

**Comments of the Center for Economic Justice and Brenda Cude to the  
NAIC Title Affiliated Business Process Review Working Group**

**June 20, 2017**

CEJ and Brenda Cude, NAIC Consumer Representative, offer the following comments on the draft report of the working group regarding the working group's charge:

Determine the feasibility of developing effective consumer disclosures related to affiliated business arrangements and reverse competition for the purchase of title insurance and related settlement services, including, but not limited to, a short and concise consumer disclosure at the beginning of the title ordering process to alert the consumer to key issues and opportunities.

The draft report does not address the charge. Despite the length of the memo, it does not make a recommendation on the feasibility, need or advisability of the disclosure mentioned in the charge. Nor does it spell out the unique advantages possible from a state-based disclosure as compared to the RESPA-required Affiliated Business Arrangement (AfBA) disclosure. In addition, the memo does not set out the guidance sought from the Task Force. It is unclear what the working group expects from the Task Force and it is unclear what the Task Force would do with the memo. As a matter of organization, the recommendations and conclusions of the working group – and the specific guidance sought from the Task Force – should be summarized at the beginning of the memo.

In terms of organization, we suggest the following key points

***Feasibility:*** It is clearly feasible to develop a disclosure that is likely to empower consumers by increasing awareness of the options and dangers – specifically related to steering caused by reverse competition. The decision to proceed should be based on the advisability and expected utility of the disclosure. The key decision points in proceeding on such an effort are:

1. Would it improve on and/or complement the RESPA AfBA? What might be the unique advantages of a state-based disclosure? The pros are that the new disclosure would, one, apply to all transactions, not just AfBA transactions, and, two, could leverage the advances in consumer disclosures, behavioral economics and digital technology made since the RESPA paper disclosure was developed. The con is that another disclosure during the home purchase / mortgage process may be confusing or get lost if not effectively written and delivered. Based on these considerations, a state-based disclosure, particularly in electronic format but also in paper format, informed by advances in consumer information design could reach a broader audience and improve upon the RESPA AfBA disclosure.

2. If an excellent disclosure were developed, is there regulatory authority to require the distribution of the disclosure at the optimal time? On this issue, some or most states may need additional statutory authority to require a new disclosure. However, even in the absence of such statutory authority, states could publish the disclosure on its web site or as a public service announcement or advertise the disclosure in places consumers purchasing a home are likely to encounter or partner with others to distribute the disclosure.
3. Would it be a better approach to work with the Consumer Financial Protection Bureau to improve the RESPA AfBA disclosure? State insurance regulators should work with federal banking regulators on issues where insurance and lending meet, but such an effort is not a substitute for state-based title insurance disclosures. While the RESPA AfBA disclosure can surely be improved, changes are limited by statutory requirements of RESPA and by the requirement to provide the disclosure only in transactions involving an AfBA.

Based on the above, the working group memo should conclude that the disclosure referenced in the charge is both feasible and advisable, but a dual track for distribution should be pursued – one track focused on publishing and disseminating the disclosure within existing statutory authority and a second track that examines the regulatory authority needed to require distribution early in the home-buying process when the disclosure is most likely to benefit consumers. In addition, this second track could examine forming coalitions with other groups involved in the home-buying process who could facilitate voluntary distribution of the disclosure. The memo should present the brief analysis, above, to the Task Force and seek approval for the following:

1. Direct the Working Group to develop the disclosure referenced in the charge, explaining the unique advantage that a state-based disclosure could offer;
2. Identify methods and opportunities for distribution through existing regulatory authorities and resources; and
3. Identify the specific regulatory authority need to require distribution of the disclosure to home purchasers at the beginning of the home-buying process.

Whether the Task Force agrees to any or all of these requests, the requests are set out in a manner for the Task Force to clearly understand the issues and proposed activities and to take whatever action necessary to provide the clear guidance needed by the Working Group.