



March 31, 2022

Fee Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket Number CFPB-2022-0003: Request for Information Regarding Fees
Imposed by Providers of Consumer Financial Products or Services

To Whom It May Concern:

The American Land Title Association (ALTA)¹ strongly believes companies that mislead customers about their prices not only hurt consumers, but also fair competition. If the Consumer Financial Protection Bureau (CFPB/Bureau), based on responses to this information gathering and additional empirical research, finds there is a problem in the marketplace with so-called “junk fees,” then it must conduct an Administrative Procedures Act rulemaking to define what a “junk fee” is and issue guidance to industry. Without going through the appropriate legal process, the CFPB will harm consumers and imperil competition by developing inconsistent market standards should it attempt to regulate through enforcement actions.

ALTA is the national voice of the title insurance and settlement services industry. We work with consumers at the most critical juncture of their financial lives, closing on their home purchase and mortgage. ALTA members are the people at the closing helping to answer consumers’ questions.

Less than a decade ago, the CFPB put in place prescriptive rules for disclosing the costs of buying a home, obtaining a mortgage, and purchasing title insurance to consumers. The Bureau’s own research shows that its regime is working to help consumers understand their costs when closing on a home.² However, if the responses to the RFI suggest the need for improvements, we stand ready to work with the CFPB in updating those regulations.³

¹ ALTA represent title insurers, title agents and attorneys that provide peace of mind to Americans by insuring their property rights and closing their real estate transactions. Our members range from small, one-county operations to large national title insurers in the United States. The mission of ALTA is to improve the skills and knowledge of providers in the real property transaction, effectively advocate member concerns, and standardize products for industry use.

² Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Releases Assessment of TRID Mortgage Loan Disclosure Rule.” October 1, 2020. <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-assessment-trid-mortgage-loan-disclosure-rule/>

³ [ALTA Comment letter](#) to CFPB on proposed TRID regulation; [ALTA comment letter](#) to CFPB on timing for issuing disclosures.

The CFPB Should Provide Formal Guidance to Industry Before Taking Any Action on “Junk Fees”

Consumers are best served when the businesses that provide service to them have clear rules of the road. Unfortunately, issuing this RFI does not provide such rules. If the Bureau believes regulatory or enforcement action is necessary after considering the responses to the RFI, it should publish for comment a formal APA rulemaking and guidance.

Consumers benefit when regulators discourage bad acts through enforcement while also encouraging good behavior through clear rules and guidance. Today, the Bureau takes its enforcement role seriously, and we encourage the Bureau to take its ability to promote good practices seriously through rulemaking, too—should thorough research unequivocally find there is a problem.

If the CFPB sees a clear need to address so-called “junk fees,” it should use the rulemaking process to first clearly define a “junk fee” and then develop clear regulatory requirements addressing them. The value of dependable guidance makes it easier for businesses to comply with regulations by giving them examples of acceptable practices that can serve as a solid basis for making decisions.

The title and settlement industry is primarily made up of small businesses that serve their local communities and operate in every county in the United States. The average title agency has fewer than five employees and revenue between \$250,000 and \$500,000 annually. Clear expectations and guidelines are the life blood of decision-making for these small businesses. This is why ALTA has long supported efforts to encourage the Bureau to commit to issuing formal guidance as part of its regulatory and enforcement process.

While the Bureau has significant authority to prohibit unfair, deceptive, and abusive acts and practices (UDAAP), it has not provided any rules or guidance on how to charge and disclose fees to ensure compliance with UDAAP. Without this guidance, punishing businesses for otherwise legal practices and fee structures would be unfair and deceptive by the Bureau.

To avoid this outcome and protect consumers while promoting competition, the CFPB should go through the rulemaking process and provide explicit examples of fees that would not fall into the definition, before taking any supervisory actions.

The CFPB’s Quasi-Description of a “Junk Fee” in the RFI Lacks a Basis and is Flawed

In the RFI, the CFPB lays out four indicators that a charge may be a “junk fee.” However, the CFPB provides no support in law for this poorly crafted description. Even more troubling, the subjective nature of the Bureau’s description is so broad and expansive it potentially captures most legitimate fees paid by consumers.

