Title Insurance (C) Task Force

March 29, 2014
Phoenix, AZ
Attachment One:
Consider Adoption of its Feb. 20 Minutes
Draft Pending Adoption

Title Insurance (C) Task Force
Conference Call
February 20, 2015

The Title Insurance (C) Task Force met via conference call February 20, 2015. The following Task Force members participated: Director Bruce R. Ramge, Chair (NE); Kevin M. McCarty, Vice Chair, represented by Amy Groszos, Belinda Miller and Jeffrey Joseph (FL); Lori K. Wing-Heier represented by Michael Ricker (AK); Dave Jones represented by David Lee, Emma Hirschhorn and Jill Jacobi; Chester A. McPherson represented by Philip Barlow (DC); Ken Selzer represented by Martin Hazen (KS); Sharon P. Clark represented by Robin Coombs and Bryan Smith (KY); Annette E. Flood represented by Jean Boven, Michael Draminski and Sherry Bass-Pohl (MI); Mike Rothman represented by Jason Broberg nd Paul Hanson (MN); John M. Huff represented by Tamara Kopp (MO); John G. Franchini represented by Mickey VanCuren (NM); John D. Doak represented by Cuc Nguyen and Joel Sander (OK); Joseph Torti III represented by Paula M. Pallozzi (RI); David Mattax represented by Sallie Williams-Tyrrell and Susannah Cooper (TX); Todd E. Kiser represented by Brett Barratt (UT); Jacqueline K. Cunningham represented by Mike Beavers (VA); Mike Kredlter represented by Jim Tompkins and Lee Barclay (WA). Also participating were: Bobbie Baca and Neil A. Herr (CO); Michelle Brugh Rafeld (OH); David Dahl (OR); Darlene Arnold (MD); Win. A Pugsley (NH) and Rolf Kaumann (NY).

1. Adopted its 2014 Fall National Meeting Minutes

Ms. Jacobi made a motion, seconded by Mr. Barratt, to adopt its Fall National Meeting minutes (See NAIC Proceedings – Fall 2014, Title Insurance (C) Task Force Nov. 17, minutes). The motion passed.

2. Reappointed its Working Groups

Ms. Pallozzi made a motion, seconded by Mr. Beavers, to reappoint the following working groups: Title Insurance Financial Reporting (C) Working Group, Title Insurance Guaranty Fund (C/E) Working Group and Title Insurance Consumer Shopping Tools (C) Working Group. The motion passed.

3. Voted to Expose the Draft Title Guaranty Fund Guideline

Ms. Jacobi stated that the Title Insurance Guaranty Fund (C/E) Working Group adopted its draft of the Title Insurance Guaranty Association – Title Insurance Consumer Protection Fund Guideline (Title Insurance Guaranty Fund Guideline) via an e-vote that concluded Nov. 3. The Title Insurance Guaranty Fund Guideline explains how states might create a state fund for title insurance and a nonprofit entity to act as a state guaranty fund association with membership required for all insurers writing business in that state.

Ms. Pallozzi made a motion, seconded by Mr. Hazen, to expose the draft Title Guaranty Fund Guideline for a public comment period ending March 20. The motion passed.

4. Discussed Comments Received on the Draft Consumer Shopping and Best Practices Guide

Ms. Rafeld stated that the draft shopping tool is meant to be a template that can be modified by each state or jurisdiction according to statute. Ms. Rafeld suggested adding drafting notes and an introductory summary to the document to provide guidance on the document’s intended use. Birny Birnbaum (Center for Economic Justice—CEJ) suggested that the draft be sent to the individual states to procure feedback on the usefulness of the draft. Ms. Miller stated that she believes the document should go into more detail about the difference between owners and lenders policies to address the risks retained by consumers if they choose not to purchase an owners policy. Mr. Draminski stated that his suggested revisions were mostly grammatical and that he believes technical terminology should be retained and explained since that is what consumers will see when they review the title documents and closing forms. Brenda Cude (University of Georgia) stated that some of the grammatical changes Mr. Draminski suggested negate the work she had done to ensure that the document is at an 8th grade reading level. Ms. William-Tyrrell and Ms. Jacobi stressed the importance of explaining the difference between owners and lenders policies to consumers so they can make informed decisions when choosing the title coverages to obtain. Ms. Jacobi also suggested that a clear explanation of the difference between title insurance and homeowners insurance be included in the
final shopping tool template. Mr. Ramge stated that the next step is for the Working Group to reconvene and make additional changes pursuant to comments received and discussion on the call.

5. Discussed Model Law Development Relative to CFPB Disclosures

Section 9 of the Title Insurance Agent Model Act (#230) and section 14 of the Title Insurers Model Act (#628) contain information on disclosures that must be provided to title insurance consumers and the length of time disclosures must be provided to consumers prior to closing. Model #230 was adopted by five jurisdictions: Alabama; Washington, DC; Kansas; Louisiana; and Nebraska. Model #628 was adopted by eight jurisdictions: Connecticut; Washington, DC; Hawaii; Louisiana; Montana; Nebraska; South Carolina; and Wyoming. Due to the broad language contained in the Model #230 and Model #628, as well as the low rates of adoption by member states, the Task Force is unsure about the need for amendments at this time.

Ron Blithenthal (Old Republic) stated that the primary issue with the Consumer Financial Protection Bureau (CFPB) disclosures is that they do not allow discounts to be shown explicitly on the settlement statement and, therefore, produce incorrect title insurance amounts in a majority of states. The second issue is that the CFPB disclosures inform consumers that owner’s policies are optional. This could drive consumers to choose not to purchase owners insurance because they do not understand the associated risks. Ms. Williams-Tyrrell stated that the Texas Department of Insurance is attempting to develop more consumer education tools that stress the importance of owner’s policies and that complaints regarding CFPB guidelines should be submitted to the CFPB. The Task Force will hear from the American Land Title Association (ALTA) at the Spring National Meeting to obtain clarification on the issues regarding the CFPB closing disclosures and information to consumers. Woody Girion (Fidelity National Financial) stated that an explanation from the CFPB on the reasoning for their rulings, guidelines and required forms would be helpful to determine how to fix the identified issues.

Having no further business, the Title Insurance (C) Task Force adjourned.
Attachment Two: Consider Adoption of Working Group Reports
Title Insurance Financial Reporting (C)
Working Group
Title Insurance Financial Reporting (C) Working Group
Conference Call
February 17, 2015

The Title Insurance Financial Reporting (C) Working Group met via conference call Feb. 17, 2015. The following Working Group members participated: Gordon Hay and Justin C. Schrader, Chair (NE); Kim Hudson, Susan Bernard and Tomoko Stock (CA); Otis Phillips (NM); and David Dahl (OR). Also participating were: Michael Ricker (AK); Neil Derr (CO); Martin Hazen (KS) Jim Pafford, Joel Meyer and Peter Rice (FL); Robert Lutton (MI); Carrie Couch (MO); Arthur Schwartz (NC); Cuc Nguyen and Eli Snowbarger (OK); Suzette Green-Wright (UT); Miranda Cloutier (VT);

1. Exposed for Comment a Blanks Proposal Regarding Changes to Schedule P

Mr. Hay stated that the proposal to the Blanks (E) Working Group contains two revisions to the Title Annual and Quarterly Statement Blanks (Title Statement) and the Title Annual and Quarterly Statement Instructions (Title Instructions). The first change is to add one and two year loss development in the Title Insurance Five Year Historical Data Exhibit. The second proposed change is to require the Appointed Actuary to comment on one and two year loss development for Schedule P Part 3 if it exceeds 20 percent of surplus. Currently, appointed actuaries must explain Schedule P Part 2 development if it exceeds 20 percent of surplus. The reasons for the changes are as follows:

- The Property and Casualty Five Year Historical Data Exhibit contains data related to one and two year development. Adding the data to the Title Statement will increase consistency between the Property and Casualty Annual and Quarterly Statement Blanks (Property Statement) and the Title Statement.
- Title insurance policy year loss emergence is typically slower than accident year emergence in virtually any Property Casualty reserving segment. Known Claims Reserve development on the report year basis from Schedule P Part 3 will provide a leading indicator for Schedule P Reserve development on the policy year basis from Schedule P Part 2.
- These statistics are easily calculated from required information.
- Historical development studies have shown wide variations over time and between companies in the adequacy of Title insurers’ Schedule P and Known Claims Reserves.
- All executives who sign the Title Statement and all Title insurance Appointed Actuaries should be aware of the development patterns from their Companies’ historically booked Schedule P and Known Claims Reserves.

The Working Group discussed proposed changes and determined that to be transparent and allow for industry and actuarial input; the proposal should be modified to exclude the second suggested change requiring the Appointed Actuary to opine on the Schedule P Part 3 if it exceeds 20 percent of surplus. That portion of the proposal has not been reviewed by industry or the Casualty Actuarial and Statistical (C) Task Force. The Working Group decided to exclude the second proposed change in the proposal for the 2015 reporting year.

Upon a motion by Mr. Hudson, seconded by Mr. Dahl, the Working Group adopted the proposal to the Blanks (E) Working Group suggesting the addition of the one and two year loss development in the Title Insurance Five Year Historical Data Exhibit.

2. Discussed Potential Revisions to the Instructions for Title Insurers’ Notes 25

Mr. Hay said that Statement of Statutory Accounting Principles (SSAP) 55 Paragraph 16 includes a requirement of disclosures relative to content in Note 25 of the Title Instructions. Mr. Hay stated that the 2014 Title Instructions Notes to Financial Statements 25 are identical to the Property Instructions Notes 25; however, there are differences for Title insurance which include:

- Title balance sheet liabilities include a known claims reserve, equal to the sum of bulk and case reserves from Schedule P Parts 3C and 3D.
- Normally, the Statutory Premium Reserve is the balance sheet liability replacing the usual Property and Casualty provisions for IBNR (both loss and ALAE) and the provision for unpaid ULAE associated with known claims and IBNR claims.

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Draft Pending Adoption

- In exceptional circumstances, the Schedule P Part 1 estimated liability exceeds the sum of known claims reserve and Statutory Premium Reserve. If this is so, a Supplemental Reserve makes provision in the balance sheet liabilities for the excess amount.
- Title insurers write only Title insurance, so development cannot be attributed to specific lines.
- Title insurers do not write retrospectively rated policies, and the Instructions for Notes 24 (Retrospectively Rated Contracts and Contract Subject to Redetermination) state “Title Companies should not complete this Note, not applicable.”

Mr. Hay observed in the company filings for 2nd and 3rd quarter 2014 Title Statements that the intended calculation and disclosure of reserve development is generally not achieved. In many cases, Note 25 is missing or populated with such assertions as “not applicable,” “None,” “no significant changes,” or zero amounts. In some cases, the illustrative language is followed more or less closely, but the amounts document the calendar year-to-date reserve change rather than calendar year-to-date development. In no case does the company clarify whether the subject of the Note is the known claims reserve or the Schedule P Part 1 reserve.

The Working Group decided to seek comment on a proposed revision to the Title Instructions regarding Note 25 to account for variances between title and property casualty data reporting. Brent Scheer (Agents National Title) stated that he would request input from American Land Title Association (ALTA) members to obtain industry comments on the proposed change in Annual Statement Instructions for Title Insurers’ Note 25.

Upon a motion by Mr. Hudson, seconded by Mr. Phillips, the Working Group voted to expose the draft proposal concerning potential changes to the Title Instructions for Note 25 with comments due no later than April 6.

Having no further business, the Title Insurance Financial Reporting (C) Working Group adjourned.
NAIC BLANKS (E) WORKING GROUP

Blanks Agenda Item Submission Form

DATE: 2/20/15

CONTACT PERSON: Aaron Brandenburg

TELEPHONE: 816-783-8271

EMAIL ADDRESS: abrandenburg@naic.org

ON BEHALF OF: Title Insurance Financial Reporting (C) Working Group

NAME: Gordon Hay

TITLE: Sr. Casualty Actuarial Examiner

AFFILIATION: Nebraska Department of Insurance

ADDRESS:

FOR NAIC USE ONLY

Agenda Item #
Year 2015
Changes to Existing Reporting [ X ]
New Reporting Requirement [ ]

REVIEWED FOR ACCOUNTING PRACTICES AND PROCEDURES IMPACT

No Impact [ X ]
Modifies Required Disclosure [ ]

DISPOSITION

[ ] Rejected For Public Comment
[ ] Referred To Another NAIC Group
[ ] Received For Public Comment
[ ] Adopted Date
[ ] Rejected Date
[ ] Deferred Date
[ ] Other (Specify) 

BLANK(S) TO WHICH PROPOSAL APPLIES

[ X ] ANNUAL STATEMENT
[ X ] INSTRUCTIONS
[ X ] CROSSCHECKS
[ X ] BLANK

[ ] Life and Accident & Health
[ ] Property/Casualty
[ ] Fraternal
[ ] Other Specify
[ X ] Health
[ X ] Title

Anticipated Effective Date: Annual 2015

IDENTIFICATION OF ITEM(S) TO CHANGE

Add one year and two year loss development in the Title Insurance Five Year Historical Data Exhibit.

