settlement.

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[2] Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 77 Fed. Reg. 51116, 51178 (August 23, 2012) (amending 12 CFR 225 and 12 CFR 1026).
[3] Id.

Settlement—or closing, as it is known in some parts of the country—is a term used to designate the point in time at which a contemplated real estate transaction is concluded. While variances occur throughout the country, in almost all residential real estate transactions, both the closing agent and the closing date are negotiated and agreed upon between the buyer and the seller, along with other terms of a purchase contract.

As you know, ALTA members serve as independent, third-party coordinators and facilitators of real estate transactions, overseeing the closing of real estate and mortgage transactions on behalf of the borrower, lender, seller and any other party in a transaction. A closing agent is typically an attorney or an employee of a title or escrow company (most of which are small, locally oriented businesses within the community). The closing agent acts as a neutral clearinghouse for the transaction, collecting all the necessary documentation, including the deed, mortgage (if applicable), title and homeowners' insurance policies, payoffs (if there are liens on the property that must be released) and pest inspection reports. Assembling these documents is just one of the many tasks performed by a settlement agent. In many states the settlement agent must be licensed by the state to perform these functions. This person also handles the exchange of monies, including any earnest money, mortgage funds and personal funds of the parties. Moreover, the closing agent prepares the HUD-1 Uniform Settlement Statement (HUD-1) and reconciles each file to confirm that the funds received and the funds disbursed balance exactly.

Settlement agents are independent third parties to the transaction.

With the complexity of modern real estate and mortgage transactions, it is nearly impossible for each party involved to meet and perform its obligations simultaneously. The role of the independent settlement agent arose specifically to facilitate these transactions more effectively and efficiently.

Settlement agents are the independent third party at the closing table. Their only interest is to ensure the integrity of the transaction.[4] They do not represent any single party in the transaction, but rather they equally represent all the parties by serving as a neutral clearinghouse collecting all the necessary documentation. The closing agent's function is to conclude the transaction equitably, honestly and in accordance with the agreed-upon instructions, and to get the funds and legal documents into the appropriate hands.

Consequently, the settlement agent is not only the clearinghouse but is also the only real estate authority among the parties. The expertise of the settlement agent is required to ensure that the parties acquire the real estate interests for which they have bargained, whether it be the lender's lien interest or the new buyer's ownership interest. In addition to providing benefit to

[4] *Citizens National Bank of Roswell v. Davisson*, 229 U.S. 213, 223 (1913); *Bell v. Safeco Title Ins. Co.*, 830 S.W.2d. 157 (Tex.App. 1992).

the lender and consumer of a particular transaction, this expertise also is of great benefit to the public at large.

<u>To preserve the valuable role of the independent settlement agent, ALTA proposes that the Bureau make the following changes to the Proposed Rule:</u>

2. The Bureau should modify its alternative 2 to ensure that lenders and settlement agents maintain the same responsibilities and level of collaboration for providing disclosures to consumers.

We appreciate the difficulties the Bureau faces in achieving Congress' mandate to integrate two separate disclosures, as currently required, without clear direction on the resolution of statutory conflicts between RESPA and TILA. If done carefully, this mandate can meet the Bureau's dual goals of helping improve consumers' understanding of their mortgage transaction and facilitating industry compliance with TILA and RESPA. One area where these two statutes don't match up is on the question of who provides the Closing Disclosure.

Today, lenders are responsible for providing the Truth in Lending disclosure required under TILA while settlement agents prepare and provide the HUD-1 settlement statement required under RESPA. While the Bureau has combined these disclosures in a single integrated form, it has not determined the process for providing the Closing Disclosure to the consumer, and instead has listed two alternatives: (1) that the lender solely prepare and provide the disclosure or (2) that the lender and settlement agent share responsibility for preparing and providing the disclosure.[5]

Since it allows settlement agents to continue to play their important role in protecting consumers at the closing table, ALTA prefers the Bureau's alternative 2, which allows for shared responsibility between the lender and settlement for preparing and providing the new Closing Disclosure. However, ALTA believes that some simple modifications to the Proposed Rule and Official Staff Interpretation are necessary to fit the intent of both RESPA and TILA more precisely. To help the Bureau visualize these changes, we have attached a mark-up of both the text of the proposed regulation and the Official Staff Interpretation.[6]

As currently drafted, the Proposed Rule's concept of shared responsibility provides little guidance to settlement agents and lenders on how to divide the responsibilities and liabilities associated with providing the completed Closing Disclosure to the consumer. This lack of guidance runs counter to the Bureau's stated goals. In addition, it actually reduces consumer understanding, because consumers will not know what to expect when each lender is conducting business differently. It will also hinder industry compliance by creating unnecessary market inefficiencies and differences in practices amongst lenders and settlement agents.

