



May 18, 2018

Mr. Mulvaney, Acting Director  
Bureau Consumer Financial Protection  
1700 G Street N.W.  
Washington, DC 20551

**Re Request for Information Regarding Bureau's Supervision Program Docket Number CFPB-2018-0004.**

Dear Mr. Mulvaney:

The American Land Title Association (ALTA)<sup>1</sup> appreciates the Bureau of Consumer Financial Protection's (Bureau) focus on improving its operations through the request for information process. We appreciate the opportunity to discuss our members' experiences with the Bureau. Based on our members' experience, we believe the most important step the Bureau can take to improve compliance with its regulations is to develop a formal process for developing clear, reliable guidance.

**Bureau supervision of real estate settlement services**

ALTA members provide two primary services to consumers and financial institutions. First, the industry prepares and writes title insurance policies protecting both purchasers and mortgagees of real property. This service falls outside the Bureau's regulatory and supervisory authority as it is part of the business of insurance.

Second, our members act as third-party settlement agents in real estate and mortgage transactions. This service is within the Bureau's authority as is the subject of the Real Estate Settlement Procedures Act (RESPA).

While the Bureau does not directly supervise ALTA members, it is important to remember that supervision and regulatory drafting are two sides of the same coin. This is particularly apparent given the complexity of the Bureau's 1,888-page TILA-RESPA Integrated

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<sup>1</sup> ALTA 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 policies that help protect the property rights of millions of American homebuyers every year.

Disclosure (TRID) or Know Before You Owe (KBYO) rule. Despite the length of the regulation, hundreds of questions arose during the implementation process.

Drafting clearer and simpler regulations is first step to improving the process, but right behind it is establishing a process for industry to obtain clear, reliable guidance.

### **Clear Guidance**

The value of clear, reliable guidance is twofold. First it makes it easier for businesses to comply with regulations. It does this, by giving them examples of acceptable practices that can serve as a solid basis for making decisions and investments in systems. Second, it improves the effectiveness of the Bureau's Supervision Program. This happens by giving examiners more reference points for judging businesses compliance. It also occurs because it makes it easier for businesses to justify their decisions to examiners. The result is lower examination costs and ideally fewer enforcement actions, all while increasing consumer protection.

Previously, Bureau staff has communicated their concern that they did not want their guidance to be too prescriptive. We appreciate the Bureau's desire to be flexible. However, that flexibility resulted in businesses not having enough information to make informed decisions.

Flexibility is good when it is matched with clear examples. As you have stated, the industry and consumers should know what the rules are before being charged with breaking them. TRID is a perfect example of this issue.

During TRID implementation, industry repeatedly asked the Bureau for examples of completed disclosures using mock transactions. These mock-ups can be valuable training tools for understanding compliance, especially given the various permutations of real estate transactions across the country. The Bureau declined to provide those mock-ups. The rationale conveyed to us, was that they wanted to flexible and not box the industry in by suggesting there was only one way to complete the disclosure. The problem with this flexibility, is that the lack of examples only made it harder to make decisions.

### **Third-party service provider bulletin**

ALTA members are indirectly supervised by the Bureau's oversight of both depository and nonbank mortgage lenders. Our industry acutely feels this indirect supervision dues to CFPB Bulletin 2012-03, Service Providers.<sup>2</sup>

The bulletin simply reminded supervised banks and nonbanks that they are expected to oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law. The Bureau bulletin restated longstanding guidance from

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<sup>2</sup> Bureau of Consumer Financial Protection, *CFPB Bulletin 2012-03, Service Providers; April 13, 2012.*  
[https://files.consumerfinance.gov/f/201204\\_cfpb\\_bulletin\\_service-providers.pdf](https://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf)

other federal regulators. However, given the lack of guidance in the bulletin it shook up the title insurance industry and our lender customers.

Unlike similar longstanding guidance from prudential regulators, the Bureau's bulletin provided little direction to banks and nonbanks. The Bureau bulletin was two and a half pages long, compared with the 16 pages of guidance from the OCC and 14-page document from the Federal Reserve Board in December 2013. Examples of more useful guidance include the Office of the Comptroller of the Currency (OCC) in 2001, the Federal Deposit Insurance Corporation (FDIC) in 2006, as well as subsequent guidance from the OCC and Federal Reserve Board in 2013 and the Mortgage Servicing Settlement and accompanying consent judgments in 2012.

