



October 18, 2016

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

Re: Docket No. CFPB-2016-0038 or RIN 3170-AA61

Dear Ms. Jackson:

The American Land Title Association¹ (ALTA) appreciates the Consumer Financial Protection Bureau's (CFPB) dedication to improving the Know Before You Owe: Mortgage Disclosures rule (KBYO). We are now one year into utilizing the new disclosures and rules. Over the past year, the title and settlement industry has made great strides in adapting business procedures to comply with the requirements of this rule. While the process to produce compliant disclosures takes longer than before, we believe more homebuyers are reviewing their mortgage disclosures prior to the closing now than before the KBYO rule.

The CFPB's July 30th proposal makes a number of valuable clarifications that should make compliance easier. We have addressed the proposed amendments in a separate letter submitted to the Bureau. Unfortunately, the proposed amendments fail to fix the single biggest cause of confusion that homebuyers express at the closing table: the requirement to inaccurately disclose the cost of title insurance.

Homebuyers deserve to know the true and accurate cost of buying a home. With respect to title insurance costs, the disclosure rule fails to meet this obligation. For the overwhelming majority of real estate transactions, the rule requires a complicated formula that discloses to consumers an inaccurate price for title insurance. Under the KBYO rule, the CFPB mandates that the correct and actual price of title insurance products be withheld from consumers. Not only

¹ The American Land Title Association, founded in 1907, is the national trade association representing 6,100 title insurance companies, title and settlement agents, independent abstracters, title searchers, and real estate attorneys. With offices throughout the United States, ALTA members conduct title searches, examinations, closings, and issue title insurance that helps protect the property rights of millions of American homebuyers every year.

does this hinder consumers' understanding of transaction costs,² but is at odds with what consumers want to know, according to ALTA's research.

In July, ALTA partnered with Survata, a national market research company, to collect data on consumer experiences related to their purchase of title insurance and the KBYO required disclosures. Survata is a recognized leader in online consumer research. It works with universities, advertising companies and Fortune 500 companies to get the consumer data needed to make better informed decisions. A copy of the survey and its results is attached to this letter.

Using the Survata platform, we polled 2,000 current and prospective homeowners, defined as those who plan to buy a home within the next 12 months. The survey posed 14 questions to these consumers about their preferences for learning information about title insurance and using mortgage disclosures. The results were census representative with a margin of error of 2.2%. Respondents received no cash compensation for their participation.

As part of the survey, consumers were shown KBYO-compliant closing disclosure forms. This included title insurance premiums using the rule's methodology. Respondents were asked to identify the price for each title policy. After identifying the price of the policies, they were then informed of the actual cost of title insurance. The survey measured their initial reactions.

Nearly twice as many consumers reacted negatively to the inaccurate disclosure than positively

The data shows that the Bureau's rule is not working as intended and is not improving transparency or consumer understanding when it comes to title insurance.

In fact, this research shows that the majority of people this rule is intended to help find it confusing. When presented with the true cost for title insurance, almost one third of homeowners responded with the statement, "I'm confused." It confirms the anecdotal evidence our members reported from their experience with consumers.

This confusion is concerning. It runs counter to the rule's purpose of helping consumers receive "timely and understandable information to make responsible decisions about financial transactions."³ The settlement industry has attempted to help by providing education. Some states such as Texas⁴ and Florida⁵ even mandate additional disclosures to address this confusion.

² This problem is exacerbated in the nearly half of states where it common for the seller to pay for all or a portion of the buyers title insurance costs. In these states, the CFPB's mandated formula not only leads to an incorrect disclosure of the cost of title insurance but confusion over how much the seller is obligated to pay.

³ 12 U.S.C § 5511(b)(1).

⁴ Texas Disclosure Form T-64. Texas Department of Insurance, Commissioner's Order 4038, Effective 08/01/2015- 28 TAC §9.2. available at <http://www.tdi.texas.gov/title/documents/t64form.pdf>.

⁵ Florida Insurance Premium Disclosure & Settlement Agent Certification. Florida Department of Financial Services. Rule 69B-186.008, F.A.C. available at <https://www.myfloridacfo.com/division/agents/Licensure/Forms/documents/DFS-H1-2146.pdf>

However, consumer education at the time of closing is not ideal and potentially minimizes the value of the CFPB’s otherwise helpful disclosures for consumers.