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[5] See 77 FR 51117. These alternatives are set forth completely in § 1026.19(f)(1) of the Proposed Rule.

[6] See Appendix B.

ALTA believes that if the Bureau were to clarify which parts of the Closing Disclosure the settlement agents and lenders are each required to prepare and still leave it to the parties to determine who will deliver the completed disclosure to the consumer, then both concerns listed above and disruptions to current business relationships would be avoided. Under our proposal, the creditor would be responsible for preparing information contained in its systems and files (generally, pages 1, 4, and 5 of the proposed disclosure) and the settlement agent will remain responsible for the information contained in its system (generally, pages 2 and 3 of the proposed disclosure). After preparing their respective parts, either the lender or settlement agent (following identical rules) would combine, collate and provide the completed Closing Disclosure to the consumer. This option would allow both the creditor and the settlement agent to each prepare and be responsible for information currently in their control or systems, as they do now under TILA and RESPA.

Our suggested modifications will improve consumers' ability to understand their transactions.

The modifications ALTA is proposing would improve consumers' ability to understand their transactions by enabling settlement agents to continue to provide their expertise and the important checks and balances at the closing table. Every day, at closings across the country, local settlement agents work directly with consumers, answering questions about the sources and accuracy of the variety of settlement costs. Since they are members of the local community, settlement agents are familiar with local customs and practices, which can help "assist consumers with issues that arise during a real estate settlement."[7] Further, since they are local, settlement agents are able to serve consumers more conveniently in all marketplaces, including rural areas. If Alternative 1 were adopted and lenders began closing transactions, consumers in some areas of the country would likely need to travel hundreds of miles or rely on mobile notaries to close.

ALTA's proposed modifications will facilitate industry compliance.

Altering the current relationships between lenders and settlement agents would be a compliance nightmare, requiring a massive shifting of information away from the parties that have the best ability to verify that information's accuracy and explain the costs to the consumer. Upending this paradigm would require lenders and settlement agents to develop new systems of cooperation to transfer this important body of knowledge without clear regulatory guidance. Further, since the Bureau has not provided sufficient guidance about its expectations on shared responsibility, each lender would likely develop its own sets of requirements preventing uniformity of business processes and compliance management systems. As a result, this would add cost, time and expense to the operation of the settlement agent's small business, as each

[7] 77 Fed. Reg. 51178

agent would need to be prepared to close transactions in multiple ways depending upon the requirements of a given lender.

Lastly, both of the Bureau's alternatives, absent ALTA's proposed modifications, have the potential to be anti-competitive. Under the proposal, even if a lender is willing to work collaboratively with a settlement agent to prepare and provide the Closing Disclosure, the lender will still be ultimately liable for the accuracy of information and delivery of documents. To manage the potential liability associated with this new disclosure regime, lenders would need a higher level of control over the settlement process than they have today. While the current rules permit consumers to shop for a local settlement agent, the proposed changes would likely mean lenders would turn to larger, national settlement firms. This would lessen consumer choice and competitiveness in the marketplace for settlement services. It may also create the prospect of having dual closings occurring for both the real estate and mortgage transaction. The net result would be a more complicated closing at a higher cost to the consumer.

3. To prevent the three-day-waiting period from operating to consumers' determent, the Bureau should broaden the exceptions for re-disclosure.

Under the Proposed Rule the Closing Disclosure must be delivered to and <u>received by</u> the borrower three business days prior to the "consummation" of the transaction.[8] ("three-day waiting period") If, during this three-day period before the scheduled closing, a cost that the borrower will pay increases or decreases[9] (subject to some limited exceptions), the borrower must be given a new updated Closing Disclosure and wait three additional business days before closing.[10] While we can appreciate the Bureau's goal of giving consumers final numbers before they come to closing, ALTA believes that the rule as proposed will lead to—at best—unnecessary delays to closing and—at worst—the cancellation of the entire transaction. Both of these outcomes will significantly harm consumers.