REASON, JUSTIFICATION FOR AND/OR BENEFIT OF CHANGE**

1. The Property and Casualty Five Year Historical Data Exhibit contains data related to one year and two year development within it. Adding the data to the Title Blank will increase consistency between the P&C and Title Blanks.
2. Title insurance policy year loss emergence is typically slower than accident year emergence in virtually any P&C reserving segment. Known Claims Reserve development on the report year basis from Schedule P Part 3 will provide a leading indicator for Schedule P Reserve development on the policy year basis from Schedule P Part 2.
3. These statistics are easily calculated from required information.
4. Historical development studies have shown wide variations over time and between companies in the adequacy of Title insurers’ Schedule P and Known Claims Reserves.
5. All executives who sign the Title Annual Statement and all Title insurance Appointed Actuaries should be aware of the development patterns from their Companies’ historically booked Schedule P and Known Claims Reserves.

NAIC STAFF COMMENTS

Comment on Effective Reporting Date:

Other Comments:

** This section must be completed on all forms.
FIVE-YEAR HISTORICAL DATA

This exhibit is a display of key statistics extracted from the annual statements of the current year and each of the four preceding years. It displays recent trends in the movement of sales, in force, surplus, and other financial data. For the most part, each section of five-year historical data references data from a specific page in the annual statement, with certain “key” lines having been extracted from that page. Page and line references for the current year are shown on the Exhibit. If a page or line reference is different for a prior year or years, it is shown below. Percentages are shown to one decimal place (e.g., 17.6).

All figures taken from or developed from annual statements of corresponding years.

The derivation of each line on Five-Year Historical Data is indicated in the annual statement blank except that Lines 42 and 43 should be based upon the book/adjusted carrying value of the asset, which is consistent with the other affiliated investments.

Reporting entities that were part of a merger should refer to SSAP No. 3, Accounting Changes and Corrections of Errors, for guidance on restatement of prior-year numbers and footnote disclosure requirements for this exhibit. Complete the footnote only if reporting entity was a party to a merger in the current reporting period.

**Source of Direct Title Premiums Written**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Reference</th>
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<tbody>
<tr>
<td>Line 1</td>
<td>Direct Operations</td>
<td>Part 1A, Line 1, Column 1</td>
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**Other Percentages**

<table>
<thead>
<tr>
<th>Line 64</th>
<th>Losses and Loss Expenses Incurred to Net Premiums Written</th>
<th>Page 4, Line 4</th>
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<tbody>
<tr>
<td>Line 65</td>
<td>Operating Expenses Incurred to Net Premiums Written</td>
<td>Page 4, Line 5</td>
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**One Year Schedule P Part 2 Development (000 omitted)**

<table>
<thead>
<tr>
<th>Line 66</th>
<th>Development in Estimated Losses and ALAE on Policies Effective Before Current Year</th>
<th>Schedule P, Part 2 Summary, Line 22, Column 11</th>
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<tbody>
<tr>
<td>Line 67</td>
<td>Percent of Such Development to Policyholders’ Surplus of Prior Year-End</td>
<td>Five Year Historical, Line 66 divided by Page 4, Line 16, Column 1 x 100.0</td>
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</tbody>
</table>
One Year Schedule P Part 3 Development (000 omitted)

Line 68 – Development in Estimated Losses and ALAE for Claims Reported Before Current Year

All years .................................. Schedule P, Part 3 Summary, Line 12, Column 11

Line 69 – Percent of Such Development to Policyholders’ Surplus of Prior Year-End

All years .................................. Five Year Historical, Line 68 divided by Page 4, Line 16, Column 1 x 100.0

Two Year Schedule P Part 2 Development (000 omitted)

Line 70 – Development in Estimated Losses and ALAE on Policies Effective Before Prior Year-End

All years .................................. Schedule P, Part 2 Summary Line 22, Column 12

Line 71 – Percent of Such Development to Reported Policyholders’ Surplus of Second Prior Year-End

All years .................................. Five Year Historical, Line 70 divided by Page 4, Line 16, Column 2 x 100.0

Two-Year Schedule P Part 3 Development (000 omitted)

Line 72 – Development in Estimated Losses and ALAE for Claims Reported Before Prior Year-End

All years .................................. Schedule P, Part 3 Summary, Line 12, Column 12

Line 73 – Percent of Such Development to Reported Policyholders’ Surplus of Second Prior Year-End

All years .................................. Five Year Historical, Line 72 divided by Page 4, Line 16, Column 2 x 100.0
ANNUAL STATEMENT BLANK – TITLE

FIVE–YEAR HISTORICAL DATA

Show amounts in whole dollars only, no cents; show percentages to one decimal place, i.e. 17.6.

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<tr>
<th>Source of Direct Title Premiums Written (Part 1A)</th>
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One Year Schedule P Part 2 Development (000 omitted)

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<th>Capital and Surplus Accounts (Page 4)</th>
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<td>47. Net unrealized capital gains or (losses) (Line 18)</td>
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<td>48. Change in nonadmitted assets (Line 21)</td>
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<td>49. Dividends to stockholders (Line 28)</td>
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<td>50. Change in surplus as regards policyholders for the year (Line 31)</td>
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One Year Schedule P Part 3 Development (000 omitted)

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Title Insurance Guaranty Fund (C/E)
Working Group
Title Insurance Guaranty Fund (C/E) Working Group
Conference Call
December 1, 2014

The Title Insurance Guaranty Fund (C/E) Working Group of the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force met via conference call Dec. 1, 2014. The following Working Group members participated: John Finston, Co-Chair, and Jill Jacobi (CA); Cynthia D. Donovan, Co-Chair (IN); Philip Barlow (DC); Gordon Hay (NE); Otis Phillips (NM); and James Kennedy (TX).

1. Discussed Draft Guideline Wording

Ms. Jacobi discussed the Section 7, A, 1 wording. She suggested that the wording be revised to read: “Be obligated to the extent of covered claims not resolved prior to the determination of insolvency.” Mr. Finston stated that his understanding was that the title defect had to exist prior to the issuance of the policy for coverage to apply. Ms. Jacobi said that she had checked the Texas Title Insurance Guaranty Fund Act, and it did not have any “arising prior” wording. Sherwood Girion (Fidelity National Financial) stated that using the “not resolved” wording would be an improvement over the “arising prior” wording.

Mr. Kennedy said the Texas Title Insurance Guaranty Fund Act had a requirement that policies be cancelled within five years. He stated that the wording as it reads now conflicts with most receivership acts. He says most guaranty acts say “unpaid” rather than “arising prior.”

Mr. Finston reminded Mr. Kennedy that in title insurance, the cure for the defect was often not the payment of a claim, but for the title company to resolve the defect in the title. That is why he believes the use of “not resolved” or “unresolved” would be more appropriate wording. Ms. Jacobi stated that title claims are often not paid out, but are resolved in another manner.

Aaron Brandenburg (NAIC) stated that the document would have to be approved by the Title Insurance (C) Task Force and the Receivership and Insolvency (E) Task Forces. Most likely, this will have to take place in the spring of 2015 prior to the Spring National Meeting. The document would go to Executive/Plenary after approval by the Property and Casualty Insurance (C) Committee and the Financial Condition (E) Committee at the Spring Meeting.

Mr. Finston said a vote was needed to move the guideline to the parent committees. Because the Working Group did not have a quorum on the call, an e-vote would have to be conducted. Mr. Finston asked that NAIC staff supply voting members of the Working Group with a final draft of the guidelines with expanded drafting notes. Voting members will be asked to approve the revised draft via an electronic vote. Members are to submit their vote by close of business Dec. 15.

Having no further business, the Title Insurance Guaranty Fund (C/E) Working Group adjourned.
Discussed Comments Received Regarding Draft Shopping Tool and Best Practices Guide

Ms. Coombs said she is concerned about the shopping tool including the whole real estate transaction and would prefer that the document address only title insurance. She said she believes a comprehensive tool is not necessary as there is a wealth of information available regarding home buying. Mr. Hazen stated that it was determined when the Working Group commenced that this tool should be a comprehensive document concerning the real estate buying process in order to receive support from real estate agents and the rest of the industry. Support is needed from people outside the title insurance industry in order to reach the consumer sooner in the home buying process. He also reiterated that each state should use this as a template and modify it in accordance with state law.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that he does not support the use of the shopping tool for several reasons. The first because he feels is that there is no clearly identified market problem that the document is solving being addressed. The second general problem is that there has been no analysis of the markets for title insurance and settlements in forming the product. He said that the Working Group should analyze the market for title insurance and settlement services and take them into consideration for creation of a consumer shopping tool. He stated that it is critical that information and disclosures intended to empower title insurance consumers consider the nature of title insurance markets and the title insurance transaction. The proposed document does not do this. Rather, it seems to provide information to consumers as if the title insurance was a consumer good that consumers had time and interest to research. He stated that due to the nature of title insurance and the time-restrictive nature of the process, a shortened, condensed document would be more effective. The third general problem is there has been no testing of the document with consumers to determine the effectiveness of it. Mr. Birnbaum stated that the document should be tested with consumers to determine its value in providing information and clarity. He said that based on experience it is highly unlikely that a consumer will wade through such a lengthy document and complete the one page for comparison shopping. He said that the era of providing a lengthy booklet is long past and consumers are overwhelmingly shopping, reading and searching for information online and through mobile devices. He suggested that consumers prefer abbreviated information readily available on a mobile device. He stated that there is no empirical support for the recommended process for getting this document to consumers and no recommendation on how and when to get it to the consumer. Finally, the list fails to address the key issue of when in the real estate purchase or refinance process the consumer should or will get the key information. Mr. Birnbaum also said that the best practices guide was an ineffective tool for states to determine when and how to get the information to consumers. He stated that he does not think it is a good strategy to put out a twelve page single spaced document and then tell the states that they can edit it as they want. He stated that the whole goal of the NAIC coming up with disclosures is to make it readily available for states to use not to provide an encyclopedia and then tell states that this is a resource they can cut and paste from. Mr. Birnbaum stated his disfavor for use of a document that is tailored by individual states. He suggests that a uniform document be created that is consistent among the states and provides a summary of title insurance for distribution to the consumer early in the real estate transaction. Mr. Byrd stated that he does not believe there is a one-size-fits-all solution regarding title insurance as state laws vary significantly. This was apparent in early discussions among the Working Group and was the basis for creation of a template instead of a direct-to-consumer informational. Randall Bradley (Placer Title Company) stated it appears the market issue addressed by the shopping tool and best practices guide is reverse competition. He agreed with Mr. Byrd about the variances in state law being an issue and believes a one-size-fits-all document would not be feasible for use in California. Ms. Greiner stated that the charge of the Working Group was to create a shopping tool, not a white paper regarding issues in the marketplace for title insurance. She stated that this document is to help consumers shop for title insurance and that the questions and rate comparison tool are intended for consumers to take directly to title insurers so that they may have the tools necessary to understand what they are buying. She stated that without development of a product, no testing can be done to determine the document’s effectiveness. Upon adoption of the document, states can begin
using it and reconvene to verify or improve its usefulness. Madeline Nagy (American Land Title Association—ALTA) suggested adding the Consumer Financial Protection Bureau (CFPB), National Association of Realtors (NAR), Mortgage Brokers Association (MBA), National Association of Home Builders (NAHB) and the National Bar Association (NBA) to the best practices guide. Tom Imperial (Title365) stated his strong support of the document and believes the comprehensive approach, as well as adaptability of the product, works best for title insurance.

Mr. Byrd suggested changing the order of the sentence on the last paragraph under “What is Title Insurance and What Does it Cover?” on page four to state, “And if you lost the dispute, you could lose money, the equity you have in your home and possibly ownership.”

Mr. Draminski stated that the document refers to a title commitment as a report on page four under “What Doesn’t Title Insurance Cover?” He said that Michigan’s title commitment is different from the title search report. To avoid confusion, he suggested removing use of report in conjunction with the title commitment. Ms. Rafeld agreed to make that change.

Mr. Imperial asked about the sentence on page four under “Two Types of Title Insurance—Lender’s and Owner’s Policies” that states, “If you borrow money to buy your home, your lender may require you to buy a lender’s policy.” He questioned if this should be changed to: “your lender will require you to buy a lender’s policy.” Ms. Green stated that there are instances in Utah where the lender’s policy is not required by the lender. Ms. Baker stated that she was unaware of any instances when it is not required in Texas. It was determined that lenders most likely but not always require the purchase of a lender’s policy, so the language should be revised to state, “If you borrow money to buy your home, your lender will most likely require you to buy a lender’s policy.” Mr. Imperial also asked whether the paragraph on page eight concerning closing protection letters should be included or if it is the intent of the group to encourage consumers to request a closing protection letter. Several members stated that they would encourage use of a closing protection letter as they have seen issues regarding coverage in their states that could have been mitigated by the use of a closing protection letter. Ms. Baker stated that closing protection letters are different in Texas as they are an agreement between the agent and the lender that protect the lender. The Working Group decided that this paragraph should remain intact and that the states could tailor the document based on state law. Mr. Draminski stated that in Michigan, the “lender’s policy” is known as “loan policy.” The Working Group decided to leave it “lender’s policy” in the document as this is the terminology used by the majority of states and that Michigan tailor the document for use in its state.

Ms. Rafeld stated that she would update the best practices guide with additional items received from Ms. Nagy. Additional items to include are: CFPB, NAR, MBA, NHA, NBA and consumer advocate groups that assist first-time homebuyers.

