



June 28, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street N.W.
Washington, D.C. 20551

Re Request for Information Regarding Bureau Guidance and Implementation Support Docket Number CFPB-2018-0013.

Dear Mr. Mulvaney:

In May at American Land Title Association's¹ (ALTA) Advocacy Summit you discussed your philosophy that the Bureau should inform companies of the rules of the road by providing concrete guidance and examples prior to enforcement. We could not agree more. That is why ALTA supports H.R. 5534, the Give Useful Information to Define Effective Compliance (GUIDE Compliance) Act, introduced by Reps. Sean Duffy (R-WI) and Ed Perlmutter (D-CO).

The GUIDE Compliance Act requires the Bureau to set up a process for publishing examples, answers to frequently asked questions and other tools to help the industry understand how the Bureau's rules apply in real life situations. This would provide businesses with an outlet to obtain more certainty around compliance before making costly business decisions. While we support H.R. 5534, we urge the Bureau to use its existing authority to implement the core pieces of the GUIDE Compliance Act, H.R. 5534.

Service Providers and Vendor Management

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.

The single most helpful piece of guidance the Bureau could put out to help the title industry is more clarity to lenders on acceptable ways to tailor their vendor management practices for different business partners. ALTA has been pushing for more clarity since April 2012 when the Bureau issued its first bulletin on this topic. Despite numerous letters and meetings on the subject, the Bureau has so far refrained from producing this much needed guidance.

In April of 2012 the Bureau issued CFPB Bulletin 2012-03 on Service Providers² which stated that financial institutions under Bureau supervision may be held responsible for the actions by the companies with which they contract. The bulletin recommended that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers.

While this bulletin was similar in nature to those put out by other financial regulators, it lacked the clear examples these regulators provided. This lack of context left not only ALTA members but also their lending partners unsure of the expectations.

In light of this confusion, ALTA developed the Title Insurance and Settlement Company Best Practices (Best Practices) and accompanying assessment procedures. This tool allows industry professionals to demonstrate to consumers, lenders and other parties who may contract their services that they have adopted policies and procedures in compliance with the Best Practices standards.

ALTA's Best Practices is the benchmark for the mortgage lending and real estate settlement industry that supplement the minimum legal requirements of federal and state law. This voluntary program is designed to help the title and closing industry illustrate to consumers and clients the various policies and procedures they follow to help protect consumers, promote quality service and ensure a positive and compliant real estate settlement experience. These Best Practices can also help a financial institution determine that the settlement company they work with has internal controls and well-trained people in place to ensure that they are aware of consumer protection laws and can operate in compliance with Federal regulations.

ALTA's Best Practices initiative is proactive, self-regulation from the land title industry to help protect consumers. Documenting and following effective processes helps ensure accuracy,

² CFPB Bulletin 2012-03. April 13, 2012.

provides further safeguards to consumers and greatly reduces the risk of loss. We hope that you will encourage financial institutions to consider utilizing ALTA's Best Practices as part of their compliance management process for title and settlement companies.

The Best Practices address seven main areas ranging from controls regarding escrow and trust accounts to protecting customers' personal information and responding to complaints:

1. Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services. The purpose is to ensure that the company is fully compliant with all applicable laws and regulations.
2. Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation. These controls help meet client and legal requirements for safeguarding client funds.
3. Adopt and maintain a written privacy and information security plan to protect Non-public Personal Information as required by local, state and federal law. Federal and state law requires a written information security plan describing how non-public customer information is protected.
4. Adopt standard real estate settlement policies and procedures. This can ensure a settlement company can provide a safe and compliant settlement and meet state, federal and contractual obligations governing the settlement process and provide for ongoing employee training.
5. Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance. Appropriate procedures for the production, delivery and remittance of title insurance policies ensures title companies meet their legal and contractual obligations.
6. Maintain appropriate professional liability insurance and fidelity coverage. Appropriate levels of professional liability ensure that title agencies and settlement companies have the financial capacity to stand behind their professional services.

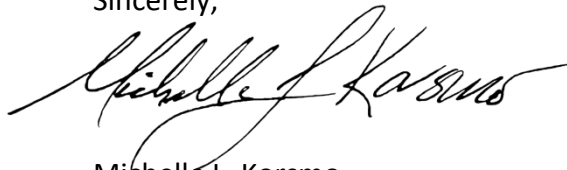
7. Adopt and maintain procedures for resolving consumer complaints. A process for receiving and addressing consumer complaints is important to ensure that any instances of poor service or non-compliance do not go undiscovered.

We appreciate the Bureau reissuing its guidance on service providers in October 2016 to clarify that the depth and formality of the risk management program for service providers may vary depending upon the service being performed—its size, scope, complexity, importance and potential for consumer harm—and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations.³ While this is helpful, it does not solve the confusion on its own.

What would be valuable to our members and their lender partners are concrete examples of acceptable vendor management programs for different industries. This could be done through examples in the Bureau's examination manual and Supervisory Highlights publication. Additionally, the Bureau should amend its bulletin and supervisory materials to encourage lenders not to limit consumer choice when establishing vendor management programs. Lastly, the Bureau should instruct lenders to specifically tailor their vendor management programs to the specific risks presented by each type of vendor. This will prevent small title companies from going through the same diligence that would be appropriate for a large credit reporting vendor.

We appreciate you considering these recommendations and the RFI process. The best way to ensure the Bureau meets its mission is to have it produce guidance that gives title companies and lenders examples applying its rules to real life. We look forward to continuing to work with the you to achieve this through regulatory and legislative means.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, with the first name "Michelle" and last name "Korsmo" being the most prominent parts.

Michelle L. Korsmo
Chief Executive Officer

³ 81 FR 74410.