President
Phyllis Mulder

TLTA
TEXAS LAND TITLE ASSOCIATION

Executive Vice President & CEO
Leslie Midgley, CAE

April 16, 2012

Mr. Richard Cordray
Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe and Small Business Review Panel

Dear Mr. Cordray,

Please find the two attached letters addressing the current Consumer Financial Protection Bureau (CFPB) proposals. The first letter dated April 13, 2012 is the Texas Land Title Association's (TLTA) comments on the final round of proposals. The second letter was sent from Dr. Jared Hazelton, an economist, to TLTA in response to our inquiry. We asked Dr. Hazelton to review the proposed changes outlined in the CFPB's February 21, 2012 document entitled, "Small Business Review Panel for TILA-RESPA Integration Rulemaking – Outline of Proposals Under Consideration and Alternatives Considered" and provide his analysis on the anticipated impact these proposals would have on the settlement services market.

Thank you for your consideration.

Sincerely,

Phyllis Mulder
TLTA President

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TEXAS LAND TITLE ASSOCIATION

Executive Vice President & CEO
Leslie Midgley, CAE

April 13, 2012

Mr. Richard Cordray
Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: TLTA Comments on Know Before You Owe and Small Business Review Panel

Dear Mr. Cordray,

I am writing on behalf of the Texas Land Title Association (TLTA) regarding the proposed changes to the real estate transaction portion of RESPA governed disclosures (HUD-1). TLTA is a statewide trade association representing the Texas title insurance industry and currently serving over 11,000 title professionals in Texas.

We understand that your process for proposing a final rule is coming to a close and we want to make sure our thoughts and concerns are included as you proceed. We appreciate the opportunity for feedback you have provided over this past year. As a result of the SBREFA process, we have recently become aware of some policy proposals that are of great concern.

The title industry exists to protect consumers from harm. This is a charge taken very seriously by our membership. We share your goals and intentions to improve the experience for the homebuyer and provide the consumer the highest level of protection possible as they enter into what for many is the most significant purchase during the course of their life.

We have grave concerns that three of the proposals under consideration threaten to undermine existing protections and benefits to the consumer and therefore will not meet the objectives you seek. Specifically, we fear that the proposed zero percent tolerance, exclusive lender control of the form, and abandonment of a promulgated form each contribute to a consolidation of the market that will hurt small businesses and remove key protections the consumer now enjoys.

Tolerance

First, and most important, when integrating TILA and RESPA, we are very concerned that a zero tolerance, even for affiliates and especially for third party providers listed on the "provider list", will drive the few and largest mortgage lenders in the U.S. to vertically integrate settlement services. This will have the unintended effect of driving small business, including independent title agents, out of business, and prices will increase over time due to a lack of competition. This would be a terrible result

for your typical American homebuyer. The tolerance provisions implemented in the 2010 RESPA changes are reducing (if not eliminating) significant variations in funds due from the borrower at the closing table. Thus, any tightening of these tolerances is not necessary and could significantly change the market to the detriment of small business and the consumer. Zero tolerance will result in zero competition and choice.

Responsibility for Providing the Settlement Disclosure

Second, we believe you should adopt your second proposed alternative that will allow for shared responsibility between lenders and settlement agents. The shared responsibility approach should be required in preparing the settlement disclosure form. It is by far in the best interest of the consumer to have the party whose primary responsibility is to perform the closing or settlement, have similar responsibility for preparing the RESPA settlement portion of the Settlement Disclosure. The proposed rule should not take the neutral settlement agent out of the process and put this function in the hands of parties with potential conflicting interests. Due to CFPB's proposed merger of the loan information and settlement statement in the Settlement Disclosure, if the lender is actually designated to prepare the entire form it will reduce the role of independent settlement agents and the checks and balances provided by a third party in the settlement process. It is worth noting that given the focus on the mortgage loan transaction versus the real estate transaction, the seller's interests have not been considered during this process. Under the proposal, the seller may be forced to use the buyer's lender or affiliated settlement agency and will not have any independent voice at the settlement table. This exclusive lender control of the form will lead to the lender controlling the entire settlement process, and we fear, raise costs and fees, which is exactly what you are trying to avoid.