Ms. Baker made a motion, seconded by Mr. Byrd, to conduct an e-vote to consider the shopping tool and best practices guide pursuant to revisions discussed on the call. The motion passed.

Having no further business, the Title Consumer Shopping Tools (C) Working Group adjourned.
Attachment Three:
Consider Adoption of Draft Title Insurance Guaranty Association – Title Insurance Consumer Protection Fund Guideline
GUARANTY ASSOCIATION FOR TITLE INSURANCE

Title insurance Guaranty Association-Title Insurance Consumer Protection Fund Guideline

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Section 14. Recognition of Assessment in Rates
Section 15. Immunity and Confidentiality
Section 16. Stay of Proceedings
Section 17. Termination; Distribution of Funds
Section 1. Title

This Act may be cited as the "[State] Title Insurance Guaranty Association-Title Insurance Consumer Protection Fund."

Section 2. Purpose

The purpose of this Act is to provide a mechanism for continuation of coverage, payment of covered claims under certain insurance policies, to avoid excessive delay in payment and avoid financial loss to policyholders because of insolvency of a title insurer and provide an association to assess the cost of such protection.

Section 3. Scope

This Act applies to all title insurers authorized to transact insurance in this state.

Section 4. Definitions

A. "Association" means the title insurance guaranty association.

B. "Authorized to transact insurance" means a title insurer as defined in [insert appropriate citation to the insurance code].

C. "Commissioner" means the chief regulatory insurance official of this state, whether referred to as Director, Superintendent, Commissioner, or other similar title.

D. "Covered claim" means an unpaid claim of an insured covered under and not in excess of the applicable limits of a title insurance policy insuring land located in this state issued by an insolvent insurer. Subject to applicable policy limits, the association's liability for covered claims shall not exceed $300,000.00 per claim. The total amount that may be recovered from the association by a claimant for all covered claims shall not exceed $600,000. "Covered claim" does not include supplementary payment obligations, including but not limited to adjustment fees and expenses, escrow or other closing protection claims nor does it include punitive, exemplary, extra-contractual or bad-faith damages awarded by a court judgment against an insurer. "Covered claim" does not include any first or third party claim by or against an insured whose net worth on December 31 of the year preceding the date the insurer becomes insolvent exceeds $25,000,000; provided the insured’s net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis, and the insured has not applied for or consented to appointment of a receiver, trustee or liquidator for all or substantially all of its assets, filed a voluntary bankruptcy petition or a proceeding under state law to reorganize or receive protection under any insolvency law. The amount of a covered claim shall be reduced by the
amount or other benefit that an insured recovers from any person, including an agent, regardless of whether an assignment is taken.

Drafting Note: States which desire to include additional claims in the fund may omit one or more of the exclusions from this definition.

F. "Insolvent insurer" means:

(1) An insurer authorized to transact business in this state at the time the policy was issued or an insurer that subsequently assumes such policy under an assumption agreement;

(2) Against which an Order of liquidation with a finding of insolvency has been entered after the effective date of this Act by a court or administrative agency of competent jurisdiction in the insurer's state of domicile, or of this state under [insert state liquidation law citation]; and

(3) Which Order of liquidation has not been stayed or been the subject of a writ of supersedes or other comparable Order.

G. "Insured" means a person entitled to payment for insured loss under a policy issued by the insolvent title insurance company on title to real property located in this state.

H. "Member insurer" means any person who is authorized to transact title insurance in this state.

Drafting Note: Some states may authorize property and casualty insurers to transact title insurance. Other states may limit the transaction of title insurance to monoline title insurers.

I. "Net direct title premium" means direct gross premiums written in this State on insurance policies to which this Act applies.

J. "Person" means any individual, corporation, partnership, association, trust or voluntary organization.

K. "Policy" means a title insurance policy, or assumption certificate whose subject of coverage or protection is title to real property located in this state; and “Title Policy” means any written instrument or contract by means of which title insurance liability is assumed by a title insurer.

L. "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.
M. “Servicing facility” means a person or persons delegated by the board of directors to settle or compromise claims and to expend association assets to pay claims.

Section 5. Organization of Association

There is hereby created a nonprofit legal entity to be known as the [State] Title Insurance Guaranty Association. All member insurers shall maintain membership in the association as a condition of their authority to transact title insurance in this state. The association may take any appropriate form of legal entity available under the laws of this state, including, but not limited to, a corporation or receivership association as approved by the commissioner.

Section 6. Board of Directors

A. The board of directors of the association shall consist of not less than five (5), nor more than eleven (11) persons serving terms as established in the plan of operation. In addition to the voting members of the board, the commissioner or his designated representative shall be an ex-officio non-voting member of the board. The members of the board shall be selected by member insurers subject to the approval of the commissioner and shall have as a majority of its members, persons who are employed by member insurers. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

B. In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

C. Members of the board of directors shall not receive compensation for serving as members of the board or any committees thereof, but may be reimbursed from the administrative account for actual expenses incurred by them as members of the board of directors.

Section 7. Powers and Duties of the Association

A. The association shall:

(1) Be obligated to the extent of the amount of covered claims not resolved, whether reported or not, prior to the determination of insolvency, except that the association shall not be obligated as to policies which have been replaced by another title insurance policy issued by a solvent authorized title insurer. In no event shall the association be obligated for an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

Drafting note: The phrase “not resolved” includes claims that are unpaid or otherwise unresolved by the member insurer as of the insolvency determination date, including claims that may not have been
asserted but exist due to a defect in title or other event covered under the terms of the title policy issued by the insolvent member insurer. If another title insurance company assumes or otherwise issues a replacement policy there should be no covered claims under the original, now insolvent, title insurance company policy. States may want to cut off claims by requiring the association, or the Commissioner as liquidator, to cancel title insurance policies after five years. Alternatively, as reflected in this guideline, states may not want to have a guaranty fund claim cut off.

(2) Have no liability for the alleged bad faith of the insolvent insurer in the handling of any claim prior to the determination of insolvency or for any exemplary or punitive damages;

(3) Investigate claims made against the policies of an insolvent insurer and adjust, negotiate, resolve, settle and pay covered claims to the extent of the association's obligation and deny all other claims. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Board of Directors, but the designation of such insurer may be declined by the member insurer; and

(4) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the covered claims and expenses, including loss adjustment expenses, and receivership expenses for the coming year if, at the end of any calendar year, the board of directors finds that the assets of the association in the fund exceed the liabilities of that account.

B. The association may subject to approval by the board of directors:

(1) Employ or retain persons or companies as servicing facilities necessary to handle claims and perform other duties of the association;

(2) Review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to in order to determine the extent to which such settlements, releases and judgments may be properly contested;

(3) Borrow funds necessary to affect the purposes of this article in accordance with the plan of operation;

(4) Sue or be sued and intervene in any court or arbitration forum having jurisdiction over an insolvent member insurer;

(5) Negotiate and become a party to contracts necessary to carry out the purpose of this Act; including, assumption or reinsurance agreements relating to the title policies of an insolvent insurer;
(6) The association may take actions as provided in subsections A and B of this section prior to an insurer being declared insolvent by a court, where an insurer is potentially unable to fulfill its contractual obligations or is determined to be impaired; and

(7) Perform other acts necessary or proper to effectuate the purpose of this Act.

C. If the association fails to act within a reasonable time, the commissioner shall assume the powers and duties of the board of the association and cause it to act as appropriate.

Section 8. Plan of Operation

A. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the approval in writing by the commissioner. If, at any time, the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt rules necessary or advisable to effectuate the provisions of this Act. The rules shall continue in force until modified by the commissioner or superseded by a plan or amendments submitted by the association and approved by the commissioner.

B. All member insurers shall comply with the plan of operation, subject to the provisions of this Act.

C. The plan of operation, among other things, shall establish procedures for conducting the business of the association, for handling its assets, for keeping records and for the conduct of other activities necessary for execution of the powers and duties of the association.

D. The plan of operation may provide that any and all powers and duties of the association, except those under Section 6 and 7 of this Act that are to be performed by the Board, be delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid by the association for its costs incurred in performance of such functions.

Section 9. Duties and Powers of Commissioner

A. The commissioner shall:

(1) Serve on the association a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer domiciled in this state at
the same time that such complaint is filed with a court of competent jurisdiction; and

(2) Notify the association of the existence of an insolvent insurer not later than three (3) days after receipt of notice of the determination of the insolvency; and upon request of the board of directors, provide the association with a statement of the reported direct premiums written for the [insert time period] of each member insurer.

B. The commissioner may:

(1) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a civil penalty on any member insurer which fails to pay an assessment when due. The civil penalty shall not exceed five percent of the unpaid assessment per month, except that no civil penalty shall be less than one hundred dollars ($100) a month; and

(2) Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

Section 10. Coordination Among Guaranty Associations

A. The association may join one or more organizations of other state title guaranty associations of similar purposes, to further the purposes and administer the powers and duties of the association. The association may designate one or more of these organizations to act as a liaison for the association and to the extent which the association authorizes, to bind the association in agreements or settlements with the receiver of the insolvent insurer or his or her designated representative.

B. The association, in cooperation with other obligated or potentially obligated guaranty associations, or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with the receiver, or his or her designated representative, in the most efficient and uniform manner.

Section 11. Effect of Paid Claims

A. Any person recovering under this Act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured seeking the protection of this Act shall cooperate with the association to the same extent as he would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against an insured for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums
had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association do not operate to reduce the liability of the insured to the receiver, liquidator, or statutory successor for unpaid assessments.

B. The court having jurisdiction shall grant such claims assigned pursuant to Subsection A of this section and the expenses of the association or similar organization in another state the same priority as the claims and expenses of policyholders. The association may make application to the receivership court for reimbursement of such reasonable claims and expenses and upon proper showing to the court for reimbursement of such amounts the court shall order appropriate reimbursement of reasonable claims and expenses to be made.

C. The receiver for the insolvent insurer shall, each time a request for funds is submitted to the association but not less than once every six months within the time set by the receivership court, file with the commissioner or liquidator court of the insolvent insurer, a statement of the covered claims paid, reserves for unpaid claims, claims expense incurred, and the balance of funds then in the possession of the receiver.

Section 12. Non-Duplication of Recovery

Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to first exhaust his or her rights under such policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery or value thereof received under such insurance policy.

Section 13. Examination of Association; Financial Reports

The association is subject to examination and shall complete audited financial statements. The board of directors shall submit to the commissioner and its member insurers, not later than June 30 each year, a financial report for the preceding year in a form approved by the commissioner.

Section 14. Assessment Authority of Commissioner and Association

A. Making of Assessment.

(1) If the commissioner determines that a title insurance company has become insolvent, the association shall promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company to pay all covered claims and administrative expenses.
(2) The association shall assess title insurance companies in writing an amount as determined under Part 2 of this subsection. A member insurer does not incur real or contingent liability under this Act until the association provides the member insurer with a written assessment.

B. Amount of Assessment: Proration of Payment.

(1) The association shall assess member insurers the amount necessary to pay: (1) the association's obligations under this Act and the expenses of handling covered claims subsequent to an insolvency; and (2) other expenses authorized by this Act.

(2) The assessment of each member insurer must be in the proportion that the net direct written title premiums of that company for the calendar year preceding the assessment bear to the net direct written title premiums of all member insurers for that year.

(3) The total assessment of a member insurer in a year may not exceed an amount equal to two percent of the member's net direct title premium earned for the calendar year preceding the assessment. If the maximum assessment and the association's other assets are insufficient in any one year to make all necessary payments, the money available shall be prorated and the unpaid portion shall be paid in subsequent years.

C. Notice and Payment.

(1) Not later than the 45th day before the date an assessment is due, the association shall notify member insurers.

(2) Not later than the 45th day after the date an assessment is made, the member insurer shall pay the association the amount of the assessment.

D. Exemption for Impaired Title Insurance Company. A member insurer is exempt from assessment during the period beginning on the date the commissioner designates the company as an impaired member insurer and ending on the date the commissioner determines that the company is no longer an impaired member insurer.

Drafting Note: Some states may substitute hazardous financial condition or inability to meet obligations for impaired.

E. Deferment.

(1) At the discretion of the commissioner, the association may defer in whole or in part an assessment of a member insurer that would cause the member's financial statement to show amounts of capital or surplus less than the minimum amount required for a certificate of authority in any jurisdiction in which the company is authorized to engage in the business of insurance.
(2) The member insurer shall pay the deferred assessment when payment will not reduce capital or surplus below required minimums. The payment shall be refunded to or credited against future assessments of any member insurer receiving a larger assessment because of the deferment, as elected by that member.

(3) During a period of deferment, the member insurer may not pay a dividend to shareholders or policyholders.

F. Accounting; Reports –Refund.

(1) The association shall adopt accounting procedures to show how money received from assessments or partial assessments is used.

(2) The association shall make interim accounting reports as the commissioner requires.

(3) The association shall make a final report to the commissioner showing how money received from assessments or partial assessments has been used, including a statement of any final balance of that money.

G. Use of Assessments. The association may use money from assessments to negotiate and consummate contracts of reinsurance, assumption of liabilities or replacement policies from authorized title insurers to provide for outstanding liabilities of covered claims. Assessments shall be used to pay the associations general expenses and statutory obligations.