The Bureau's strict three-day-waiting period will be very costly to home buyers, sellers and state and local government.

An analysis commissioned by ALTA and conducted by Dr. Nam Pham[11] suggests that both home sellers and home buyers will be negatively impacted if an additional three-day waiting period is triggered because a closing cost had changed within three days of consummation. Using

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[8] 77 FR 51117
[9] The proposed rule is not consistent in defining the "triggers" for redisclosure. In the event of '(i) a consumer and seller negotiation", the rule uses the phrase "make changes". In the event of '(ii) a change in the amount paid, the rule uses the word "exceed". In the event of '(iii) a change after consummation, the rule uses the phrase 'become inaccurate". (page 740) The Bureau is encouraged to standardize these terms.
[10] 77 FR 51117
[11] Nam D. Pham, Ph.D. "The Economic Contributions of the Land Title Industry to the U.S. Economy." (2012). A copy this report is attached as Appendix A.

a historical average that 50% of transactions have some closing costs that change within the three days prior to settlement, Dr. Pham concludes that the average transaction will take longer to close.[12] If there is a delay to closing caused by this rule:

- Home sellers will be responsible for extra per-day interest costs to the tune of $64 million a day and $193 million per reset. Typically these homes will be empty since the sellers will have moved out in anticipation of closing.[13]
- Home buyers would likely pay more to obtain longer mortgage rate locks or pay higher mortgage interest rates. Dr. Pham concludes that home buyers would have to pay more than $1 billion per year in additional interest throughout the life of their loans.[14]
- In a refinance transaction, homeowners would forgo more than $21 million in savings per day and nearly $64 million for each three-day reset on mortgage interest payments for each 1 percentage point of mortgage rate reduction.[15]

While these numbers are concerning, the more troubling fact is that under the Proposed Rule buyers (through no fault of their own) could default on their purchase contracts by not meeting the contractual deadlines to close because of a government-mandated delay to closing. If this were to occur, buyers would not only be out all the costs they expended leading up to the closing, but could also lose their earnest money deposits and the opportunity to purchase their homes.

According to Dr. Pham, state and local governments will be harmed by the three-day waiting period to the tune of $0.35 million per day and by more than $1 million for each three-day waiting period in delayed collection of transfer taxes and fees.[16] Past experience suggests that this drastic loss of revenue will have a serious impact on local government operations (especially in county recorders' offices), which will result in addition harm to consumers.

While a good first step, more exceptions are needed to prevent the proposed three-day waiting period from harming consumers.

We appreciate that the Bureau has recognized that with respect to the Proposed Rule's redisclosure and additional three-day-waiting period requirement, "there are several circumstances where the strict application of the three-day-waiting period required by § 1026.19(f)(1)(ii) may operate to the consumer's detriment."[17] To that end, the Bureau has proposed a limited number of exceptions in which closing costs could change without triggering

[12] Id at 2.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] 77 FR 51179

a new three-day waiting period.[18] This flexibility is a good first step toward ensuring that consumers are not inadvertently harmed by the Bureau's good intentions; however, ALTA believes that more exceptions and clarification to the waiver provisions are needed to protect consumers from the unnecessary harms caused by delaying their closings. To that end, we suggest the following additional exceptions:

- Closing costs paid by or on behalf of the seller that do not impact the buyer, including sellers' debts, liens or judgments
- Closing costs paid by or on behalf of the buyer, but unrelated to the loan costs (such as changes to or decisions to purchase property insurance coverages, flood insurance, owner's title insurance or the like)
- Payment to discharge any defects, liens, encumbrances or other matters requiring curative action which are discovered in a title search or examination
- All prorations as long as the underlying per-day rate does not change or they are paid to a state or local government instrumentality or authority
- Recording costs and other fees incurred due to additional documentation used for the consumer's convenience (such as a power of attorney)
- Any increase in the borrowers' costs due to a change to the sales contract, mutually agreeable to the buyer and seller and not objected to by the lender, or as a result of local custom or practice regardless of when the change is made or the amount of the change

In addition to the above additional exceptions, ALTA believes that the Proposed Rule's de minimus exception[19] should be converted from the specific dollar amount of $100 to a set percentage of the loan amount. ALTA suggests an appropriate percentage would be 1% of the loan amount. By defining the de minimus change as a percentage of the loan amount, the exception will better serve the interests of the consumer and ensure that the Bureau will not have to go through frequent rounds of rulemaking to account for inflation.