In the Bureau’s RFI a “junk fee” includes:

- a. Fees for things *you believed were covered* by the baseline price of a product or service.
- b. *Unexpected fees* for a product or service.
- c. Fees that *seemed too high* for the purported service.
- d. Fees where it was *unclear why they were charged*.

Unfortunately, this vague description appears to be driven by feelings and emotions instead of anything objective and specific. It is so subjective that it provides no guidance to

consumers or businesses about “junk fees.” It is hard to imagine a consumer that wouldn’t find property taxes paid at closing or the amount charged by the county for recording their mortgage too high for the service received. As drafted, the description could be read to capture a host of legitimate and already regulated fees for important services in the home buying transaction, such as insurance premiums, closing fees and pass-through fees for distinct services like recorders’ fees and the cost of utilizing remote online notarization (RON).

Further, it is unclear how these four concepts tie to any of the Bureau’s regulatory authorities. The CFPB does not cite where it derived this description. If it comes from the Bureau’s UDAAP authority, it lacks the objective reasonableness and materiality requirements necessary.

Before taking any action based on this RFI, the CFPB must do the appropriate administrative law work to outline its authorities, conduct research, and propose for public comment an objective definition of a “junk fee.” From there, the Bureau should commit to producing reasonable guidance to aid industry in understanding how it would interact with areas where the Bureau does not have authority, like the regulation of insurance or, in general, price setting. Guidance should also clarify that a “junk fee” never includes fees for services that are regulated by a federal, state, or local government or disclosed to the consumer in advance.

One example of how a rule could work is through defining a “junk fee” based on the CFPB’s UDAAP authority. Under that authority, the Bureau could produce an objective definition that a fee is unfair to consumers if it provides no service or if the fee is illegal (like a referral fee under RESPA). Under existing guidance, a practice is unfair when it is likely to cause a substantial injury that cannot be avoided by the consumer and for which there is no countervailing benefit.

The CFPB could also explain in guidance that a fee is not necessarily a “junk fee” just because it has different names in different parts of the country. In real estate closings throughout the country, there are examples where the exact same service has a different name due to local custom and practice. Since the differently named fees are for a legitimate service, they should not be deemed a “junk fee” merely due to a different naming convention at the local level. In addition, these fees are also disclosed to the consumer in advance on a Loan Estimate and Closing Disclosure under the CFPB’s TRID rule.

Lastly, guidance could also address times when a fee is added last minute due to consumer-requested changes to a transaction. An example of this would be the addition of a courier or remote notary fee, when the buyer elects to no longer come to closing in person but instead attend remotely or have a notary come to their home. Most last-minute fees occur at the request of the consumer if a circumstance changes and thus the consumer would be harmed by providers declining the change.

State Regulation and Federal Fee Disclosure is Central to the Title Insurance and Settlement Services Industry

Protecting consumers is at the center of the title insurance industry’s core values: to lead, deliver, and protect. This cultural compass drives the industry to focus on business practices to do just that.

Over the last decade, we have worked closely with the Bureau and industry partners to improve the way we communicate and work to ensure consumers are treated fairly and honestly while ensuring that land transfer is accurate, swift, and secure.

In 2012, ALTA created the Title Insurance and Settlement Company Best Practices to develop a common language for the ways title companies protect real estate professionals, lenders,

and consumers. This tool helps the industry and its customers understand the policies and procedures for a safe closing experience and compliance under consumer protection laws. The seven pillars of ALTA Best Practices revolve around the issues of: licensing, accounting, personal information, compliant settlement procedures, title policy delivery, insurance liability, and consumer complaints responsiveness.

During the same period, we worked closely with the CFPB during the development and implementation of the new Truth in Lending Act (TILA) and RESPA Integrated Disclosures (TRID). Along with providing copious resources and data to the Bureau to assist in the development of the new disclosures, we worked closely with our partners to train the industry on compliance – including hosting a series of workshops that the Bureau participated in to promote collaboration and compliance. We also worked closely with the CFPB on its “Your Home Loan Toolkit.”