Promulgated Form

Finally, we sincerely believe the abandonment of the single promulgated form would be disastrous for the consumer and small businesses. For almost 40 years, the American real estate industry has enjoyed the use of a standard form. This standardization helps protect consumers by serving both as an education and transparency tool vital to understanding the terms of their transaction and by increasing efficiencies in the real estate system, which ultimately results in lower costs. Multiple forms in the marketplace would be confusing for consumers and unworkable for small businesses who would have to adjust software to accommodate different forms from different lenders.

Impact and Necessity

Impact

As you observed in your recent "Outline of Proposals", the proposed rules will have an impact on the amount of competition in certain sectors of the real estate market:

> Lenders may be more likely to enter into affiliate relations with service providers. The effect of these relationships on competing small-entity service providers is unknown. Further, if affiliate relationships were to become more common, smaller lenders may be placed at a disadvantage.

("Small Business Review Panel for TILA-RESPA Integration Rulemaking—Outline of Proposals Under Consideration and Alternatives Considered" Feb. 21, 2012, pg. 16)

We encourage you to also take into account and acknowledge the impact on competition and the availability of neutral agents in the settlement services sector. The proposals present a profound restructuring of a market that will likely result in increased costs and decreased protections for the consumer.

Necessity

Given the potential irreparable harm the proposed changes may have on the market and the interests of the consumer, it is worth pausing for a moment to reexamine the necessity of such changes. It is clear

to many observers that it is not necessary to make these changes. Specifically, Dodd-Frank does not require these changes. Section 132 of H.R. 3126 explicitly provides that "**mortgage loan transaction**" disclosures governed by TILA and RESPA (i.e. the Good Faith Estimate known as the "GFE") be combined. It does not require combining all of the **real estate transaction** documents (the remainder of the settlement issues covered by RESPA being what is now known as the "HUD-1").

Moreover, the language gives the CFPB specific discretion to recognize and leave intact "any proposal by…the Department of Housing and Urban Development" which "carries out the same purpose." This language is referring to the 10-year study and rulemaking process conversation that resulted in a major overhaul of the Settlement Statement. These 2008 HUD reforms were adopted by the President early in his term and were absorbed and implemented by the industry in 2010. These recent and comprehensive reforms acknowledged and accounted for in Dodd-Frank are the reforms the CFPB is now considering overturning.

We respectfully recommend that you act upon the direction of Dodd-Frank with respect to TILA and the GFE portion of RESPA without reaching into the real estate transaction portion of the RESPA form and without economically realigning the real estate industry, the result of which, we believe, will force the closure of an entire sector that is presently providing a valuable service protecting consumers for a reasonable price.

Thank you for your consideration of these recommendations. We remain available as a resource for you if we may be of any service or answer any questions.

Sincerely,

Phyllis Mulder
TLTA President

Jared E. Hazleton, Ph.D.
133 Roadrunner Lane
Burnet, Texas 78611
(512) 793-6842

April 16, 2012

Leslie Midgley, CAE
Executive Vice President and CEO
Texas Land Title Association
1717 West 6th St., Suite 120
Austin, TX 78703

Dear Mrs. Midgley,

You have requested that I review rule changes proposed by the Consumer Financial Protection Bureau (CFPB) relating to consolidation of the truth in lending (TILA) disclosure form and the Real Estate Settlement Procedures Act (RESPA) settlement statement. Specifically, you asked whether in my opinion the proposed rule changes would impact the structure of the market for settlement services and, if so, what would be the long run impact of the resulting market structure on consumers?

The settlement industry consists of numerous independent title agents serving relatively local markets and a few large title underwriters and settlement agencies which have offices across the nation providing services in many states and localities. For the most part, mortgage originators and lenders rely on these agencies to provide services related to the real estate settlement process.