This lack of guidance provides businesses with many unanswered questions about how to demonstrate compliance. For example, some lenders felt that the bulletin required them to run a small title company doing five closings with them a year through the same process as a large company doing thousands of closings. This uncertainty pushed some small businesses to exit the market.

Another area of uncertainty was on oversight of consumer versus lender selected providers. Commonly, the consumer—and not the lender—selects their title and settlement company (with the advice of a real estate agent, attorney or other trusted party). Given the lack of guidance most lenders treated consumer chosen vendors and lender chosen vendors the same. To manage the risk, some lenders chose to severely limit consumers' options. This is the wrong outcome and created a conflict in states where the law limits a lender's right to restrict consumer choice.

To bring clarity, ALTA created the Title Insurance and Settlement Company Best Practices in 2012. Today, lenders use this tool to manage and mitigate the risks inherent within the vast national network of more than 20,000 settlement companies.

While many lenders have adopted the Best Practices as part of their compliance management program, they are concerned about the lack of guidance from Bureau examiners about its sufficiency. A public statement in support of the ALTA Best Practices from the Bureau would provide much desired clarity and guidance to supervised entities.

After more than four years discussions with Bureau staff, including your predecessor for more robust guidance the Bureau made a few minor clarifications, in October 2016<sup>3</sup>. The guidance clarified that a lender's risk-management program for service providers may be scalable depending on several factors. This has been helpful, but more is still needed especially on the collision between consumer choice and vendor management.

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<sup>3</sup> Bureau of Consumer Financial Protection, *Compliance Bulletin and Policy Guidance; 2016-02, Service Providers*; 81 FR 74410; October 26, 2016.

## Issuing advisory opinions to financial service providers

The Bureau also should establish procedures for issuing advisory opinions. Consumers benefit when regulators discourage bad acts through enforcement while also encouraging good behaviors. Today, the Bureau takes its enforcement role seriously; we encourage the Bureau to take its ability to promote good practices seriously too.

An advisory opinion provides certainty to those complying with federal consumer financial law. The use of advisory opinions is widely used by other federal agencies. They analyze how the applicable laws apply to a specific set of facts or a proposed design, operation or maintenance of consumer financial product or service. While advisory opinions can only be relied on by the company that requested it, publishing redacted versions can help other companies make better decisions.

Thank you for offering this opportunity to provide input. Our experience with the Bureau gives us a unique view on how it can improve its processes. Our central conclusion is the same one reached by the the Bipartisan Policy Center<sup>4</sup>:

*Perhaps the most significant trend the Task Force discovered was that when the Bureau operated in a transparent, open, and iterative manner, repeatedly seeking input from all stakeholders throughout a process, the results were generally positive. However, when the Bureau made unilateral decisions, rolled out initiatives, rules, or processes as a result of a more closed, internal deliberation process, the results were far more likely to be problematic.*

We believe more open and iterative processes, like these requests for information, will lead to more positive outcomes for all stakeholders. We look forward to continuing to work with you and the Bureau to “achieve meaningful burden reduction or other improvement to the processes used by the Bureau to supervise for compliance with Federal consumer financial law (Supervision Program) while continuing to meet the Bureau's statutory and regulatory objectives and ensuring a fair and transparent process for supervised entities<sup>5</sup>.”

Sincerely,



Michelle L. Korsmo  
Chief Executive Officer

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<sup>4</sup> Bipartisan Policy Center, *The Consumer Financial Protection Bureau: Measuring the Progress of a New Agency* (September 2013)

<http://bipartisanpolicy.org/sites/default/files/BPC%20Consumer%20Financial%20Protection%20Bureau%20Report.pdf>

<sup>5</sup> Bureau of Consumer Financial Protection, *Docket No. CFPB-2018-2004: Request for Information Regarding the Bureau's Supervision Program* (2018).