Beyond adding additional exceptions to retriggering the three-day waiting period, there are questions that the Bureau must answer in order for the industry to be able to understand its compliance requirements under the rule.

What constitutes delivery of the closing disclosure?

> Under the Proposed Rule, "If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer."[20] The Official Staff Interpretation clarifies that this presumption

[18] Id.
[19] 77 FR 51180
[20] 77 FR 51161

of receipt can be rebutted "by providing evidence that the consumer received the disclosures earlier than three business days."[21] While this provision is helpful, since most consumers will not receive their disclosures in person, the Official Staff Interpretation does not provide sufficient guidance to the industry on what types of evidence are sufficient to defeat the three-day presumption. ALTA urges the Bureau to clarify the types of receipt that can rebut this presumption by incorporating the answers to the following questions in the Official Staff Interpretation:

- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, which service will suffice to rebut the presumption of receipt? Delivery confirmation? Signature Confirmation Service? Return Receipt? Certified Mail?
- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, how does industry establish the date on which the disclosure was sent? A Certificate of Mailing? USPS Track and Confirm?
- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, is a signature required for confirmation of receipt? If so, must it be the signature of the person named as a party to the loan? If multiple consumers are to be obligated on the loan, must all of them sign the receipt?
- If the disclosure is delivered by fax or electronic mail, which services will suffice to rebut the presumption of receipt? A read receipt? A return receipt? E-mail from the person to be obligated on the loan? E-mail tracking metrics such as open and click-through rates?

What constitutes "consummation?"

Under the Proposed Rule, the consumer must receive the Closing Disclosure three days prior to consummation of the mortgage transaction. Under the existing Official Staff Interpretation, the time of consummation is governed by state law.[22] In many states (primarily eastern states) consummation of a loan takes place at the same time as the real estate settlement, because all the parties physically come together "at the table" to execute and transfer all documents. In those states, the Closing Disclosure would have to be received by the consumer three days prior to this set date.

However, in escrow states (primarily in the west) there is not a set closing date and consummation and closing may occur at different times. Thus, it becomes less clear when the consumer must receive the Closing Disclosure to ensure compliance with this Proposed Rule. In these states, for example, could the escrow agent deliver and the consumer receive the

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[21] Id.
[22] Supplement I to 12 CFR 1026, Comment to 2(a)(13) Consummation

Closing Disclosure at the time they sign the loan documents if the escrow agent holds those documents for three days before consummating the transaction by recording the documents? Due to these unique aspects of state law and practice, we urge the Bureau to use the Official Staff Interpretation to provide sufficient guidance for disclosure to help facilitate industry compliance.

Lastly, ALTA believes that the borrower should have a right to fully waive the three-day waiting period in the event of potential economic harm such as the expiration of the sales contract, the loss of a rate lock or a similar financially disastrous event.[23] ALTA understands the Bureau's concerns about a misuse of such a choice and recommends that the Official Staff Interpretation set forth examples of fact patterns that constitute a "Bona Fide Financial Emergency" beyond those currently provided.

4. As the Bureau merges the disclosure forms, it should clarify that the underlying statutes and regulations remain distinct as Congress intended.

The Dodd-Frank Act required the Bureau to 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 for mortgage loan transactions covered by those laws."[24] While Congress ordered the Bureau to combine the disclosures in a single form, it did not empower the Bureau to go beyond this mandate as it has in the Proposed Rule. The Bureau's current proposal effectively attempts to amend the two underlying statutes and regulations to make them mutually consistent. To remain within the intent of Congress, the provisions of both statutes (including their liability provisions) must remain in place.

