

**AMERICAN  
LAND TITLE  
ASSOCIATION**

11-468



January 18, 2011

The Honorable Timothy F. Geithner  
Secretary of the Treasury  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Shaun L. S. Donovan  
Secretary of Housing and Urban  
Development  
United States Department of Housing and  
Urban Development  
451 Seventh Street, SW  
Washington, DC 20410

The Honorable Mary L. Schapiro  
Chairman  
United States Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

John G. Walsh  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219-0001

Edward J. DeMarco  
Acting Director  
Federal Housing Finance Agency  
1700 G Street, NW  
Washington, DC 20552

The Honorable Sheila C. Blair  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429-9990

The Honorable Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Ave  
Washington, DC 20551

John E. Bowman  
Acting Director  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

Dear Sirs and Madams:

As you implement Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act")<sup>1</sup>, the American Land Title Association ("ALTA")<sup>2</sup> appreciates the opportunity to express its views on the characteristics of a Qualified Residential Mortgage ("QRM") as you jointly issue regulations to exempt QRMs from the risk retention requirements of the Act. A title search backed by a title insurance policy, is an underwriting feature that results in a lower risk of default and should be included in the definition of a Qualified Residential Mortgage.

<sup>1</sup> Public Law 111-203, (July 21, 2010).

<sup>2</sup> The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry representing more than 3,800 member companies. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstractors, title searchers and attorneys, ranging from small, one-county operations, to large national title insurers.

Section 941 of the Act requires the federal banking agencies, the Department of Housing and Urban Development (HUD), the Federal Housing Finance Agency (FHFA) and the Securities and Exchange Commission (SEC) to jointly promulgate rules requiring a securities issuer to retain a percentage of the credit risk in any asset-backed issuance, including a residential mortgage backed security. Congress authorized an exemption from this requirement for securities backed entirely by "Qualified Residential Mortgages". While the definition of a QRM is left to the joint regulators, Congress required the regulators to consider "underwriting and product features that historical loan performance data indicate result in a lower risk of default<sup>3</sup>."

**Title Insurance is an essential underwriting feature that reduces risk in the mortgage transaction.**

ALTA strongly supports efforts to identify the underwriting and product features that result in a lower risk of default. Therefore we draw your attention to one of the most fundamental parts of the underwriting process: underwriting the real property that will serve as collateral for the mortgage loan. At its most basic, mortgage origination involves two essential underwriting steps, underwriting the borrower and underwriting the collateral. Mortgage originators utilize a title search backed by a title insurance policy to investigate, identify, and analyze the state of title to the collateral, thus reducing credit risk.

Due diligence in the form of title insurance is so fundamental to the issuance of credit that it has become a "check off" underwriting item and universal practice among mortgage originators. Nevertheless, this analysis of the collateral's title, although sometimes underappreciated, is a vital part of the underwriting function of any mortgage loan, and should be included within the requirements of a QRM. Consumers, investors, mortgage originators and the public are better protected from this risk when a title search, examination and curative work are conducted and title insurance policies are issued for both the owner and loan in conjunction with the origination and/or refinancing of a mortgage.

The Act's risk retention requirement and the QRM exemption are intended to protect homebuyers, investors and the public by promoting loan products that reduce the buyer's risk of default and the investor's risk of loss on the mortgage. As Fannie Mae and Freddie Mac have recognized by requiring the placement of a title insurance policy for all mortgages sold to the companies via their seller/servicer guidelines<sup>4</sup>, title insurance can help reduce both of these risks and should be a part of the QRM requirements.

<sup>3</sup> Public Law 111-203, Section 941(c).

<sup>4</sup> See Fannie Mae's "Selling Guide" Chapter B7-2, Title Insurance and Freddie Mac's "Single-Family Seller/Servicer Guide" Chapter 39: Title Insurance. Fannie Mae requires, "Before purchase or securitization, each first mortgage loan delivered to Fannie Mae must have a title insurance policy in place that satisfies Fannie Mae's requirements." Freddie Mac requires, "Each Mortgage purchased by Freddie Mac must be covered by... A paid-up Mortgage title insurance policy meeting the requirements in Section 39.2"

**The title insurance process provides confidence to lenders, consumers, and buyers.**

The "ownership" of real estate involves the interest in a bundle of rights relating to the use of, and disposition of real property. This concept is called title, and these rights can be transferred individually or collectively. Prior owners may have created interests in a property or suffered liens against a property that will affect the interests acquired by a new purchaser. Potential buyers need to know which rights have been removed from or added to the bundle as this will affect the use of the land, and as a result, its value.