H. Failure to Pay

(1) The association shall promptly report to the commissioner a failure of a member insurer to pay an assessment when due.

(2) On failure of a member insurer to pay an assessment when due, the commissioner may take any action as provided in section 9 B of this Act:

(3) A member insurer whose certificate of authority is canceled or surrendered is liable for any unpaid assessments made before the date of the cancellation or surrender.

I. Recovery of Assessment in Rates; Tax Credit.

(1) The surcharge on title insurance policies shall be based on historical need and include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurers, less any amounts returned to the member insurers by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurers.

(2) Unless the commissioner determines that all amounts paid as assessments by each member insurer have been recovered under Subsection (a), for any amount not recovered the member insurer is entitled to a credit against its premium tax
reference to state law providing for premium taxes). The credit may be taken at a rate of 20 percent each year for five successive years following the date of assessment and, if the member insurer elects, may be taken over an additional number of years.

Drafting note: State law may not permit this tax offset, as premium taxes are for general fund purposes and assessments as provided in this Act are for a specific purpose.

(3) An amount of a tax credit allowed by this section that is unclaimed may be shown in the member insurer’s books and records as an admitted asset for all purposes, including an annual statement under [include reference to state law].

Drafting note: State law may not permit this tax offset, therefore subsections (b) and (c) may be omitted.

Section 15. Immunity and Confidentiality

A. There shall be no liability on the part of, and cause of action of any nature shall arise against, any member insurer, the association or its officers, agents or employees, the board of directors, any individual director or the commissioner or his representative for any action taken by them in the performance of their powers and duties under this Act or for failure to prevent any insolvency.

B. The meetings, activities, recommendations and decisions of the board of directors of the association as required or permitted in this article shall not be open to public inspection, nor considered public documents pursuant to [insert relevant state law]. No representative of a member insurer shall be excluded from any meeting of the board of directors, with the exception of a representative of an insolvent insurer.

Section 16. Stay of Proceedings

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver of the association for specific cases involving covered claims, be stayed for six (6) months and such additional time as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action.

The liquidator, receiver or statutory successor of an insolvent insurer covered by this Act shall permit access by the board or its authorized representative to such of the insolvent insurer’s records which are necessary for the board in carrying out its functions under this act with regard to covered claims. In addition, the liquidator, receiver or statutory successor shall provide the board or its representative with copies of those records upon the request by the board and at the expense of the board.
Section 17. Termination; Distribution of Funds

A. The commissioner shall by Order terminate the operation of the association if he or she finds, after hearing, that there is in effect a statutory or voluntary plan which:

(1) Is a permanent plan which is adequately funded or for which an adequate means of funding is provided; and

(2) Extends, or will extend to the policyholders of this state protection and benefits with respect to insolvent member insurers not substantially less favorable and effective to the policyholders than the protection provided under this Act.

B. If operation of the association is terminated or if the association has no further known obligations, the association, as soon as possible thereafter, shall distribute the balance of money and assets remaining, after discharge of the functions of the association, with respect to prior insurer insolvencies not covered by another plan, together with expenses, to the member insurers or former member insurers, pro rata upon the basis of the aggregate of such payments made by the respective insurers during the period of five (5) years next preceding the date of the Order.
PROJECT HISTORY

TITLE GUARANTY FUND GUIDELINE

1. Description of the Project, Issues Addressed, etc.
In 2011 during discussions at Title Insurance (C) Task Force meetings, it was pointed out that only a few states had guaranty funds that would protect title insurance policyholders in the event of a title insurance company insolvency. The Title Insurance (C) Task Force committed to perform a review of the need for a model law or guideline that states that did not already have a title guaranty fund could use to establish a fund in their state. Working with the Receivership and Insolvency (E) Task Force, the Title Insurance (C) Task Force appointed the Title Insurance Guaranty Fund (C/E) Working Group of the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force. The Working Group was chaired by Cindy Donovan (IN) and John Finston (CA).

With the assistance of NAIC staff, the Working Group developed information about past title insolvencies and how title consumers were affected. The research focused on the following questions:

1. Is there a serious title insolvency problem?
2. Is a 50-state guaranty fund the best way to address this problem?
3. How has the public been affected by title company insolvencies?
4. What is the scope of title guaranty fund payments?
5. How have title insolvencies played out in the past (both with and without title guaranty funds)?
6. Have guaranty funds worked in the states that have them?
7. What steps would a guaranty fund take to manage insolvency?

2. Name of Group Responsible for Drafting the Model and States Participating
The Title Insurance Guaranty Fund (C/E) Working Group of the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force - Participating states include: California; Colorado; Washington, DC; Indiana; Kansas; Minnesota; Missouri; Nebraska; New Mexico; Oklahoma; Rhode Island; and Texas.

3. Project Authorized by What Charge and Date First Given to the Group
“Appoint a Title Insurance Guaranty Fund (C/E) Working Group to consider whether a title insurance guaranty fund model law or guideline should be developed. Determine the attributes of recent title company financial failures. Report the results by the Summer National Meeting.—Fall 2012 Meeting. Charge adopted for 2013.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

- The following charge was proposed at the 2011 Fall National Meeting: “Consider Development of Model Law or Guideline on Title Insurance Guaranty Association Model Act” (Nov. 4, 2012, National Meeting). The charge was not adopted for Property and
Casualty Insurance (C) Committee, but it was decided instead to form a joint Title Insurance Guaranty Fund (C/E) Working Group.

- At the 2012 Spring National Meeting, the Task Forces authorized the Title Insurance Guaranty (C/E) Working Group to continue research on title insurance insolvencies, agent defalcations and states with existing title guaranty funds.

- In 2012, the NAIC conducted research regarding title insurance company insolvencies and title agent defalcations and presented the results to the Working Group Nov. 13, 2012.

- Other parties participating in the Working Group discussions were: American Land Title Association—(ALTA); (ClosingCorp, Inc.); Center for Economic Justice (CEJ); Old Republic Title Insurance Company.; Agents National Title Company.; Demotech; Fidelity National Title; Stewart Title Guaranty Company; October Research; First American Title; Security Title Guarantee Corporation of Baltimore; Agent’s National Title; Westcor Land Title Insurance Company; and PricewaterhouseCoopers.

- The Working Group chairs recommended that a model law not be developed due to a lack of evidence and instead focus on continued work related to administrative controls identified in the Title Insurance Escrow Theft White Paper rather than develop a title insurance guaranty fund model law or guideline.

- Working Group members voted to proceed with the development of a “Title Guaranty Fund Guideline” that states could implement (Feb. 14, 2013).

- A draft guideline was developed by David Cox (MO) and modified by members of the Working Group and NAIC legal staff (May 28, 2013) The draft guideline was exposed for public comment (July 10, 2013). Written comments were received from ALTA, National Conference of Insurance Guaranty Funds (NCIGF) and American Insurance Association (AIA).

- ALTA submitted an alternative “Option 3” version (Dec. 30, 2013). It was rejected in a letter to ALTA after review by the Working Group chairs and NAIC legal staff (January 2014). Additional revisions to the draft were subsequently proposed by ALTA and the Working Group chair.


- Comments were received from Fidelity National Title and ALTA (August 11, 2014) In response to comments, additional edits were made to the draft and the title of Guideline was revised to Guaranty Association for Title Insurance.

- Document renamed by working group members to “Title Insurance Guaranty Association-Title Insurance Consumer Protection Fund Guideline” (Sept. 30, 2014).
• On Oct. 23, 2014, the revised draft was exposed for public comment a second time for a four-week period ending Nov. 20, 2014. No additional comments received.

• A conference call was held Dec. 10, 2014, and an e-vote was conducted to approve forwarding the document to the Title Insurance (C) Task Force and Receivership and Insolvency (E) Task Force for further consideration (Dec. 15, 2014). The motion was approved.

• The Title Insurance (C) Task Force and the Receivership and Insolvency (E) Task Force adopted the Guideline at the 2015 Spring National Meeting.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

See the timeline listed in #4 above.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group’s response)

Initial studies did not indicate that there were enough title insurance company insolvencies or agent defalcations to merit the formation of an NAIC model law for all states. A consumer advocate group, the Center for Economic Justice, challenged this finding and encouraged the group to continue working on a model law. The Working Group reconsidered discontinuing work on the project and decided that it would be worthwhile to develop guidelines that states that did not have a guaranty fund could consider should they decide to form one.

Initial drafts of guidelines were challenged by industry groups that disagreed with assessment language for guaranty association member companies. Numerous drafts were presented and modified before a final version was approved by the Working Group in December 2014.

7. Any Other Important Information (e.g., amending an accreditation standard).

Not Applicable
Attachment Four:
Discuss Consumer Financial Protection
Bureau (CFPB) Integrated Truth in Lending
Act (TILA)-Real Estate Settlement
Procedures Act (RESPA) Final Rule
Date: March 2, 2015

To: State Governors
   State Insurance Commissioners
   State Attorneys General

From: Karen E. Koogler, CEO
       The Koogler Group, L.L.C.

Re: Federal Infringement Into State Title Insurance Laws creates potential for significant Consumer financial harm
    [Premium overcharges] and Rate violation allegations against Title Insurers and Licensed Title Agents

Introduction

The purpose of this letter is to address actions taken by the Consumer Financial Protection Bureau (CFPB) under the November 2013 Integrated TILA-RESPA Final Rule [hereinafter “Final Rule”] which takes effect August 1, 2015. Language within the Final Rule creates the potential for significant consumer financial harm via title insurance premium overcharges. The Bureau’s actions in the Final Rule effectively obfuscate insurer-filed/published or state-promulgated title insurance premium by requiring that creditors [mortgage lenders] manipulate title premium rates on federally-mandated disclosures [Loan Estimate and Closing Disclosure] resulting in consumers potentially paying more for specific types of title insurance coverage [e.g., simultaneous-issue loan policy premium] than state-regulated filed/published/promulgated rates. In turn, such overcharges may give rise to Consumer complaints involving alleged premium rate violations and/or UDAP violations against title insurers and licensed title insurance agents. It is imperative that State Insurance Commissioners be aware that title insurers and licensed title agents are accurately quoting title insurance premium to creditors who, in turn – by adhering to CFPB directives set forth in the Final Rule – are required to manipulate such rates when disclosing same to Consumers [buyers/borrowers].

When the Nation’s Governors clarified their position, in March 2014, that federal laws and regulations must not preempt or undermine the strong state-based insurance regulatory system that for more than 140 years has protected consumers and safeguarded the capital adequacy and solvency of insurers – title insurance was not in the forefront of their minds. Since the first title insurance company was founded in Philadelphia in 1876, title insurance has remained in the shadows of most Insurance Commissioners’ thoughts and actions. This is due, in large part, to the anomalous nature of title insurance when compared to property-casualty insurance products – coupled with a reverse-marketing approach by title insurers and licensed title agents who generally market title insurance to industry middlemen [real estate brokers and agents, mortgage brokers, mortgage lenders, and homebuilders] rather than to the consumers [sellers and buyers] who actually pay for the product.

This letter serves to highlight recent CFPB actions regarding treatment of title insurance under the Integrated TILA-RESPA Final Rule which takes effect August 1, 2015. Although the title insurance industry, as well as supporting real estate and mortgage lending industries, have given the CFPB ample data – from workshop commentary leading up to the 2012 Proposed Rule, formal commentary following publication of the 2012 Proposed Rule, and ongoing commentary since publication of the Final Rule – the Bureau has deemed that such “points related to state law prohibitions and regulation of insurance are inapposite in a situation where the party providing the Loan Estimate, the creditor, is not subject to the legal requirement of State insurance laws.”

The Bureau has effectively created a regulatory loophole around state law, by requiring that mortgage lenders [as opposed to title insurers and licensed title agents] manipulate title insurance premium for purposes of issuing federally-mandated disclosures [Loan Estimate and Closing Disclosure] to consumers. A year prior to publication of the Final Rule, the Bureau effectively sidelined the central role title (settlement) agents play in real property purchase/sale/finance transactions, by issuing CFPB Bulletin 2012-03, which effectively places title (settlement) agents in service to mortgage lenders.
The Bureau's actions threaten existing consumer protection provided by title (settlement) agents who stand in the center of purchase/sale/finance transactions affording coequal duty to all transaction participants – buyer and seller via the real estate contract, borrower and lender via mortgage loan documents and closing instructions; and title insurer and named insureds via title insurance commitment and final policies.

The combination one-two punch of the Integrated TILA-RESPA Final Rule and CFPB Bulletin 2012-03 creates the potential that consumers [buyers/borrowers] will experience significant financial harm in future purchase/sale/finance transactions, and virtually guarantees that settlement of the purchase/sale side of such transactions will be unnecessarily and unduly complicated. Such negative impact could have been avoided had the Bureau consulted with state insurance commissioners and/or paid heed to informed industry commentary. That the CFPB has, for the past 2½ years, consistently ignored industry commentary and compelling data as to why it should alter its approach regarding the title insurance product as well as treatment of title (settlement) agents under the Final Rule, creates sufficient cause for the Nation's Governors, Insurance Commissioners, and Attorneys General to pay heed to this situation and, to the extent possible, take appropriate action to remedy the current situation and deter further federal inroads into the state-regulated title insurance business.

