

**Comments of the Center for Economic Justice and Brenda Cude to the
NAIC Title Task Force regarding
The Report of the Title Affiliated Business Process Review Working Group
July 31, 2017**

CEJ and Brenda Cude, NAIC Consumer Representative, offer the following comments on the report of the Title Affiliated Business Review Working Group regarding its 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.

First, we thank the chair and members of the working group for the thoughtful and inclusive process of gathering comments from a variety of stakeholders. We have concerns that the working group's report does not provide the Title Task Force with a roadmap for guidance needed and a way forward. Based on our decades of experience with consumer information, education and disclosure generally and with title insurance, specifically, we offer the following.

Feasibility: It is clearly feasible to develop a disclosure that is likely to empower consumers by increasing awareness of the options and dangers 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 a state-based disclosure could, 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, 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. We endorse working with the CFPB to improve the RESPA disclosure, but that effort is not a substitute for a state-based disclosure.

Based on the above, we 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.

We suggest that the task of developing the disclosure (item 1 below) be assigned to the Transparency and Readability Working Group because of the expertise and experience that group has in developing consumer disclosures and because the task of creating consumer information fits better with the role of the Transparency and Readability Working Group. Items 2 and 3 could remain with the Title Task Force or go to the Transparency and Readability Working Group.

We ask the Title Task Force to recommend to the Property and Casualty C Committee that it accept a charge for the Transparency and Readability Working Group to:

1. Develop the disclosure 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, informed by the unique advantages 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 needed to require distribution of the disclosure to home purchasers early in the home-buying process.

Thank you for your consideration.