As the CFPB knows, all fees charged by title companies are disclosed to the consumer on both the Loan Estimate and Closing Disclosure. TRID sets strict rules for the way the industry’s fees are disclosed to consumers, the timing of those disclosures, and when changed circumstances allow for alterations to the disclosures. Given this reality, it would seem impossible for our fees to be of the nature the CFPB intended to address when issuing this broad RFI. That is why we are so troubled that the Bureau referenced outdated, questionable, and inflammatory opinion pieces on industry competition in the RFI’s footnotes.

Along with TRID, ALTA developed a new consumer education campaign to help homebuyers understand the closing process and the benefits of title insurance. Through our consumer education portal (www.homeclosing101.org), we host a variety of resources to help consumers shop for title insurance, understand the steps in a closing, and a glossary of common terms and fees. We have backed this effort with consumer-focused advertising and explainers through our Homeowner Outreach Program (HOP) that we make available to our members to use in their operations.

This education includes materials to help explain the common fees in a real estate transaction. A consumer typically is charged a premium, search, and exam fees (when not included in the premium) and a closing fee. Additionally, there are pass through fees for distinct services like couriers, remote online notarization, and recording services when required by the consumer, based on how they wish to close. The CFPB even used some of these materials as resources on these issues for its website.

The title insurance industry is comprehensively regulated by a state’s department of insurance, the CFPB through RESPA and where applicable, the state bar/supreme court rules. Real estate transactions are extremely local – varying from state to state and even city to city. The state department of insurance oversees the industry’s practices and rates, and examines them to ensure they are not excessive, inadequate, and unfairly discriminatory.

While title insurance premiums are regulated at the state level and thus vary by state based on their regulatory requirements, they generally range from 0.5%-1% of the purchase price of the home. Research by Fannie Mae study shows these costs average out around 0.7%.⁴ Unlike other forms of insurance, title insurance protects against risks in the history of a property’s ownership.

⁴ Fannie Mae, “Barriers to Entry: Closing Costs for First-Time and Low-Income Homebuyers.” December 2, 2022. <https://www.fanniemae.com/research-and-insights/publications/barriers-entry-closing-costs-first-time-and-low-income-homebuyers>

This backward-looking nature, in addition to the one-time fee paid at closing, makes it prudent that most of the focus of title insurance underwriting is on loss prevention prior to closing. This underwriting is typically done by local agents or direct operations and involves a labor and time-intensive search and examination of public land records. While technology has improved the process, the lack of sufficient online records makes this much more than a google search. This often means there are higher operating and personnel costs spent at the front end of the transaction to prevent losses and lower amounts needed to be held in reserve to pay claims than other insurance lines.

All these steps, in conjunction with the role of state regulation of insurance, have greatly increased consumer access to information about the industry, its services and fees, and enhanced their ability to compare and shop for title insurance and settlement services. As we continue to move more closings to digital, additional consumer education touch points should be available. The title insurance industry is working diligently to simplify the closing process for consumers and ensure they have all the information they need to make good decisions when purchasing a home.

Conclusion

While we share the Bureau's desire to root out companies and practices that mislead consumers about their charges, we also strongly believe the CFPB would benefit from conducting a full Administrative Procedures Act rulemaking before taking action on any area of concern, including so-called "junk fees." A rulemaking is needed to justify and define the concept of a "junk fee," especially given the overly broad description outlined in the RFI. Detailed guidance is also critical to provide industry clear rules of the road and set appropriate expectations for consumers.

ALTA appreciates the opportunity to submit a comment to the CFPB on this important issue and is happy to serve as a resource for any questions that may arise. As shown from past partnerships with the CFPB, the title insurance industry wants to help the Bureau educate consumers and make sure the home buying process is as easy as possible. Please reach out to Steve Gottheim, General Counsel, at sgottheim@alta.org or Chris Morton, Senior Vice President of Public Affairs & Chief Advocacy Officer, at cmorton@alta.org with any inquiries.

Sincerely,

Chris Morton

Chris Morton
Senior Vice President of Public Affairs & Chief Advocacy Officer
American Land Title Association