Background

TITLES V AND X OF THE 2010 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

Title V of the Dodd-Frank Act established the Federal Insurance Office [FIO] to advise the Secretary of the Treasury on major domestic and prudential international insurance policy issues and consult with the states and state insurance regulators regarding insurance matters of national and international importance. The Office will monitor all aspects of the insurance industry, including the availability of affordable insurance to traditionally underserved, low to moderate income, and minority persons and communities. The Office's authorities extend to all lines of insurance except health insurance, long-term care insurance (except that which is included with life or annuity insurance components) and federal crop insurance. The Act does not provide the Office with general supervisory/ regulatory authority over the business of insurance. Insurance is generally regulated at the State level. The Office will consult with States regarding insurance matters of national and international importance.

Title X of the Dodd-Frank Act established the Consumer Financial protection Bureau [CFPB] as an independent agency within the Board of Governors of the Federal Reserve System. The CFPB regulates the offering and provision of consumer financial products and services under federal consumer financial laws. The Bureau is responsible for ensuring that federal consumer financial laws are enforced consistently so consumers may access markets for financial products, and so that these markets are fair, transparent, and competitive. Title X also addresses the role of state law and state intervention in the operation of federally-chartered depository institutions. The statute is not meant to preempt state consumer financial protection laws, as long as the state laws do not conflict with federal laws or regulations. State consumer protection laws that offer greater protection than federal law are not considered to be conflicting with federal laws. Moreover, state Attorney Generals and state regulators can bring civil actions to enforce provisions of Title X.

NGA CONCERNS REGARDING FEDERAL PREEMPTION OF STATE-BASED INSURANCE REGULATION

On December 16, 2011, the Nation's Governors submitted comments to help inform the U.S. Department of the Treasury's preparation of its study required under the Dodd-Frank Act on how to modernize and improve the system of insurance regulation in the United States. The letter clarified the importance of states maintaining their long-standing authority as the functional regulators of the business of insurance and emphasized that federal laws and regulations must not preempt or undermine the strong state-based regulatory system that shields consumers and safeguards the capital adequacy and solvency of insurers.
The letter addressed state consumer protection, noting that, having developed deep regulatory expertise over the business of insurance, states are often the “first responders” to emerging financial services threats. Existing state consumer protection, antitrust, and unfair trade practice laws provide necessary tools to help protect consumers and stop anti-competitive conduct with the business of insurance. State regulators and Attorneys General also play complementary and mutually supportive roles in monitoring and investigating insurers, agents, and brokers to prevent and punish activities prohibited by those state laws. Market conduct exams are part of the monitoring system. State insurance officials supervise the market conduct of industry participants by reviewing their business operations through market analysis, periodic examinations, and investigations of specific consumer complaints. Monitoring involves reacting to conditions and changed circumstances. It also involves taking an active role and adjusting state laws and policies that anticipate new challenges that threaten consumers and market stability.

Subsequently, on March 28, 2014, the Nation's Governors once again reiterated their position in a letter to the Secretary of the Treasury, following release of the Treasury's Federal Insurance Office [FIO] report on how to modernize and improve the U.S. insurance regulation system. In that letter, the Governors expressed their concern regarding the FIO report’s suggestion of a greater federal role that could invite a dual regulatory system – clarifying their position that federal laws and regulations must not preempt or undermine the strong state-based insurance regulatory system that for more than 140 years has protected consumers, safeguarded the capital adequacy and solvency of insurers. The letter cited that, for generations, states have protected consumers of insurance products – products that are essential to protecting not just the U.S. economy, but also the most-cherished personal effects of individual consumers. Insurance is part of the social fabric and financial safety net that enables citizens, small businesses, and global corporations to move forward each day with confidence. In closing, the Governors stated that – while recognizing the possibility for federal intervention should states fail to act collectively on issues of legitimate concern – preemption of state regulatory authority must be the exception rather than the rule. Governors stand ready to protect state-based insurance regulation. The diversity of consumers, financial services products and institutions, investors, and local market conditions are currently addressed by state regulators with a proven track record.

While this letter focuses primarily on the treatment of the title insurance product and treatment of title (settlement) agents, the primary concern the November 2013 Integrated TILA-RESPA Final Rule2 – together with CFPB Bulletin 2012-03 – the NGA concerns relating to possible federal preemption of state-based insurance regulation is compelling. It is, in fact, the impetus for submitting this letter to the Nation’s Governors, Insurance Commissioners, and Attorneys General. While, for the most part, “as goes property/casualty insurance so goes title insurance” has been the state-of-the-industry in the past, when one connects the dots set forth in this letter, it is possible we may be witnessing a slow erosion of state-based insurance regulation whereby “as goes title insurance, so goes property/casualty insurance.”

Current Concerns

TITLE INSURANCE TREATMENT UNDER THE INTEGRATED TILA-RESPA FINAL RULE

Despite numerous attempts by title insurers, licensed title agents, and other industry participants – beginning with submitted commentary to the Bureau's 2012 Integrated TILA-RESPA Proposed Rule and ongoing commentary flowing from a heightened level of apprehension as the mandatory August 1, 2015 effective date of the November 2013 Integrated TILA-RESPA Final Rule fast approaches – to urge the CFPB to reconsider its decision requiring creditor [mortgage lender] rate manipulation of title insurance premium on federally-mandated Loan Estimates and Closing Disclosures, the Bureau has remained steadfast that such rate manipulation, which significantly deviates from state-regulated [filed/published/promulgated] title premium rates, is in the best interests of consumers.

Industry participants vehemently disagree. While some level of industry self-interest exists – e.g., a desire by title insurers and licensed title agents to protect themselves from unwarranted consumer complaints regarding alleged premium rate violations and/or UDAP violations – there is even greater interest in protecting consumers by ensuring that the actual premium rates
quoted by title insurers and licensed title agents are not manipulated on Loan Estimates and Closing Disclosures. There is also the impetus of ensuring that small and midsize title agencies remain in business, thus affording consumers a wide selection of providers from which to shop for title insurance and related title services. For purposes of clarification, the Loan Estimate referred to herein integrates the current Initial (Early) Truth In Lending (TIL) Disclosure and Good Faith Estimate (GFE), while the Closing Disclosure integrates the current Final TIL and HUD-1 Settlement Statement on most mortgage loans beginning August 1, 2015 (Final Rule Effective Date).

Required Manipulation of Title Insurance Premium on the Initial Loan Estimate

As a preface for those unfamiliar with title insurance – and at the risk of over-simplification for the sake of brevity – “Title” to real property is conveyed by seller/grantor to buyer/grantee as part of a purchase/sale transaction. Where such purchase is financed, the creditor/lender secures financing via a mortgage, deed of trust, or other security instrument. Title insurance is available to protect the interest of the buyer [Owner’s Policy] and, separately, the interest of the lender [Loan Policy]. When the two policies – Owner’s coverage and Loan coverage – are issued concurrently on a purchase/sale/finance transaction, the premium for the “Simultaneous-Issue” Loan Policy (SI-LP) is, in most states, significantly less than the premium that would be charged if the Loan Policy (LP) was issued alone [without issuance of the Owner’s Policy (OP)].

When the two policies are issued simultaneously on a purchase/sale/finance transaction, the OP is the primary policy [premium based on percentage of purchase/sale price] and the LP is the secondary policy [reduced premium based on simultaneous-issuance with the OP]. In short, a consumer [as borrower] cannot mortgage that which the consumer [as buyer] does not own. On a purchase/sale/finance transaction, the deed conveying Title [ownership] from seller to buyer is recorded prior to the mortgage securing lender financing of said purchase. Although 2008 ALTA form policies facilitate policy issuance on the date of closing, the effective date of the OP is generally held to be the date/time of deed recordation, while the effective date of the LP is generally held to be the date/time of mortgage recordation – thereby supporting the fact that in a purchase/sale/finance transaction the OP is the primary policy and the SI-LP is the secondary policy where such policies are simultaneously-issued.

Sample Purchase/Sale/Finance Transaction

For purposes of discussion, we will assume a Sample Purchase/Sale/Finance Transaction, whereby the Seller pays the Owner’s Policy (OP) title insurance premium and the Consumer [Buyer/Borrower] pays the Simultaneous-Issue Loan Policy (SI-LP) title insurance premium. Although “who pays what” is fully negotiable between Sellers and Buyers, in most purchase/sale/finance transactions the Sample provided herein is the most common scenario.

Also, for purposes of discussion, we will assume the following Sample Premium Rates: $1,000 OP premium and $100 SI-LP premium; as well as $800 LP premium for comparative analysis in cases where the Consumer [Buyer/Borrower] does not obtain Owner’s coverage. While title insurance premium rates vary jurisdictionally, the Sample Transaction used herein reflects the most common scenario, whereby the SI-LP premium is less than – and in most states significantly less than – full LP premium where no OP is issued.

As shown hereinbelow, the Final Rule requires that creditors manipulate title insurance premium on the Loan Estimate and Closing Disclosure causing disclosed amounts to deviate significantly from state-regulated [filed/published/promulgated] rates.\textsuperscript{9}

The CFPB, throughout the Final Rule, incorrectly focuses on the owner’s policy [OP] as the lower-priced of the two policies [OP and SI-LP]. In actuality, it is the simultaneous-issue loan policy [SI-LP] premium that is reduced. The cost of insurance and indemnification against loss or damage incurred by the insured is already covered in the risk premium charged for the owner’s policy [OP]. This is an important point that should be referenced when reading the information presented hereinbelow.
The Final Rule sets forth the following rate manipulation requirements for the Loan Estimate and Closing Disclosure:

Simultaneous title insurance premium rate in purchase transactions: 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:

i. 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).

[In the Sample Transaction, the LP is disclosed as $800 instead of the actual $100 SI-LP rate] [Consumer (Buyer/Borrower) is overcharged $700]

ii. The owner’s title insurance premium is calculated by taking the full owner’s title insurance premium, adding the simultaneous issuance premium for the lender’s coverage, and then deducting the full premium for lender’s coverage.

[In the Sample Transaction, the OP is disclosed as $300 instead of the actual $1000 OP rate] [Seller is undercharged $700]

Comment for 1026.37(f)(2)-4 Lender’s Title Insurance Policy: §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 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. [END REPRINT]

Required Manipulation of Title Insurance Premium on the Final Closing Disclosure

§1026.38(3) [Good Faith Requirement] states that the Closing Disclosure required by §1026.38 is “required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction.” 11

However, at the same time, §1026.38(f)(2) references guidance in other [earlier] comments - e.g., “For examples of services, costs, and their descriptions disclosed under §1026.38(f)(2), see comments [37(f)-3, and -4]” 11 – which references back to the rate manipulation method for loan title insurance premium set forth for the initial Loan Estimate noted hereinafore.

As for owner’s title premium disclosed on the final Closing Disclosure, §1026.38(g)(4)-2 states that “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, 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).” 12

POTENTIAL REPERCUSSIONS OF MANIPULATING TITLE PREMIUM RATES ON MANDATED DISCLOSURES

It is sufficiently disconcerting that the Final Rule requires that creditors/lenders manipulate title insurance premium on the initial Loan Estimate, thereby creating unnecessary confusion as to actual rates and charges at point of loan inception. That the Bureau further requires that such manipulated rates also be disclosed on the final Closing Disclosure which is otherwise required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction is alarming. Equally alarming is that certain loan types require certification as to the accuracy of the information presented on such forms - e.g., FHA-required certification currently required on HUD-1 settlement statements (see below) that is expected to carry forward to same or similar required certification on the Closing Disclosure – statements that are governed under the federal False Claims Act.
CERTIFICATION OF SETTLEMENT AGENT IN AN FHA-INSURED HECM LOAN TRANSACTION

To the best of my knowledge, the HUD-1 Settlement Statement [future Closing Disclosure] which I have prepared is a true and accurate account of the funds which were (i) received, or (ii) paid outside of closing, and the funds received have been or will be disbursed by the undersigned as part of the settlement of this transaction. I further certify that I (we) have obtained the above certifications which were executed by the borrower(s) and seller(s) as indicated.

Settlement Agent

WARNING: Federal law provides that anyone who knowingly or willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry may be criminally prosecuted and may incur civil administrative liability.

Referencing the Sample Transaction, where the Consumer has a purchase/sale contract showing Seller-paid OP and Buyer-paid LP – where actual [state-regulated] premium is $1,000 [OP] and $100 [SI-LP] – a Loan Estimate and Closing Disclosure showing manipulated $300 OP premium and $800 LP premium may cause significant Consumer confusion. Understanding that such confusion is possible or probable, the CFPB provides a Final Rule “remedy” for the “Confused Consumer” contingency:

“There is no indication on the Loan Estimate that the owner’s title insurance premium disclosed is an incremental cost to the consumer, and not the full rate. However, the creditor can communicate to those CONSUMERS who are CONFUSED that the total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title underwriters and title agents.”

