



Comments of the Center for Economic Justice

To the NAIC Title Affiliated Business Process Review Working Group

January 25, 2017

With the exception of the following, the Center for Economic Justice supports the January 24, 2017 proposed revisions to Chapter 18 of the Market Regulation Handbook

The following is proposed regarding Standard 3 – Controlled business is handled in accordance with statutes, rules and regulations.

Documents to Be Reviewed: Applicable statutes, rules and regulations

The title insurance agent must advise customers prior to commencing a transaction of the controlled business arrangement, if required by statutes, rules bulletins and regulations. Compare any disclosure form to RESPA appendix D which refers to affiliated business arrangements and any additional state based disclosure requirements that pertain to affiliated entities or controlled businesses. ~~Refer to the Real Estate Settlement Procedures Act (RESPA), Appendix D for the required federal affiliated business disclosure form~~

Comment:

It is unclear how or why the examiner would know that RESPA is an applicable statute since it is a federal statute. We suggest adding “including the federal Real Estate Settlement and Procedures Act” at the end of applicable statutes, rules and regulations in documents to be reviewed. We also suggest that documents to be reviewed include “State or federal affiliated business arrangement disclosures,” since the procedures direct the examiner to review such disclosures.

The first paragraph of the review procedures, as proposed with edits, is shown above. The first sentence instructs the examiner that an AfBA disclosure is required **if required by statutes, rules bulletins and regulations**. We know such a requirement already exists in RESPA Section 8. Consequently, a more accurate and relevant instruction would be:

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RESPA requires a title agent, title insurer or affiliate of the title agent or title insurer to advise consumer prior to commencing a transaction of the controlled or affiliated business arrangement. State statutes, rules bulletins and regulations may add additional disclosure requirements or limitations on the controlled business arrangement. Verify that the appropriate disclosure was made at the proper time. Compare any controlled business disclosure to the requirements of RESPA, appendix D and any additional state-based disclosure requirements that pertain to affiliated entities or controlled business.

A couple of paragraphs down in this standard, the following addition is proposed:

With regard to national banks and their affiliates conducting title insurance, see 15 U.S. Code § 6713

We suggest that this addition is unhelpful because it directs the examiner to a federal statute which is unlikely to be applicable. The section cited has a very narrow grandfathering: a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before November 12, 1999. If the national bank or its subsidiary was operating lawfully before November 12, 1999, then it is almost certainly was operating in compliance with state laws, so “grandfathering” would be irrelevant.

If the reference to 15 USC 6713 is added, then it requires the addition of “which potentially provides a very limited preemption of state insurance laws for national banks actively and lawfully conducting title insurance activities prior to November 12, 1999.” By adding the further explanation, the examiner is alerted to the situations in which a review of the federal statute would be useful.