Despite Congress's refusal to choose which statute's provisions and liabilities should govern, the Bureau appears to have done so of its own accord. The Bureau's proposed rulemaking solely revises TILA rulemaking under Regulation Z and then exempts from RESPA (and Regulation X) all transactions that are subject to the combined disclosure. This appears to shift all the disclosure requirements (and liability for disclosure errors) into TILA. This is a dramatic shift that effectively negates the provisions in RESPA.

This was not Congress's intent when passing Dodd-Frank. Rather than unilaterally nullifying RESPA, ALTA suggests that the Bureau could achieve an integrated disclosure while remaining faithful to the two statutes and Congressional intent by drafting mutually consistent proposals for both RESPA and TILA's implementing regulations. This could easily be done by shifting the sections of the Proposed Rule that deal with closing costs or other RESPA-related disclosures

[23] 77 FR 51161; See also Proposed comments to Proposed 1026.19(e)(1)(v)
[24]12 USC 5532(f);

(primarily pages 2 and 3 of the Closing Disclosure) back into RESPA's implementing regulation with appropriate cross references.

Revising the Proposed Rule in this manner would provide clear, "bright line" requirements under the combined disclosure. The result would facilitate industry compliance by providing unambiguous responsibilities and liabilities based on historical precedent, without any negative impact on consumer understanding—since consumers would still receive the same disclosure.

This proposal would facilitate industry compliance by keeping in place historical responsibilities and liabilities under the two statutes. Under TILA, if a lender fails to comply with any requirements of the statute, including the disclosure requirements (accuracy and timing), it is liable to the consumer in an amount equal to the sum of: (1) actual damages, (2) twice the finance charge (or for closed-end mortgage transactions, not less than $400 nor more than $4,000), and (3) in a class action, the lesser of $500,000 or 1% of the net worth of the lender.[25] In addition to providing consumers with this right of action against the lender, disclosure errors could also provide the consumer with an enhanced rescission period and open up the lender to enforcement actions by the Bureau and state attorneys general. These are very severe penalties that RESPA does not possess. Rather, under RESPA, a disclosure error only opens up lenders or settlement agents to administrative enforcement or actions by state attorneys general.

5. The Bureau should alter the Proposed Rule's disclosure of title fees to prevent consumer confusion.

For disclosures to be effective, they should provide consumers with quality information to help them make decisions in their financial interest. While the forms do make some improvements in the way they provide information to the consumer, one place they fall short is in their disclosure of title-related fees. By requiring owner's title insurance to be listed as "(Optional)"[26] and incorrectly disclosing the costs of title insurance, the Bureau is doing consumers a disservice that will make it more difficult for them to understand the costs of their transaction.

Under the Proposed Rule, in all cases where the borrower will be paying, in whole or in part, the premium for an owner's title insurance policy, the listing of such charge on both the Loan Estimate and Closing Disclosure forms must be followed by the modifier "(Optional)."[27] While this is technically true in some jurisdictions, we believe that the use of this modifier label for

[25] 15 USC 1640.
[26] 77 FR 51216
[27] Id.

owners' title insurance will confuse consumers and prejudice them against making financial decisions that actually are in their best interest.

As the real estate industry, several state legislatures, and the Department of Housing and Urban Development have recognized, the purchase of an owner's title insurance policy is a smart financial decision in residential transactions. Sophisticated commercial real estate purchasers obtain an owner's title insurance policy in virtually every transaction. In many states, the legislature has deemed the issuance of owner's title insurance to purchasers a matter of important public policy for their citizens, and they statutorily mandate that their consumers be made aware of the protection such coverage provides.[28] Further, in its *Settlement Cost Booklet*[29] required under RESPA, HUD consistently recognized the value of owner's title policy protection for consumers:

> Owner's Policy**.** A lender's title insurance policy **does not protect you.** Similarly, the prior owner's policy does not protect you. If you want to protect yourself from claims by others against your new home, you will need an owner's policy. When a claim does occur, it can be financially devastating to an owner who is uninsured. If you buy an owner's policy, it is

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[28] California Civil Code, Section 1057.6 provides: "In an escrow transaction for the purchase or simultaneous exchange of real property, where a policy of title insurance will not be issued to the buyer or to the parties to the exchange, the following notice shall be provided in a separate document to the buyer or parties exchanging real property, which shall be signed and acknowledged by them:

> 'IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.'"