Borrowing from the CFPB’s position that industry commentary regarding the importance of accurately quoting title premium in compliance with state-regulated [filed/published/promulgated] rates is “inapproe” to the situation involving creditor-manipulated rates because creditors [mortgage lenders] are “not subject to the legal requirement of State insurance laws” – the fact that the “total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title underwriters and title agents” is “inapproe” to the discussion of title premium where, on most Purchase/Sale/Finance transactions, OP premium is paid by the Seller and LI-LP is paid by the Consumer [Buyer/Borrower]. In most states, title premium rates are [filed/published/promulgated] in various rate classifications including, but not limited to basic OP and LP policy rates; enhanced OP and LP policy rates; reissue rates; and simultaneous-issue LP rates. Where such rate classifications exist, rates should be quoted and charged as [filed/published/promulgated] unless state law permits deviation via rate negotiation or rebating of premium.

Further, if we are to accept CFPB’s premise that title insurance premium rate manipulation is acceptable because such rates are manipulated by creditors [mortgage lenders] who are “not subject to the legal requirement of State insurance laws” – the new issue that should be addressed at the State level is why unlicensed persons – in this case, mortgage lenders – are disclosing title insurance premium to Consumers [on Loan Estimates and Closing Disclosures] in amounts other than that accurately quoted to lenders by title insurers and title agents; and, further, are explaining to “Confused Consumers” the difference in manipulated title premium [shown on said disclosures] and the actual rates [filed/published/promulgated] under State law. In most states, only title insurers, licensed and appointed title agents, and attorney-agents are permitted to quote and collect premium, and discuss premium rates and coverages. Even in states where there is no specific prohibition against unlicensed persons engaging in such practices, creditors may still run afoul of unauthorized practice of law [UPL] regulations.

It appears that the CFPB, in focusing almost solely on the mortgage/lender/borrower side of the transaction – to the near exclusion of the purchase/sale/buyer/seller side of the larger encompassing transaction – is missing the point regarding the importance of adhering to state-regulated [filed/published/promulgated] rates when quoting and charging title premium. While it is understandable that the Bureau would focus its attention on that which is charged with regulating/supervising/enforcing – e.g., the creditor [mortgage lender] and credit transaction [mortgage] for the overarching purpose of consumer [borrower] protection – such protection falls short, when the Bureau utilizes the Truth In Lending Act [TILA] to justify its rate manipulation methodology.
Another potential repercussion arises from the fact that, under the Final Rule, creditors have the choice of preparing and delivering both the Loan Estimate and the Closing Disclosure directly to the consumer. To date, both Wells Fargo and Bank of America have notified title (settlement) agents — those who currently prepare the HUD-1 Settlement Statement and, in so doing, accurately reflect [charge and collect] title premium in compliance with state-regulated [filed/published/promulgated] rates even where lenders and loan originators incorrectly disclose premium on the Good Faith Estimate — that, beginning August 1, 2015, the creditor [not the title (settlement) agent] will prepare and deliver the Closing Disclosure, which is required to be delivered to the consumer three business days in advance of consummation. That the Final Rule carries over the Bureau’s rate manipulation methodology to the Closing Disclosure virtually guarantees consumers [buyer/borrowers] will be significantly over-charged where the loan policy is simultaneously issued [SI-LP] with the owner’s policy [OP].

Title insurers and licensed title agents are understandably concerned that creditors following the Final Rule will cause consumers [buyer/borrowers] to be over-charged title premium at transaction consummation. Referencing the Sample Transaction, the consumer is charged $800 [full LP premium] rather than $100 [SI-LP premium]. This is certainly sufficient to give rise to consumer complaints alleging rating violations and/or UDAP violations being brought against title insurers and licensed title agents who had absolutely nothing to do with the manipulated rates and [point in fact] have tried everything they could to dissuade the CFPB from requiring such rate manipulation.

It is imperative that State Insurance Commissioners recognize that title insurers and licensed title agents are quoting the correct premium based on the specific type of transaction — OP premium only for cash transactions; LP premium only for refinance transactions; and OP plus SI-LP premium for purchase/sale/finance transactions. Please refer to the 2014 Title Premium Rate Chart shown on Page 9 for state-by-state comparison of title insurance rates.

It is unfair for consumers to be over-charged title insurance premium based on an errant provision in the integrated TILA-RESPA Final Rule which, to date, the CFPB seems disinclined to correct. It is also unfair for the Bureau to expose creditors to potential UPL charges for engaging in practices for which they do not hold proper licensure/appointment. And, finally, it is patently unfair that those most likely to incur regulatory repercussions from Bureau required rate manipulation are title insurers and licensed title agents that have exhausted all efforts to convince the Bureau to rectify its error.

POTENTIAL FOR ADDITIONAL CONSUMER FINANCIAL HARM ARISING FROM RATE MANIPULATION

While State Insurance Commissioners focus on the potential for significant consumer financial harm arising from the Bureau’s required rate manipulation of title insurance premium under the Final Rule, the same errant provision may potentially give rise to additional consumer financial harm flowing from related “tolerance” provisions set forth in the Rule. In short, the Final Rule provides “zero tolerance” for certain charges including, but not limited to loan origination fee, discount points, and transfer taxes. This means that such [individual] charges may not generally increase from that disclosed on the Loan Estimate. In contrast, there are other charges that cumulatively fall into a “10% tolerance” category, meaning that such [aggregate] charges, when added together, may not generally increase by more than 10% from that estimated [Loan Estimate] to that actually charged [Closing Disclosure]. Whether or not a charge falls into the 10% tolerance category largely depends upon: (a) whether the creditor requires the service; (b) if so required, whether the creditor permits the consumer to “shop” for the service; and (c) if so permitted, whether the consumer chooses a provider from the creditor’s written list of providers for such service.

Generally, title insurance is a service for which consumers may shop. While some may choose a title company not on the creditor’s written list of providers — which means fees disclosed on the Loan Estimate may increase without any tolerance provision applying — most consumers choose a provider from the creditor’s [often limited] list of providers. When a consumer chooses a provider from the creditor’s written list, the resultant charges generally fall into the 10% [cumulative/aggregate] category. However, when it comes to title insurance, the Bureau, under the Final Rule — on purchase/sale/finance transactions where the two policies [OP and SI-LP] are issued — categorizes the two policies as if they are independent of each other.
First, because the creditor does not require that the consumer obtain owner's title insurance [OP] the Bureau requires that it be shown as "optional" on both the Loan Estimate and Closing Disclosure. Additionally, since it is not required, the premium for the OP does not fall into the 10% [cumulative] tolerance category. However, the creditor does require lender's title insurance [LP] and, where the consumer chooses a title insurance company from the creditor's [often limited] written list of providers, the premium for the LP – or, referencing the Sample Transaction, the SI-LP – does fall into the 10% tolerance category. When this information is applied to the Sample Transaction, the potential for additional consumer financial harm becomes apparent:

<table>
<thead>
<tr>
<th>Title Insurance Policy Type</th>
<th>Premium Paid By</th>
<th>Actual Premium</th>
<th>Manipulated Premium</th>
<th>Tolerance Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owners Policy [OP]</td>
<td>Seller</td>
<td>$1,000</td>
<td>$300</td>
<td>None</td>
</tr>
<tr>
<td>Simultaneous-Issue Loan Policy [SI-LP]</td>
<td>Consumer [Buyer/Borrower]</td>
<td>$100</td>
<td>$800</td>
<td>10% Cumulative</td>
</tr>
</tbody>
</table>

**Why this is important:** First, as noted earlier, under current RESPA regulations, actual charges for title insurance premium must be shown on the HUD-1 settlement statement. Although many creditors often incorrectly disclose such fees on the Good Faith Estimate (GFE) – primarily due to a misunderstanding regarding tolerance categories – the title (settlement) agent responsible for preparing, delivering, and certifying the accuracy of the HUD-1 settlement statement, ensures that actual charges are shown on the HUD-1 with the correct party [seller or buyer/borrower] paying for same in accordance with the terms of the purchase/sale contract. Second, under current RESPA regulations, where the creditor requires [LP] coverage and the consumer chooses a title company from the creditor's [often limited] written list of providers, thereby placing it in the 10% [cumulative] tolerance categories, the premium for both policies are placed in such category.

This is not the case under the Integrated TILA-RESPA Final Rule. First, creditors are required to manipulate the title premium as shown in the Sample Transaction. Second, where the creditor requires [LP] coverage and the consumer chooses a title company from the creditor's [often limited] written list of providers, only the premium for the SI-LP falls into the 10% [cumulative] tolerance category. Any individual charge within the 10% [cumulative] tolerance category may increase by more than 10% – and charges for services not previously appearing on the Loan Estimate may be added and charged to the consumer at closing – provided the cumulative aggregate charges within the category do not increase above 10%.

Rarely, if ever, would it be the case that title insurance premium is the only charge appearing in the 10% [cumulative] tolerance category. For purposes of discussion, let's assume a $200 title search fee and a $300 closing fee are also part of the 10% category. Under current RESPA regulations, if the LP falls into the 10% [cumulative] tolerance category so, too, does the OP – and actual charges must appear on the HUD-1. Therefore, based on the Sample Transaction, the HUD-1 would show a total of $1600 in the 10% category [$1000 OP + $100 SI-LP + $200 title search + $300 closing fee]. Even if the creditor slightly underestimated such fees on the GFE [e.g., totaling $1500 instead of $1600], there would be no tolerance violation, as the $1600 cumulative total shown on the GFE may increase by 10% [$150] or $1650 cumulative total on the HUD-1.

As an added note, under current RESPA regulations, on purchase/sale/finance transactions, GFE line item instructions require that both OP and SI-LP be shown on the GFE – even where the purchase/sale contract shows the seller paying the OP premium. HUD-1 line item instructions require that anything shown on the GFE be charged to the buyer/borrower [to facilitate GFE to HUD-1 comparison of estimated and actual charges] – with a line item credit from seller to buyer where the purchase/sale contract requires the seller to pay the OP premium. This, itself, is confusing – however, it does shed some light on why the CFPB's Final Rule is even more confusing, as the Bureau made the [incorrect] assumption that the current RESPA regulation [last modified in November 2008] was fundamentally sound. It was not.

In contrast, under the Integrated TILA-RESPA Final Rule, applied to the Sample Transaction, only the SI-LP would fall into the 10% category and the premium for the SI-LP is required to be manipulated on both the Loan Estimate and Closing Disclosure. Assuming the same parameters and incorporating rate manipulation, the Loan Estimate would show a total of $1300 [$800 manipulated SI-LP + $200 title search + $300 closing fee]. Where such fees fall into the 10% [cumulative] tolerance category, the fact that the SI-LP should only be $100 rather than the manipulated $800 – there remains a buffer [cushion] of $700 at point of Loan Estimate. [Continued Page 10]
### 2014 At-A-Glance Title Premium Rates

<table>
<thead>
<tr>
<th>STATE</th>
<th>OP PREM</th>
<th>SL-LP PREM</th>
<th>LP ONLY</th>
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<tbody>
<tr>
<td>AL</td>
<td>550</td>
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Based on $180,000 Purchase / $162,000 Finance Online rate quotes were not available for all States.

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### State-by-State Title insurance Premium Rates

The chart reflects October 2014 rates obtained from 3 national title insurers' online rate calculators - based on $180,000 purchase price and $162,000 loan value - showing the simultaneous-issue loan policy rates as significantly less than the "stand-alone" loan policy rates and owner's policy rates.***

#### Premium Rate Notes

Online rate quotes were not available for all States. Those were left blank.

All rates are basic OP and LP coverage without reissue rates or endorsement fees.

*OP* and *SL-LP* rates were run as a Purchase/Finance transaction with $180,000 purchase price and $162,000 concurrent [simultaneous] mortgage loan.

*LP Only* rates are for a "stand-alone" basic Loan Policy without reissue rates or endorsements, issued without concurrent Owner's Policy.

#### Simultaneous-issue Rate Notes

33 States show simultaneous-issue Loan Policy rates at $100 or less.

09 States show simultaneous-issue Loan Policy rates at $125 to $250.

#### Additional Notes

**IN - Corrected SL-LP rate based on July 25, 2014 Settlement Agreement with IDOI.**

07 States [CT; GA; NH; NC; RI; SC; VT] offer "GFE/HUD-1 Recalculation" option.

Of the 45 states with online rates - ALL show SL-LP rates LOWER than LP Only rates; most showing significant reduction.

- This deviates from Final Rule [Page 658] where the CFPB states that "approximately 26 States, either by promulgated rates or by rates created and used by title underwriters, calculate the cost of lender's title insurance policy differently when a simultaneous owner's title insurance policy is issued."*

The Final Rule requires that the LP premium be disclosed at full rate on the Loan Estimate - even if the transaction is a concurrent simultaneous transaction and even if the contract says the Seller pays for the OP. Then, use the following calculation methodology for the OP premium disclosed on the Loan Estimate:

1. Add the OP full rate premium plus the SL-LP premium.
2. Deduct the LP full rate premium from the Total.
3. Enter the result as the OP premium on the Loan Estimate.

***Where online rate calculators required a "County" the chart used the County in which the State Capital is located. Where all three insurers' rates matched (such as in promulgated rate states) the chart reflects the matching rates. Where two insurers' rates matched, with the third being variant, the chart reflects the two matched rates. Where all three insurers' rates differed, the chart reflects midpoint/median rates.

It is inconceivable that State Insurance Commissioners will permit creditors to manipulate state-regulated [filed/published/promulgated] title premium so that consumers are significantly over-charged premium at closing; therefore, the balance of this example assumes actual charges must be charged to the consumer at time of transaction consummation -- rather than the manipulated premium required under the Final Rule.