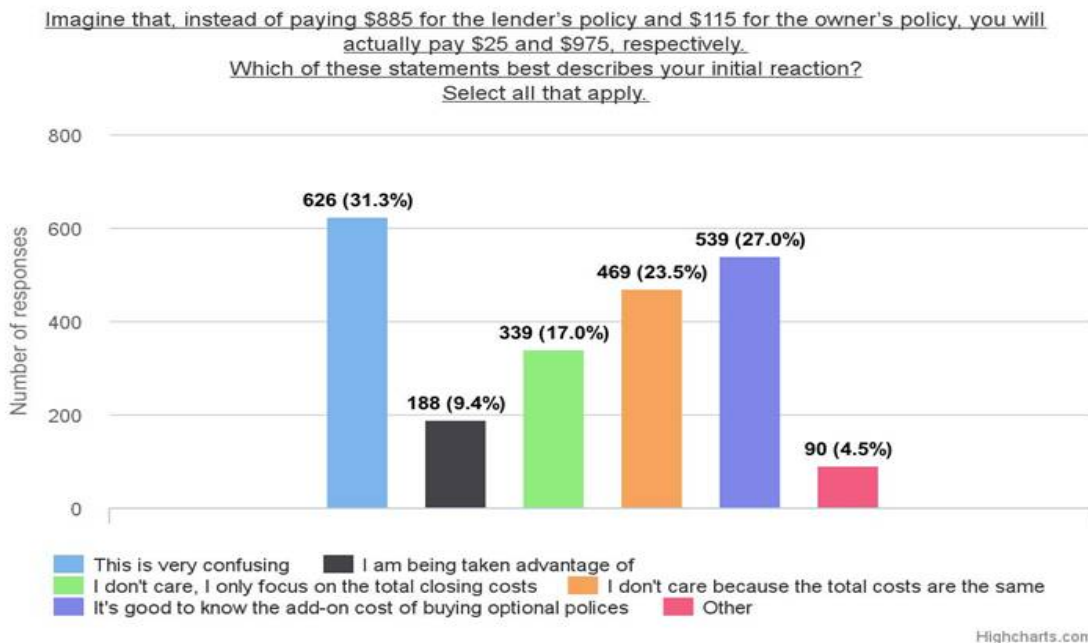
While this confusion is disconcerting, it is not the most troubling finding from the survey.

The most troubling data point is that 10% of consumers felt that they were being taken advantage of by not being told the true cost of title insurance on the disclosure. Frankly, this is 10% too many.

The purpose of the CFPB is to protect consumers by ensuring markets are fair, transparent and competitive.⁶ As President Obama put it, to “make sure that people aren’t taken advantage of.”⁷ Unfortunately, the Bureau’s decision to require the inaccurate disclosure of title premiums is producing the opposite effect.

In contrast, only 27% of consumers found the CFPB’s mandated title insurance disclosure helpful. These respondents appreciated knowing the marginal cost of buying an owner's title insurance policy.

The study also showed that 40% of homeowners were neither helped nor hurt by the CFPB’s disclosure. These consumers responded that they either did not focus on individual line items or were satisfied since the total cost of title insurance was the same.



⁶ 12 U.S.C § 5511(a)

⁷ Remarks on Senate Action to Block the Nomination of Richard A. Cordray to be Director of the Consumer Financial Protection Bureau and an Exchange with Reporters. December 8, 2011.

This research confirms that the accurate disclosure of title premiums would be more beneficial for consumers than the rule's current requirement. In KBYO's preamble, the Bureau said that the "technical disclosure of the owner's and lender's title insurance premiums" is outweighed by the need to provide consumers with a "clear disclosure of the required cost for the lender's title insurance alone, and the additional incremental cost to be paid by the consumer for the optional owner's title insurance premium."⁸ However, according to consumers, this is not the case.

Only about one-quarter of homeowners agreed with this sentiment. Meanwhile our consumer testing⁹ suggests that over 40% would be better served by seeing the true cost of title insurance on the disclosure. This would lead to increased consumer understanding and trust in the transaction.