For other states requiring disclosure of the availability of owner's title insurance coverage and/or a written waiver for an election not to purchase such coverage, see Code of Ala. § 27-25-7 (Alabama); Ark. Code Ann. § 23-103-413(b).; Conn. Gen. Stat. § 38a-423 (Connecticut); 2009 D.C. ALS 223 Sec 2139(b) (District of Columbia); La. R.S. 22:531 (Louisiana); MD Insurance Code Sec 22-102 (Maryland); 381.015 R.S.Mo. (Missouri); Nev. Rev. Stat. Ann. § 692A.210 (Nevada); NMAC 13.14.7.8B (New Mexico); Title Insurance Rate Manual for New York approved by Superintendent of Insurance of NY, Section 26 (New York); O.R.C. Ann. Sec. 3953.30 (Ohio); Tenn. Code Ann. § 56-35-133 (Tennessee); and Va. Code Ann. § 38.2-4616 (Virginia). Many states also provide both written and web-based materials indicating the importance of owner's title insurance. For example, see http://www.insurance.wa.gov/consumers/home/title_insurance.shtml and http://www.insurance.wa.gov/publications/other_types/Title_Escrow_Guide.pdf (Washington Office of the Insurance Commissioner); http://www.insurance.ca.gov/0100-consumers/0010-buying-insurance/0080-compare-premiums/title-terms.cfm (California Department of Insurance); and http://www.colorado.gov/cs/Satellite?c=Page&childpagename=DORA-DI%2FDORALayout&cid=1251623076707&pagename=CBONWrapper (Colorado Department of Real Estate)

[29] 12 USC 2604. A copy of the booklet can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/settlement-cost-booklet03252010.

usually much less expensive if you buy it at the same time and with the same insurer as the lender's policy.

Title fees should be disclosed based on the common type of policy purchased in the jurisdiction and not the basic coverage.

Besides prejudicing consumers against purchasing an owner's title insurance policy by using the modifier "(Optional)", the Proposed Rule also requires industry to misquote the actual cost of title insurance coverage to the consumer. Providing the consumer with incorrect prices on title insurance will most certainly inhibit their understanding of their transaction and make it difficult to shop for an appropriate title insurance provider.

Under the Proposed Rule, the lender is required to quote on the Loan Estimate the standard coverage rate for title insurance premiums. No enhancements are permitted even if (1) the lender knows that it will require enhanced coverage or endorsements for the Loan Title Insurance Policy, (2) it is customary in the locality for consumers to purchase enhanced coverage such as the ALTA Homeowner's Policy, and (3) the real estate sales contract actually requires the purchase of an enhanced policy. Providing a borrower with an estimate of a standard coverage policy, particularly when the lender has information that an enhanced policy form will ultimately be issued, is a disservice to the consumer and negates the benefit of an accurate and early "Cash to Close" number. We believe that a lender's Loan Estimate should reflect pricing of the owner's policy based upon the most accurate information available to the lender, rather than a one-size-fits-all computation frequently having no relation to the actual transaction.

In addition to requiring lenders to disclose the wrong type of title insurance policy, the Proposed Rule also mandates that consumers be quoted the wrong price. The Proposed Rule requires lenders to quote the lender's title insurance policy at the full policy rate and the simultaneously issued owner's policy at the reduced "simultaneous issue" rate, in direct conflict with state law and state regulator approved rates. Rather than distort the actual costs for title insurance policies, ALTA recommends that the Bureau require lenders to disclose the actual price for title insurance policies based on the state regulated title insurance rate structure.

Over the years, title industry pricing of owner's and lender's policies issued in a single transaction involving the same property have recognized the efficiencies of a single search and policy provisions limiting total liability. Custom and practice caused pricing of owner's policy coverage to remain at full premium, while providing a substantial discount on the second policy in the transaction issued to the lender, resulting in an overall discount in title insurance costs for the transaction. This discounted pricing is commonly referred to as a "simultaneous issue" rate, reflecting the circumstances of the dual policy issuance. Such a practice is firmly established in the vast majority of states, providing a substantial reduction on borrower costs for lenders' title insurance policies required by lenders.