Assuming that State Insurance Commissioners [supported by the Nation's Governors and State Attorneys General] take action to prevent consumers from being financially harmed under the Integrated TILA-RESPA Final Rule -- the consumer [buyer/borrower] should incur actual charges of only $600 [$100 actual SI-LP + $200 title search + $300 closing fees] rather than the $1300 shown on the Loan Estimate. On par that seems like a good thing -- e.g., that the consumer is not over-charged premium at closing.

However, that still leaves a buffer [cushion] of $700 in the 10% [cumulative] tolerance category. As the Final Rule is written, other [individual] charges within the 10% category could increase beyond 10% -- or new charges not originally disclosed on the Loan Estimate could be added to such category, provided the [cumulative] total of all charges does not exceed 10% from the amount shown on the Loan Estimate. Although the Final Rule also provides that most creditor-direct and creditor-affiliate charges fall into the earlier-discussed zero tolerance category -- where generally, no [individual] charge may increase beyond what is disclosed on the Loan Estimate -- the Final Rule does not place such restrictions on non-affiliate charges, including charges by what the CFPB referred to as "creditor preferred-partner providers" in workshops leading up to the publication of the Final Rule.

Therefore, it is possible, if not probable, that some of the more unscrupulous creditors and their preferred-partner providers might increase estimated charges and/or pile on undisclosed other charges in an effort to increase profitability at the expense of consumers. RESPA violations involving incentives and inducements given and received for the referral of settlement service business remain rampant within the settlement services industry -- especially where larger providers are concerned. The errant provision within the Final Rule that requires creditor rate manipulation of title insurance premium virtually guarantees there will be an ample buffer [cushion] in which creditors and creditor preferred partner providers can attempt to hide such kickbacks.

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CFPB Takes Action Against Wells Fargo and JPMorgan Chase for Illegal Mortgage Kickbacks

On January 22, 2015, the CFPB and the Maryland Attorney General took action against Wells Fargo and JPMorgan Chase for an illegal marketing-services-kickback scheme they participated in with Genuine Title, a now-defunct title company. Genuine Title gave the banks' loan officers cash, marketing materials, and consumer information in exchange for business referrals. The proposed consent orders, filed in federal court, would require $24 million in civil penalties from Wells Fargo, $600,000 in civil penalties from JPMorgan Chase, and $11.1 million in redress to consumers whose loans were involved in this scheme.

"Today we took action against two of the nation's largest banks, Wells Fargo and JPMorgan Chase, for illegal mortgage kickbacks," said CFPB Director Richard Cordray. "These banks allowed their loan officers to focus on their own illegal financial gain rather than on treating consumers fairly. Our action today to address these practices should serve as a warning for all those in the mortgage market."

"Homeowners were steered toward this title company, not because they were the best or most affordable, but because they were providing kickbacks to loan officers who referred consumers to them," said Maryland Attorney General Brian Frosh. "This type of quid pro quo arrangement is illegal, and it's unfair to other businesses that play by the rules."

While the CFPB should be commended for the role it played in the above recent enforcement action, it is disconcerting that the Bureau -- responsible for protecting consumers from financial harm -- should itself promulgate a Final Rule that requires creditors to manipulate title insurance premium in such a way that virtually guarantees consumers will be "confused" at best and "overcharged" at worst. Further, by including [as applicable] the manipulated LP premium in the 10% [cumulative] tolerance category, the Bureau creates a buffer [cushion] that unscrupulous creditors and their preferred-partner providers will undoubtedly use for their own financial gain, rather than treating consumers fairly."
CFPB JUSTIFICATION FOR MANIPULATING TITLE INSURANCE PREMIUM ON FEDERAL DISCLOSURES

In support of its decision to require creditors to disclose title premium on the Loan Estimate in a manner other than rates are filed/promulgated/published pursuant to State law, the Bureau cites the McCarran-Ferguson Act, 15 U.S.C. §1012(b):

(b) Federal regulation

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

The Final Rule [Page 859]— referencing DFA sections 1098 and 1100A — goes on to state: "The Bureau believes that a standard method of disclosing lender’s and owner’s title insurance premium amounts on the Loan Estimate under Regulation Z that shows consumers the incremental cost of purchasing an owner’s title insurance policy in addition to a lender’s title insurance policy will aid consumer understanding of the transaction, which is one of the purposes of the integrated disclosures set for by the Dodd-Frank Act in TILA and RESPA."

Text Note: At the same time the Bureau cites that its rate manipulation methodology "will aid consumer understanding of the transaction" it also admits it may confuse consumers; but notes that "creditors can communicate to those consumers who are confused that the total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title writers and attorneys." This section of the Final Rule continues: "For approximately 25 States, this calculation methodology would result in disclosure of owner’s title insurance and lender’s title insurance premiums that would not be in accordance with the actual pricing; that is, the owner’s title insurance and lender’s title insurance premiums listed on the integrated disclosures always would be different than the actual rates charged."

Text Note: This pertains to rates disclosed on federally-mandated disclosures [GFE under RESPA or Loan Estimate and Closing Disclosure under TILA-RESPA] not matching insurer-agent quoted state-regulated [filed/promulgated/published] rates. Based on the state-by-state title premium rate chart shown hereinabove — all states reflect SI-LP rates lower than OP rates in a simultaneous-issue transaction and also, lower than "stand-alone" loan policy [LP] premium [e.g., where the consumer chooses not to obtain OP coverage on a purchase/real/finance transaction]. There remains the issue of potential liability for title insurers and licensed title agents that quote actual rates [in accordance with state law] to creditors, where creditors in turn disclose rates to consumers that are inconsistent with such quoted actual rates. This may potentially give rise to consumer complaints regarding rate discrepancies caused by the Bureau’s rate manipulation methodology under the Final Rule. However, such complaints will likely be made against title insurers and/or licensed title agents. Creditors are also likely to "pass the buck" regarding such complaints in an attempt to hold title insurers and title agents responsible for something over which they have no control. Once again, it is imperative that State insurance Commissioners are aware that title insurers and licensed title agents are accurately quoting title insurance premium to creditors who, in turn — by adhering to CFPB directives set forth in the Final Rule — are required to manipulate such rates when disclosing same to consumers.

Text Note: Although the Final Rule requires actual charges be shown on the Closing Disclosure [where such actual charges are reasonably known to the creditor at the time the CD is prepared] it appears to carve out an exception where title insurance premium is concerned. As noted earlier, as to the Closing Disclosure, §1026.38(g)(4)-2 states that "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, 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(h)(2) or (b)(3)." At minimum — in an attempt to rectify the damage done by the errant provision contained in the Final Rule, title (settlement) agents may need to create a separate Closing Disbursement Statement — apart from the Final Rule — that accurately reflects actual charges for all fees including OP and SI-LP premium [other than cases in which average charges are permitted and used, which is not the case regarding title insurance premium]. This still does not address the potential liability issues for title (settlement) agents who may be required to certify the accuracy of the information appearing on the Closing Disclosure under the federal False Claims Act [e.g., for FHA loans].
The Final Rule continues: "However, the calculation would result in providing every consumer in the United States with an accurate reflection of the incremental additional cost associated with obtaining an owner's title insurance policy at consummation. With this disclosure, consumers can determine if the additional cost for insurance to protect themselves from losses that result from a title defect and to provide a legal defense from challenges to their legal ownership of the property they are acquiring would be appropriate."

**Text Note:** Based on the Sample Transaction – where the Loan Estimate shows $800 LP premium plus $300 OP premium based on calculations made in accordance with Final Rule methodology – the Bureau's statement that the calculation provides "every consumer in the United States with an accurate reflection of the incremental additional cost associated with obtaining an owner's title insurance policy at consummation" seems questionable at best. To the extent such manipulated rates carry over to the Closing Disclosure and result in significant consumer financial damage is alarming – and, as this letter attempts to point out, entirely avoidable if the Bureau paid heed to industry concerns and commentary.

As noted hereinabove, the Bureau provides a remedy for confused consumers - "There is no indication on the Loan Estimate that the owner's title insurance premium disclosed is an incremental cost to the consumer, and not the full rate. However, the creditor can communicate to those consumers who are CONFUSED that the total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title underwriters and title agents."

**Text Note:** A longstanding problem experienced by title (settlement) agents involves unscrupulous real estate agents, loan originators and/or mortgage lenders advising consumers that owner's title insurance is not important. This is often done to deflect attention from high real estate commissions or excessive loan fees by focusing on helping consumers "reduce" closing costs, by refusing owner's title coverage. Even where this is not the case, most creditors do not possess the knowledge to accurately communicate the information noted by the Bureau. Even where they do possess the knowledge, it is not the creditor's job to "sell title insurance." This begs the question of whether title agents have title coverage and premium rate discussions with consumers, they should be required to be properly licensed and appointed as title agents. Also, as addressed hereinabove, in most purchase/sale/finance transactions, sellers pay OP premium and consumers [buyer/borrowers] pay SL-OP premium. Where this is the case, the Bureau's argument that when actual and manipulated OP and LP premiums are totaled, they come to the same aggregate amount [$1000 + $100 = $1,100 vs. $300 + $800 = $1,100] is inapposite – especially when the consumer is likely to be significantly overcharged premium for the SL-OP. The fact that the seller is undercharged by the same amount does not offset the financial damage incurred by the consumer.

"The Bureau finds that the 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 outweighs the benefit of a technical disclosure of the owner's and lender's title insurance premiums; such a technical disclosure can result in confusion about what the consumer actually may pay if the consumer does not obtain an owner's title insurance policy, as well as removing any need to provide two Loan Estimates, as one commenter suggested."

**Text Note:** There is nothing clear about manipulating actual [state-regulated] title insurance premium in a manner which results in the consumer [buyer/borrower] paying more than they are obligated to pay – e.g., $800 LP premium rather than $100 SL-OP premium.

The Bureau intends to address issues surrounding title insurance, including the differing technical manners in which title insurance premiums are calculated, as part of updates to the special information booklet prescribed by RESPA that the Bureau intends to revise prior to the effective date of this final rule. See the section-by-section analysis of §1026.19(g) for more information about the special information booklet. The Bureau also may provide additional guidance to consumers about the nature of title insurance, its potential benefits and costs, and the manner in which premiums are calculated in other ways as part of its ongoing efforts to empower consumers to make financial choices that are in their best short- and long-term interests."

**Text Note:** Due to the rate manipulation methodology employed by the Bureau in its Final Rule – coupled with the fact that it requires Owner's title insurance to be shown as optional on both the Loan Estimate and Closing Disclosure – consumers may potentially become more confused and choose to "opt out" of Owner's title insurance coverage – arguably one of the most important coverages from a consumer-protection perspective.
Summary

In closing, the CFPB appears to have largely based the treatment of title insurance under the Integrated TILA-RESPA Final Rule on facts applicable to refinance transactions – e.g., where only a loan policy [LP] is issued or, in cases where the consumer does not already have an owner’s policy [OP], where the consumer [borrower] pays for both policies. On refinance transactions where only the LP will be issued, the Loan Estimate and Closing Disclosure should reflect full loan policy [LP] premium – as is required under the Final Rule. In refinance [borrower-only] transactions where the borrower does not already have owner’s coverage and chooses to purchase the OP concurrently with the LP – making the LP a SI-LP – it does not harm the consumer [who is paying both the OP and SI-LP premiums] if the Bureau’s rate manipulation methodology is utilized by creditors, as the total amount of combined [manipulated] premium shown on the Loan Estimate and Closing Disclosure [$800 LP + $300 OP] is the same as the actual charges for such coverages [$1000 OP + $100 SI-LP].

However, it is important to recognize that a growing number of transactions are purchase/sale/finance transactions where, in most cases, the seller pays the OP premium and the consumer [buyer/borrower] pays the SI-LP premium. Here, the rate manipulation methodology employed by the Bureau simply does not work. According to the Mortgage Bankers Association, refinance transactions continued to decline in February 2015, accounting for approximately 62% of all mortgage loan applications at month-end. As the number of refinance transactions decline, the volume of purchase/sale/finance transactions is expected to increase, due to affordable home prices coupled with low interest rates. As such, it is imperative that the Final Rule properly address the importance of accurately disclosing actual rates for title insurance premium – at minimum, on the Closing Disclosure – rather than relying on manipulated rates that, at best, would only be informative to consumers engaging in refinance transactions – while potentially causing significant financial harm to consumers engaged in purchase/sale/finance transactions.

The purpose of distributing this letter to such a wide regulatory audience is to bring the issue to the attention of those – in addition to consumers and industry professionals – with the most at stake: (1) State Governors concerned with potential federal inroads being made into the state-regulated insurance industry; (2) State Insurance Commissioners responsible for ensuring that title insurers and licensed title agents accurately quote and charge state-regulated rates so as to ensure consumers are not overcharged; and (3) State Attorneys General responsible for ensuring state laws regulating title insurance are followed so as to protect consumers from those who may engage in UPL or UDAP violations.

A copy of the author’s professional biography is attached. Please direct any questions regarding this letter to Karen Koogler via email: KarenKoogler@KooglerGroup.com.