Along with measuring consumer reactions to the inaccurate disclosure of title premiums, we obtained a deeper understanding about important disclosure concepts for consumers. This is especially important for products and services like owner's title insurance, which is not required by the lender.

Consumers Care More about Accuracy and Detail than Incremental Costs

In the study, we asked homeowners to rank from most to least important, the factors they care about when analyzing their transaction. According to survey results, the CFPB was largely successful in developing the mortgage disclosures. However, the results also show that accuracy and detail are more important to consumers than the marginal costs of products.

We learned that consumers want mortgage disclosures to provide a detailed breakdown of all the costs for service. This was far and away the most important factor for homeowners.

The second most important factor is the ability to easily compare estimates to final figures. This is something the KBYO disclosures do really well. Closely following this factor is the ability to compare the disclosures to the actual costs consumers will pay and confirming the seller is paying the correct amount. At the bottom of the rankings is providing marginal cost of optional products and seeing bottom-line amounts like cash-to-close.

These findings show that consumers would find more value in the mortgage disclosures if they showed accurate costs for title insurance instead of the incremental costs.

⁸ 78 F.R. 79964.

⁹ This disclosure was not a topic that was tested during the extensive consumer research conducted by the CFPB in developing the disclosures. See "Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures." Kleimann Communication Group. Presented July 9, 2012. Available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf

Showing the actual cost of title insurance is an easy fix

Amending the rule to require the disclosure of the actual cost of title insurance is the best way to achieve the Bureau's missions to ensure "consumers are provided with timely and understandable information to make responsible decisions about financial transactions."¹⁰

The best way to address this is to modify the Official Interpretations for §1026.37(f)(2), §1026.37(g)(4) and §1026.38(g)(4). These comments should allow the industry to disclose title insurance the same way as every other cost (i.e., the actual cost the consumer will pay for the service based on the best information reasonably available). Appendix A includes suggested edits the Bureau should make to those comments.

Making this simple change would be relatively easy for the industry to implement. It would not require new software coding or development, like other changes in the proposal. Rather, it would require vendors to turn off existing coding. It would not only help consumers, but make it easier for companies to comply with state insurance laws. We strongly urge the Bureau to make this change in this rulemaking.

Finally, the need for better consumer education about mortgage costs and title insurance is paramount. According to our study, the majority of homebuyers make the decision to purchase an owner's title insurance policy before they reach the closing. We believe this scenario will only continue to increase as the title and settlement industry utilizes the tools in ALTA's Homebuyer Outreach Program (HOP). This innovative program provides title companies with tools for educating consumers about the benefits of title insurance. While less than a year old, the program is proving to be successful with title agents increasingly utilizing HOP's resources in their education of consumers.

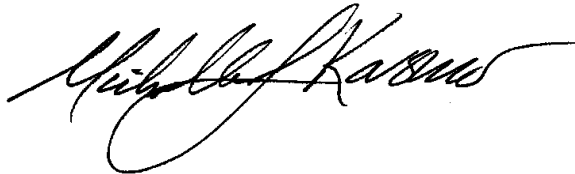
This is important because our study showed that the most important factor for consumers when making the decision to purchase an owner's title insurance policy is a full understanding of the benefit of the service to them. The cost of the service was the second most important factor. Toward the bottom of the list was the impact of the decision on other home buying costs.

ALTA and its members are committed to educating consumers about how title insurance provides peace of mind by protecting their property rights. An equal commitment from the Bureau is needed to ensure that confusion over the price of title insurance does not undercut these efforts. Consumers will benefit from having the actual cost of title insurance disclosed on the mortgage disclosures. This is not only supported by our research, but also by our members' experiences everyday at closings across the country.

¹⁰ 12 U.S.C § 5511(a).

The simple change suggested in this letter will help the disclosures reach their true potential. We look forward to continuing to work with the Bureau on this issue. Should you have any questions about this letter, please do not hesitate to contact Steve Gottheim, ALTA's senior counsel, at steve@alta.org or 202-261-2943. Thank you for providing this opportunity to share our concerns.

Sincerely,

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

Michelle L. Korsmo
Chief Executive Officer

Appendix A

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).~~