The Proposed Rule's distortion of "simultaneous issue" pricing is in direct conflict with state insurance statutes and/or regulations. In the vast majority of states, the promulgated or filed rates[30] involving simultaneous issue of a lender's and an owner's policy require a full charge for the owner's policy and the discounted simultaneous issue rate for the lender's policy. Many states prohibit settlement agents and/or title insurers from disclosing fees in an amount other than the actual premium charge for such product filed with its regulatory agency and actually charged to the consumer. The Proposed Rule will require settlement agents and title insurers to violate these state laws and regulations.

6. The Bureau should make simple changes and issue clarifications to reduce the cost and burden of implementing the Proposed Rule.

The proposed Closing Disclosure and accompanying rules will require significant technology and implementation efforts. Due to the new formatting, record-keeping requirements and the disclosures' dynamic qualities, the Proposed Rule will likely cost industry roughly $315 million to implement. With this high cost and the significant changes from the current forms and processes, ALTA believes that the industry will need roughly **24 months** to implement the disclosures and rule once it is final.

While improved in some aspects over the recent 2010 changes, the proposed Closing Disclosure presents a number of new formatting challenges that will prove very costly for the industry to implement.

Line Numbers.

As noted in the Small Business Review Panel Report[31], the proposed Closing Disclosure uses a different line numbering system than that of the current HUD-1 that industry believes will be unnecessarily costly to implement. The Small Business Review Panel requested that the Bureau seek comment on whether retaining the current line numbering system of the HUD-1 would (1) lower software-related costs on industry by a specific amount, while (2) improving consumer understanding of the loan terms and costs.[32] The answer to both of these inquiries is yes.

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[30] In some states title insurance premiums are promulgated (such as in Texas, Florida and New Mexico). In other states, rates for premiums must be filed and approved by state authorities. In still other states, rates must be filed and once filed are to be followed.

[31] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), available at *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.*

[32] See Small Business Review Panel Report at 20, 28-9.

The proposed Closing Disclosure form only sets specific line numbers for a small number of fees. Without specific line numbers, software vendors are faced with the challenge of trying to determine the appropriate placement of data. This will require developing a more dynamic software program which will increase the number of hours of programming, limit the ability to automate the production of the form based off of certain lines and result in a significant loss in user productivity and the ability to integrate the data with other reports.

Also, unlike with the current HUD-1, very few of the closing cost items are hard coded to appear in the same spot on all Closing Disclosures. Instead, closings costs must be listed in alphabetical order under the appropriate cost subsection. Like the line numbers, this protocol will require extra software programming to create the type of dynamism that is required to produce a compliant software system.

While these are costly programming challenges, the lack of standard formatting for where costs are listed on the disclosures will make it difficult for consumers to compare disclosures from different lenders and for different transactions. Each lender, type of transaction and specific loan product will require their own sets of loan and closing costs. Since most loan and closing costs will not appear in the same place on every disclosure, consumers attempting to compare competing Loan Estimates or Closing Disclosures from different transactions will have barriers to comparing those costs.

To reduce software costs and improve consumers' ability to understand their transactions, ALTA suggests retaining the current line numbering system and requiring more costs to be hard coded in a set location on the disclosure.

Lack of Standard Naming Convention.

The proposed Closing Disclosure lacks any standard naming convention to describe loan and closing costs. Under the rule, the Closing Disclosure must list the loan and closing cost with the same terminology as used on the Loan Estimate. ALTA requests that the Bureau develop an industry-standard naming convention to improve consumers' ability to compare disclosures from different lenders and reduce the industry's compliance burden.

Using a standard naming convention would help consumers compare disclosures during shopping. Under the Proposed Rule, the consumer who obtains Loan Estimates from different lenders in an effort to shop would potentially have difficulty comparing the forms because of differing terminology used to describe the same loan terms and closings. The result could be a drastic blow to the consumer's ability to compare terms and determine which loan product is the best for his or her personal situation.

In addition, the lack of a standard naming convention opens the disclosure process up to regulatory uncertainty that can harm industry compliance efforts. To ensure proper compliance, lenders will need to provide settlement agents with the Loan Estimate (something that does not occur today) to guarantee they are matching the correct terminology. Unlike today, the settlement agent's software system will not be able to reduce the burden by pre-populating these terms. The result will be that industry will waste significant processing time (and expense) manually entering data to ensure compliance.