I have carefully reviewed the "Outline of Proposals Under Consideration and Alternatives Considered" dated February 21, 2012, prepared by the CFPB for the Small Business Review Panel convened under the Small Business Regulatory Enforcement Act (SBREFA). Based on my review, I believe the proposed rule changes would likely result in increased vertical integration in the industry with settlement services being provided by the lender itself or by firms which because of their size could negotiate with large lenders to provide such services. Thus, the role and market presence of small independent title agents would be eliminated or greatly reduced.

- The CFPB is proposing to lower the 10% tolerance allowed in total cost variation from GFE to the closing from 10% to 0%. My reading of the CFPB summary cited above leads me to the conclusion that the elimination of the 10% allowance would apply not just to affiliated businesses and settlement agents but rather to all agents. In other words, in order to get the business, title agents would have to be on the "provider list" and if they are on the list they would have to comply with the zero tolerance requirement.

- If the lenders are going to be held accountable for any variation in closing costs above those contained in the initial estimate, it only stands to reason that they will want to

control those costs. They could achieve control either by bringing such costs in house (providing the settlement functions themselves) or by entering into agreements with large national providers (underwriters or settlement services providers) whose size and national prominence would eliminate or greatly reduce the likelihood of the lenders having to absorb variation in costs above the initial estimate. The CFPB explicitly recognizes that under the proposed rule changes, lenders should be better able to estimate the cost of services provided by a company they own or with which they are affiliated because of their knowledge of the company's business (summary p. 11).

- The proposed rules would result in both the TILA loan application and the settlement information being prepared by the loan provider rather than having the lender complete only the TILA portion of the form as at present. In other words, the proposed rule changes would essentially eliminate the need for the services provided by the independent agents.

- The CFPB is also considering replacing the standardized promulgated settlement form with a set of guidelines as to the content of the form. Allowing variation in the settlement forms would place an undue burden on small banks and title agents which might not have the resources to accommodate differing settlement forms.

- Thus, the inevitable effect of the proposed rule changes would be to eliminate or greatly reduce the role of small independent title agents in the settlement process.

In the long-run, the departure from the market of small independent title agents would be expected to negatively impact competition in the settlement industry.

- The industry market structure would become more concentrated as the proposed rule changes drive out smaller competitors and consolidate market power in the hands of fewer and larger entities.

- Economic theory supports the view that more concentrated markets offer consumers less choice.

- Economic theory also supports the conclusion that in the long run, more concentrated markets are likely to result in higher prices to consumers.

Thus, I conclude that the proposed rule changes would result in increased vertical integration of settlement service providers significantly reducing the presence of small independent title agents; and that in the long-run industry consolidation would reduce competition in the industry leading to fewer choices for consumers and higher prices for settlement services.

Sincerely,

Jared E. Hazleton

BIO – JARED E. HAZLETON

Dr. Hazleton received his BBA degree in accounting from the University of Oklahoma and a Ph.D. in economics from Rice University. He has been a tenured full professor in economics, finance, and public policy at the University of Texas, the University of Washington, Texas A&M University, and the University of North Texas. He served as Associate Dean of the LBJ School of Public Affairs at UT-Austin, Dean of the Graduate School of Public Affairs at the University of Washington, founder and Director of the Center for Business and Economic Analysis at Texas A&M University, and Dean of the College of Business Administration at the University of North Texas.

Outside of academics, he served as an Officer in the U.S. Navy, an officer of the Federal Reserve Bank of Boston, president of the Texas Research League (a 501c organization doing research on issues of public policy at the state and local level), and vice president for economics for T. Boone Pickens' Mesa Limited Partnership (at the time the largest independent oil and gas firm in the nation).

He is the author of three books, four monographs, and over 40 professional publications, and has been a principal investigator on more than $2 million of research projects sponsored by the National Science Foundation. He has testified as an economics expert in both federal and state courts and has been a consultant to numerous public and private organizations at both the state and national level. He was elected President of the Southwestern Economics Association and the National Taxpayers Conference, and Treasurer of the Association for Public Policy and Management.

He currently is a principal with TexEcon, an economics consulting firm Additional information on Dr. Hazleton's accomplishments may be found in his listing in the sixty-fifth (2011) edition of Marquis *Who's Who In America*.