Footnotes
1. 12 U.S.C. §5511 [DFA §1021]
2. 12 U.S.C. §5551 [DFA §1041]
3. See id
4. 12 U.S.C. §5552 [DFA §1042]
9. Excerpts from the Title Insurance Treatment under the Final Rule chapter of the Integrative TILA-RESPA Final Rule available at www.KooglerGroup.com,
11. Page 1839 Integrated TILA-RESPA Final Rule referencing §1026.38(2)(2) and (2)(3) [Loan Title Insurance Premium]
12. Page 1842 Integrated TILA-RESPA Final Rule referencing §1026.38(g)(4)(2) [Owner’s Title Insurance Premium]
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| Alan Wilson, South Carolina AG |
| Ken Paxton, Texas AG |
| Mark Herring, Virginia AG |
| Brad Schimel, Wisconsin AG |
Karen E. Koogler
Professional Biography

Karen Koogler is CEO of The Koogler Group, LLC, an educational design firm founded in 1986, specializing in prelicensing, regulatory compliance, and CE/CLE courses for title agents, attorneys, closing agents, title examiners, and support personnel working within the title insurance industry. With nearly four decades of direct title insurance experience – including 25+ years devoted to championing a national effort for meaningful industry education – Karen remains a staunch advocate for protecting consumer rights, as well as preserving a seat at the settlement table for small business [micro-agent] providers. During her tenure – working in collaboration with, and serving the needs of, state and national land title associations, national and regional title insurers, and state and federal regulators – Karen has developed over 1500 hours of classroom and online courses. In addition, she has personally developed the following educational programs and products:

- Integrative TILA-RESPA Final Rule Implementation Study Manual
- Integrative TILA-RESPA Final Rule Implementation Course [Classroom and Online]
- Federal Compliance Courses [Classroom and Online under Development]
- Multi-State Study Manual for Title Insurance [Book with Interactive Test Component]
- Multi-State Study Manual for Closing Agents [Book with Interactive Test Component]
- Multi-State Study Manual for Title Examiners [Book with Interactive Test Component]
- Multi-State Closing Agent 16-Hour Course [Classroom; Online Course under Development]
- Multi-State Closing Agent Online Certification Exam
- Multi-State Title Examiner Online Certification Exam
- Alabama Study Manual for Title Insurance
- Alabama 20-Hour Title Agent Prelicensing Course
- Florida Study Manual for Title Insurance
- Florida Study Manual for Title Insurance Interactive Test Component
- Florida 40 Hour Title Agent Prelicensing Course
- New York Study Manual for Title Insurance
- Virginia Study Manual for Title Insurance
- Virginia Study Manual for Title Insurance Interactive Test Component
- Virginia Study Manual for Title Settlement Agent Certification [with Secured Protocol Online Examination]
- Virginia Study Manual for Title Examiner Certification [with Secured Protocol Online Examination]
- Virginia 16 Hour Title Agent Prelicensing Course
- Virginia 16 Hour Title Settlement Agent Certification Course
- Indiana 10 Hour Title Producer Prelicensing Course [2005-2007]
- Indiana Title Producer Study Materials
- 2010 Foreclosure Special Report [for Regulators; State AGs; and Prosecutors]
- 2008 RESPA Final Rule Study Manual and Online CE/CLE Program
- 2008 RESPA Final Rule ENews Implementation Support Program
- Building the Bridge Between the GFE and HUD-1 Study Manual and Online Program
- Partnering for Profit: Working Together In Tumultuous Times
- TechnoTitle 2020: FutureFocus on the Settlement Service Industry

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Emphasis on Regulatory Compliance

Since 1992, Karen has focused her attention on regulatory compliance issues – providing prelicensing, regulatory compliance, professional ethics, and industry-certification programs throughout the country. Her 1996 book, Partnering for Profit, laid the groundwork for establishing regulatory-compliant, consumer-centric affiliated business arrangements. In early 2009, her focus turned to the RESPA Final Rule [FRF] where she authored two RESPA textbooks; designed and presented a full-day RESPA Final Rule Implementation Program to more than 5,000 title agents, attorneys, closing agents, and loan originators in classrooms throughout the country; designed and launched a companion online program attended by more than 1,000 industry professionals; and supported it all for six months, post-implementation, via a free publication [Final FAQS E-News] where she answered hundreds of RESPA questions from Program participants. Today, Karen continues to respond to student questions on myriad compliance issues, as part of her commitment to meaningful industry education.

Standardized Industry Education

Karen is no stranger to standardized education. Her first foray into the national industry educational arena involved the creation of the Title Trilogy series of national jobskills manuals, which includes Closing Concepts, Title Basics, and Liability 101. Turning a deaf ear to industry naysayers, who believed title examination and settlement/escrow principles could not be taught on a national [standardized] platform, Karen forged ahead with the Title Trilogy project. Having already experienced considerable success with the Internal Audit Guide and her first National Lecture Series on Spotting and Stopping Fraud, Forgeries, and Embezzlement, she knew that the task-steps of title search/examination and the settlement/escrow process easily crossed state lines. Her instincts were correct. Since its inception, the Title Trilogy series of jobskills textbooks has sold over 250,000 copies.

With an eye toward the future – taking her cue from the 2007 GAO Report, Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers, which includes a recommendation to state regulators to “strengthen regulation of title agents through means such as establishing meaningful requirements for capitalization, licensing, and continuing education” – Karen renewed her efforts in developing meaningful national industry education programs and products, at a time when the housing, mortgage, and title markets were collapsing under the weight of a decade of unprecedented levels of fraud [mortgage fraud, securities fraud, foreclosure fraud, short sale fraud]. Following her extremely successful 2008 RESPA Final Rule Implementation Program, Karen devoted the next several years developing a series of Multi-State Study Manuals, Interactive Testing Components, and Online Certification Exams for Closing Agents and Title Examiners. In early 2012, that project took on a life of its own, prompting Karen to return to her roots [The Title Trilogy] and group the Multi-State Study Manuals under a single educational umbrella.
LICENSING AND CERTIFICATION ASSESSMENT TRAINING [LCAT™] SERIES

The Licensing and Certification Assessment Training [LCAT™] Series provides nationally standardized meaningful education for title agents, closing agents, and title examiners. Every component of the LCAT™ Series is created from a national perspective. The Multi-State Study Manuals were developed at an intermediate level – some components going back-to-basics, and others encouraging participants to expand their level of knowledge and expertise.

Each Multi-State Study Manual – Title Insurance, Closing Agents, and Title Examiners – contains over 600 pages of targeted industry education, including hundreds of sample multiple-choice questions per manual. In total, the LCAT™ Series comprises nearly 2,000 pages of industry- and task-specific information – or, as Karen likes to say, “Nearly 10 pounds of Prime ‘Grade A’ Education,” eluding to the fact that each Study Manual weighs over 3 pounds. Included with each Multi-State Study Manual is an interactive test component [e.g., either a single-load CD or access to online Training Portal practice tests] comprised of sample multiple-choice test questions and delivering multi-topic exams.

LCAT™ Multi-State Certification Programs

Two timely components of the LCAT™ Series are the task-specific certification-level Study Manuals – MSM for Closing Agents and MSM for Title Examiners. The Study Manuals, although designed for independent self-study, are easily adaptable for informal in-house training, as well as formal industry-sponsored certification and CE/CLE programs.

At the national level – to premise the effectiveness of standardized education and task-specific certification-level programs – The Kooger Group offers two Secured Protocol Online Examinations – one for Title (Closing) Agents and the other for Title Examiners. Once participants complete the appropriate task-specific self-study program, they may apply to take the corresponding online exam, with test results maintained by The Kooger Group. Should a participant change employers, require title insurer appointment, or undergo industry “vetting”, The Kooger Group will provide a transcript of test results to said employer, title insurer, or “vetting” entity upon test-taker authorization. The Kooger Group will transition its 16-Hour Multi-State Closing Agent Course from classroom to online in 2016. A similar program will be developed for Title Examiners in 2017.

LCAT™ Series Promotes Collaborative Educational Opportunities

Each Study Manual was developed in components, enabling state land title associations, title insurers, and others – in collaboration with The Kooger Group – to mix-and-match components from the various Study Manuals. If desired, we will add state- and/or insurer-specific end-chapter notes to create a fully customized Study Manual that partnering associations, insurers, and others may use as a foundation for their own industry-sponsored educational training programs.

We first engaged in the collaborative learning approach in the 1980’s when Pennsylvania Land Title Institute purchased several hundred copies of Closing Concepts and Title Basics to use in delivery of their own Institute-sponsored training programs. For over a decade, beginning in the late 80’s, Karen also collaborated with ALTA’s Land Title Institute, creating exam questions for their LTI courses, contributing articles to ALTA News, and providing multi-state accredited CE/CLE programming for convention attendees on regulatory compliance and professional ethics as part of her Five-Star Best Practices Program. From there, she took the courses premiered at ALTA conventions on the road, through her National Lecture Series.

In 1993, when Florida began licensing title agents, Karen was tasked with writing the state licensing manual and developing the 40-hour prelicensing course. Little did she know, at the time, how incredibly busy she would become, as the primary provider of the 40-hour course, once the real estate boom hit Florida. At the height of the boom period, Karen personally instructed more than 1200 students per year. What was unexpected was the high percentage of attendees who were not required to take the course. When Karen asked why so many title agents and attorneys – many with 10-20 years experience – were taking a prelicensing course created for those new to the industry – the response was consistent.

Students had finally found an instructor who explained why they did what they did, and how their jobs connected to the bigger picture of the overall settlement services industry. It was as if Karen had become the title industry’s Horse Whisperer. She seamlessly connected all the dots, between job functions and sub-industry roles; at the same time connecting the past to the present, empowering students to accurately predict the future. As one participant succinctly put it, “You don’t teach us what to think... you teach us how to think for ourselves.”
That is the heart of what Karen does. She brings vast amounts of information to the learning table, encouraging students to think for themselves and challenge conventional wisdom, by actively engaging in the learning process. Today, students from decades ago, contact Karen with questions regarding current industry issues. In that way, education becomes an interactive as well as an integrative process. That’s the life within the lifelong learning process.

Virginia Land Title Association was the first state title association to embrace the concept of collaborative education. In 2008, The Koogler Group contracted with VLTA to develop the Virginia Study Manual For Title Insurance and the 16 Hour Title Agent Prelicensing Course, which Karen continues to teach on behalf of VLTA. In 2010, in consultation with the Virginia Bureau of Insurance, VLTA established two new industry certifications: (1) the Title Settlement Agent Certification [VCTSA]; and (2) the Title Examination Certification [VCTE]. After two successful years of working with The Koogler Group on the prelicensing project, VLTA reached out to Karen, for development of the Virginia Study Manual for Title Settlement Agents and the Virginia Study Manual for Title Examiners. Rounding out the effort, Karen developed, and delivers, VLTA’s new 16 Hour Title Settlement Agent Certification Course, and assisted, behind-the-scenes, with the 16 Hour Title Examination Certification Course. The Koogler Group is proud to have partnered with VLTA in this exciting and collaborative educational endeavor.

INDUSTRY VETTING AND FEDERAL COMPLIANCE

When the Consumer Financial Protection Bureau [CFPB] released Bulletin 2012-03 regarding its expectations that financial institutions fully vet third party service providers – which includes mortgage lenders vetting title (closing) agents – Karen obtained the Bureau’s internal Supervision and Examination Manual from which she developed the Federal Compliance Risk Management Manual to aid title agencies, law firms, and settlement/escrow companies in developing written risk management policies and procedures, as well as providing federal compliance training and testing to applicable personnel.

INTEGRATIVE TILA-RESPA REFORM

In 2014, Karen published the Integrative TILA-RESPA Final Rule Implementation Study Manual and accompanying classroom and online courses. Classroom presentation of the Integrative TILA-RESPA Final Rule Implementation Course will continue through 2015, paralleling the online course. She will continue to support post-implementation education via a series of Education Matters newsletters, bulletins, and CE/CLE courses.

2015 FEDERAL COMPLIANCE TRILOGY

To remain viable now and in the future, title agencies, law firms, and settlement/escrow companies must prove that all applicable personnel are fully trained [and tested] on federal compliance and risk management issues. Proof must include written training materials and written risk management protocols. The Federal Compliance Trilogy consists of three current textbooks: (1) Federal Compliance Risk Management Manual; (2) Multi-State Study Manual for Closing Agents; and (3) Integrative TILA-RESPA Final Rule Implementation Study Manual.

THE NATIONAL TITLE INSURANCE ACADEMY

The Koogler Group continues to facilitate the establishment of the National Title Insurance Academy which will eventually house all Koogler Group educational programs and products, along with those of other select industry educators, under the direction of an industry-designated Board of Trustees. This will enable furtherance of Karen’s lifework of creating meaningful educational programs and products. The primary objective of the Academy is to develop a two-year Associates Degree in Title Insurance. This will be the final offering Karen makes to the title industry before her retirement.

For more information regarding The Koogler Group, please visit our website, www.KooglerGroup.com.
To contact Karen directly, please email KarenKoogler@KooglerGroup.com.
Attachment Five:
Hear Presentation from American Land Title Association (ALTA) Regarding CFPB Closing Disclosure
Presentation from American Land Title Association (ALTA) Regarding CFPB Closing Disclosure Will Be Available Soon