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June 1, 2020

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2020-RFI-Taskforce@cfpb.gov

re: Request for Information To Assist the Taskforce on Federal Consumer
Financial Law

Docket Number CFPB-2020-0013

Honorable Kathleen L. Kraninger
and The Taskforce on Federal Consumer Financial Law
Director, Bureau of Consumer Financial Protection
Consumer Financial Protection Bureau
1700 G Street NW.,
Washington, DC 20552

Dear Director Kraninger and The Taskforce:

I am writing on behalf of the members of the American Escrow Association (AEA), the nation's trade association on federal matters for real estate settlement agents. Members work for businesses who provide escrow and other forms of settlement (closing) services. We are submitting comments on this request for information (RFI) to cover considerations applicable to the services we provide to consumers and others such as lenders. We appreciate the open process and this opportunity to place our comments in the public record. Our subject matter expertise under "II. Requests for Information," is specifically pertinent to loan closing services under the item: "Mortgage origination and servicing."

Our comments are presented as precisely as we can for your assessment considerations. At the outset we would like to make clear we do not perform empirical research. On the other hand, our members have regular transactional-based contact with consumers on their home purchase and financing transactions (as well as refinancings). That has been true even in this time of COVID-19 notwithstanding the majority of employees working from home. A basic reason for that is the generally unchanged need for physical presence in many cases to witness a "wet signing" of the promissory note and other documents on behalf of the lender. We believe we can provide specific and detailed value to the Taskforce by engaging in direct dialog between the most experienced of our members who handle—directly—the closing of consumer mortgage lending transactions (and accompanying real estate transaction if there is a purchase) and staff and members of the Taskforce. We are providing information on our contact individuals (for the balance of

2020) at the end of this letter in the hope we are not precluded from a direct role in the Taskforce's process of developing its recommendations. We have this concern because of the reference to the 1968 consumer legislation and the commission established under it, whose report "contained original empirical data, information and analyses." 85 FR 18215. We believe our information will be equally informative to the Taskforce as is research with accompanying analysis and data development. Finally, in addition, we recognize that this RFI is for information gathering purposes and not part of a formal or informal rulemaking.

On specific sections:

A. Expanding Access.

We have supported legislation for years to address an important topic not directly addressed in this RFI—seller-financed access to homeownership. We have supported legislative adjustments to the Dodd-Frank law to balance the need to protect consumers from unfairly expensive financing choices with the historically provable fairness of home financing often available at the small seller-financer provider level (such as self-directed IRA investors) in properties. These individuals may just sell and finance one or even a few more properties in some years, generally to the occupant previously renting. These individuals only charge a non-high cost market interest rate for the financing, with no upfront (or back-end) adding or loading of costs; and in fact the only consumer cost is timely payment of the monthly contract amount. We believe there has been too much general bias by the Bureau against this type of financing stemming from some truly abusive practices by different interests as compared to the many small providers of access to owning a home by financing themselves. We have supported the efforts of the "Coalition to Save Seller Financing" over a number of years and the current Bill reflecting its work, introduced at the beginning of the current Congress as HR 1036, is the "PARITY Act" of 2019. More generally we believe that only those who "regularly and habitually" engage in credit transactions should be subject to a more highly regulated business setting and those who would be covered under the PARITY Act should not. This is a balanced approach and needs your attention.

B. Consumer Data.

Our members regularly handle a lot of sensitive consumer financial data including elements considered non-public personal information (NPPI). As the laws of the land and individual states relating to the handling and safeguarding of consumer data have been developed, and are still being developed, our primary hope is that different federal efforts be coordinated with awareness of what each entity has underway and that there be harmonizing and coordination of the efforts. For example, the FTC has a very important initiative underway under its "Safeguards" (and privacy) rules which could dramatically change what escrow operations face. We will be watching closely their virtual workshop on July 13, 2020. We also are watching closely what the GSEs and others articulate in their efforts to protect consumer financial data and privacy more generally through specific systems requirements.

C . The Regulations.

The primary regulation impacting escrow under the Bureau (which combined Truth in Lending Act and the Real Estate Settlement Procedures Act requirements), is the “TRID” rulemaking. We believe that project was ultimately an overall success notwithstanding the need for a number of adjustments in additional rulemaking after the initial final rule was issued. We add that we have urged, including recently, one final formal adjustment to TRID relating to the disclosure of owners’ title insurance premiums based on the original and unfortunate policy decision to vary (in the calculated amount) from presentation of actual cost on this one cost only. We can provide further explanatory details.

The more general point is that the Bureau first engaged with AEA even before it was a separate agency. (It was still under Treasury when that project started pre-rulemaking as there was not a confirmed Director and the Dodd-Frank law mandated a proposed rule by a specified deadline.) The listening sessions we had with staff were equal to or better than any we have had with any federal agency since AEA was formed 40 years ago. We hope that opportunity can be a model for AEA dialog with the Taskforce in 2020.

D. Federal and State Coordination.

Our primary thought on this topic is that any action, whether further rulemaking, or supervisory or examination-type and enforcement activity of the Bureau involving an escrow operation, be aware of the scope and actual current functioning of state regulators before launching into actions. Some states have a broad range of active consumer protections and safeguards built into their licensing structure for escrow and the Bureau needs to be aware of those.

While this section is stated as state-federal coordination the overall focus seems to have to do with joint supervision or enforcement responsibilities including of, and with, other federal agencies. We have seen a few examples in which clean (from an historical state oversight view) escrow operations are caught up in punitive federal action. The most glaring example of this is in the Civil Investigative Demand (CID) category in which Bureau action in California involving a major lender took a ruinously expensive turn for two escrow companies in the “dragnet” approach seeking all their communications with and closing work for that lender. This type of problem was partially addressed by the Bureau several years ago through a prior set of RFI’s including one on CIDs. We had urged the Bureau to adopt the recommendations of the FTC in their adjustments on the same topic in dealing with small service providers, which include almost all escrow operations. We continue to urge the same.

On question 16, we believe the Bureau should issue policy statements for categories of specific providers to indicate it will defer to proven adequate state oversight--supervision, examination and enforcement—where appropriate to provide certainty and clarity that all parties including consumers can rely on.

We hope we can discuss these topics further in the way we did with the Bureau almost a decade ago. We believe we delivered equal value to others who may have focused more on detailed empirical data presentations.

Other topics for further discussions:

1. Addressing wire fraud losses and potential losses of consumers. AEA engages in many intra-industry and direct efforts to address consumer matters. One example is our involvement in wire fraud reduction efforts through consumer education and direct messaging to consumers in the use of their own money by wire transfer to acquire real estate in their specific transaction.
2. Consumer education on understanding the real estate closing process. This includes participation in CFPB efforts to provide useful online information as well as direct company-produced information—beyond mandatory federal disclosures—to help guide a buyer obtaining a loan through the process.

Finally, we have tracked the Bureau's risk-based supervision efforts including for non-banks since its inception and would use additional opportunities to engage with this Taskforce to address specific aspects of escrow which for which risk-based future approaches of the Bureau can be relevant.

Our contacts to set up these discussions for the remainder of 2020 are:

Myself as current President at: **Redacted** through July 31, 2020 and then our President-Elect Carlye Buxton at **Redacted** from when takes office August 1, through December 31, 2020. While serving we can be contacted at **Redacted**

Sincerely,

/s/ **Heather Wyant**

Heather Wyant
2019-2020 President
American Escrow Association