In the United States real property is conveyed by a private contract that is most commonly called a deed. These private agreements are memorialized in local public records, putting the world on notice of the transfer. Since governmental agencies do not routinely verify land titles, buyers, sellers and mortgage creditors depend on the land title industry to research the public record in order to determine various facts related to title, including how title is legally vested. It is this work performed by land title professionals that fosters the trust necessary in these public records so that equity in real property can be exchanged for mortgage credit.

Title insurance plays an essential role in facilitating ownership and investment in real estate in the United States. Mortgage lenders typically require title insurance as a condition of providing financing for the transaction to assure itself that the buyer, in fact, will own the property and that the mortgage lender will obtain a valid and enforceable first mortgage lien that is not subject to any other lien or claim that could adversely affect that mortgage interest.

**Title insurance facilitates accurate, quick, and affordable transactions that benefit buyers, sellers, and lenders.**

Thanks to the efforts of the land title industry, our system of land transfer has a relatively short settlement transaction time, saving borrowers and sellers money and producing the strongest real property transfer system in the world. Through this confidence is often taken for granted in our country, it provides our economy with the legal underpinning to make homeownership possible, serving as an extraordinary model for the rest of the world. In fact, internationally respected economist Hernando de Soto argues that the economic success of the United States relies on the title insurance process and authentication it brings to real estate transfers.<sup>5</sup>

In general, the land title industry offers two types of title insurance policies, both of which are typically issued after the closing of a real estate or mortgage financing transaction: an Owner's Policy and a Loan Policy. An Owner's Policy insures the purchaser of real estate against financial loss or damage that may arise from defects in the title as insured, including the assertion of liens and claims against the property that are not otherwise excepted from policy

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<sup>5</sup> De Soto, Hernando. "TOXIC Paper: The Obama administration must tackle a problem that has bedeviled the emerging markets for years." Newsweek Mar 2, 2009.

coverage. The policy includes protection against title defects that may be found in public records but were not discovered during a search of those records or their significance was not appreciated, and against those non-record defects that even the most comprehensive search of public records would not reveal. Without a title insurance policy, a borrower would self-insure the risk of losing title. Besides losing their home, borrowers would be financially responsible for: the loss of the purchase funds and any improvements; the costs of defending their rights including legal fees and court costs; and the costs of obtaining new housing.

A Loan Policy insures the holder of the promissory note that it will have a valid, enforceable lien on the property in accordance with the mortgage rights created by the loan; that the person to whom the loan is being made has title to the property used as collateral; and that no other claimant, other than those specifically noted in the policy has a prior, superior claim. The title insurer is obligated to pay for the costs of defending the title as insured against any covered claim. Without the policy, the holder of the note would self-insure the risk of losing access to the property if the borrower defaults. Further, the loan policy follows the note and transfers to each subsequent holder throughout the securitization process.

**Acting as independent third parties to the transaction, title companies ensure that the underlying contractual obligations are executed as written.**

An important aspect of title insurance that should not be overlooked is that at the settlement or closing title agents are the independent third party to the transaction whose only interest is to the integrity of the transaction and the protection of the consumer. We are the people who handle the funds that come from the borrower and the lender and disburse it to the appropriate parties in the transaction. Our job is to close the transaction equitably, honestly and in accordance with the agreed-upon instructions, and to get the funds into the appropriate hands.

**ALTA believes that uniform underwriting standards currently in place in the secondary market should also be applied in the QRM.**

Beyond the placement of title insurance, ALTA believes that the QRM should be designed broadly to maximize its potential to generate uniform, national standards, protect a greater percentage of mortgage applicants and encompass the widest possible range of mortgage products – including those with both short-term and long term maturity, a fixed and variable rate, conforming and jumbo – so that the maximum number of qualified buyers have access to homeownership. By focusing on underwriting standards that can be universally applied to a variety of borrowers and loan products, the benefits of the QRM can set precedents that extend beyond its specific market share to the market as a whole.

Currently this standard and uniformity is accomplished by Fannie Mae and Freddie Mac's market position. Consequently, their underwriting platforms, standards, forms and mortgage terms have become standard practice throughout the mortgage market. The QRM has this same potential to set market standards.

Finally, regulators should consider the potential impact the QRM and risk retention requirements will have on the availability of credit. While regulators should not condone risky lending practices, the definition should provide flexibility to provide access to credit through standard products and responsible, innovative products.

The protection of title insurance is vital for underwriting a safe and sound real estate transaction. A title search, examination, curative work and the placement of both an owner's and loan title insurance policy are best practices that protect both individuals and creditors and should be included in the QRM exemption.

ALTA appreciates this opportunity to comment on the joint rulemaking process. Should you have any questions, please do not hesitate to contact Justin Ailes at 202.261.2937.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Pfothauer", followed by a horizontal line.

Kurt Pfothauer  
Chief Executive Officer