"Calculating Cash to Close" Explanations.

Similar to the issues discussed above, the lack of standardized and accepted verbiage for changes in the "Calculating Cash to Close" section of the Closing Disclosure on page 3 will hinder the consumer's ability to compare disclosures from different lenders and increase the industry's compliance burden. Without a standard set of explanations, different lenders will develop their own explanations. These explanations could expand into multiple sentences and/or paragraphs, which may spill over beyond page 3 of the closing disclosure form. To ensure the development of compliant software, the Bureau must provide industry with a standard set of explanations for the "Calculating Cash to Close" section.

Record Keeping/Machine Readable.

The Proposed Rule requires that lenders retain the data contained in both the Loan Estimate and the Closing Disclosure in a "machine-readable" format. While this technology exists, it is not widely used in the industry at the present time and will require significant costs to upgrade systems. In addition, without a single industry-wide standard for this technology, its benefits are limited.

Since the Bureau has not provided enough specific information on the requirements for machine-readable technology, it is impossible to estimate what the exact costs will eventually be. To comply with the Bureau's proposal, software vendors will need to provide integrations for settlement agents to send the final Closing Disclosure form data to lenders electronically. This will require extensive research and coordination with the lending community. The result is that a significant period of time will be needed to scope and code these integrations.

According to the Bureau, the stated rationale and main benefit of this proposal is to improve, "the ability of the Bureau and other regulators to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against impermissible changes in settlement costs and loan terms." Without a standard data protocol, the Bureau will be required to "normalize" data to run the desired analyses. If the Bureau provided software vendors with specific design documentation that details the parameters of this new functionality, the burdens on the Bureau might be reduced. Without an industry standard set by the Bureau, software vendors run the risk of producing integrations that fail to interface properly with multiple lender loan origination systems. In addition, the Bureau runs of the risk of having incompatible data to compare.

Additional comments.

The Proposed Rule's average charge pricing rules are an improvement over the current regulation.

We believe that the use of average charges can provide a significant consumer benefit by more definitively predicting charges that will occur at closing. Thus, we were pleased to see the provisions in the Proposed Rule providing detailed direction on the computation and use of an average charge. As you know, similar (but in our opinion, less instructive) provisions exist in RESPA regulations. Therefore, we believe that one set of rules concerning the use and computation is advisable, and recommend that the RESPA provisions on this subject be supplanted by the new TILA provisions of the Proposed Rule.[33]

The Proposed Rule will be very costly to implement.

Just a few years ago, HUD finalized its amendments to RESPA's implementing regulation and disclosure forms. According to Dr. Pham, those changes cost the industry $157.4 million, including $13.7 million to upgrade software, $97.6 million for settlement agent training, and $53.2 million of productivity losses.[34] While the Bureau estimates that the total one-time cost related to the Proposed Rule will be $100.1 million, ALTA believes that a more accurate estimate (given the size and scope of this regulation) is that it will cost the industry $314.7 million, or twice the impact of the 2010 changes.[35] As discussed in the previous section, some of this cost can be reduced by making simple changes to the disclosure forms and regulations.

Conclusion.

ALTA firmly believes that the single best thing that the Bureau can do to protect consumers in a mortgage transaction is to maintain the robust role settlement agents currently play as an independent third party to the transaction. We believe that the changes proposed in the above letter can achieve this end, while also meeting the Bureau's twin goals of improving consumer understanding of their mortgage and real estate transactions and facilitating industry compliance with consumer financial protection laws.

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[33] A suggested method for such revisions to the applicable RESPA regulation is shown in the Appendix.
[34] Pham, at 19-20.
[35] Id.

ALTA appreciates the thoughtfulness that the Bureau has shown in developing these new forms and urges the Bureau to keep working with industry to refine this rule. We also encourage the Bureau to continue testing these new forms and rules on consumers. We strongly believe that getting this right is important to ensure that consumers have a safe and efficient closing process. Should you have any questions, please do not hesitate to contact Steven Gottheim, Legislative and Regulatory Counsel, at 202.261.2943.

Sincerely,

Michelle L. Korsmo
Chief Executive Officer

Appendix I

Appendix II