

Date: July 13, 2016
To: NAIC Title Insurance Task Force Members
From: Karen E. Koogler, CEO
The Koogler Group, L.L.C.
Re: Educational Materials for NAIC Title Insurance Task Force Members



During my Spring 2015 presentation to Task Force members regarding the impact of CFPB Bulletin 2012-03 and the TILA-RESPA Integrative Disclosure [TRID] Rule, I offered members a set of Federal Compliance Trilogy textbooks, to enhance understanding of current issues facing title (settlement) agents under the Bulletin and Rule. While some members provided us their contact and shipping information, others did not. Because we believe in the importance of meaningful education, we are today forwarding the following to each Title Insurance Task Force member:

- **Federal Compliance Trilogy**
 - *Multi-State Study Manual for Closing Agents 2nd Edition [textbook only]*
 - *Federal Compliance Risk Management Manual*
 - *Integrative TILA-RESPA Final Rule Study Manual [textbook only]*
- TILA-RESPA Education Matters E-News Supplements
- TILA-RESPA [TRID] Rule Koogler Group Correspondence

One of the items listed on the Spring 2016 Agenda included comments regarding development of a Title Insurance Education Course for regulators as well as a proposed Course Outline. As you are aware, what once began as title agent licensing for the purpose of countersigning and issuing title insurance policies on behalf of title insurers and providing core [primary] title services re same, has expanded into title agent licensing for the purpose of engaging in settlement/escrow activities within an increasingly complex regulatory environment. As such, it is imperative that state regulators maintain awareness and – *to the extent permitted under specific state law* – oversight of title (settlement) agent activities.

As a 40-year industry veteran who has dedicated most of her career to industry education, I have observed a shift in those attending title agent prelicensing courses for purposes of working in title search and examination vs. those obtaining licensing for purposes of working as settlement/escrow agents. In the early 90's, those attending prelicensing courses were fairly evenly divided between the two groups. By the mid 90's, far more settlement agents than title examiners pursued title agent licensure – with a new and expanding group of "*industry-adjacent*" real estate brokers/agents and mortgage brokers pursuing title agent licensure for purposes of opening affiliated-business title insurance agencies. During the past five years – due in large part to an increasingly complex regulatory environment which has fixated focus on compliance issues – prelicensing courses now include a growing number of attendees working in settlement/escrow support capacities as marketing representatives and processors.

In addition to authoring numerous industry prelicensing textbooks and developing and delivering prelicensing programs, much of my time is devoted to developing programs and products on federal compliance issues. My stance on regulatory compliance has remained the same for 40 years; first as an industry participant and, for the past three decades, as an industry educator. When it comes to state and federal laws, rules, and regulations, there are only two options: (1) comply; or (2) comply, while lobbying for change if one finds them too restrictive. Circumvention is never an option. I deeply believe in regulatory compliance as a means to ensuring consumer protection. As the 2007 GAO Report, Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers states:

"Kickbacks are generally illegal under both RESPA and most state insurance laws. Although the enforcement provisions of laws in five of the six states in our sample included suspension or revocation of agents' licenses and monetary penalties, state regulators and others did not see these sanctions as effective deterrents against kickbacks.

One state regulator and some industry participants expressed concern that title insurers and agents saw the fines simply as a cost of doing business, since these businesses stood to gain much more in market share and revenue through illegal kickbacks than they would lose in state-assessed monetary penalties. From 2003 to 2006, officials in states we reviewed settled with insurers for over \$90 million in penalties for alleged referral fee violations. In comparison, in 2005 alone net earnings for the five biggest title insurers totaled almost \$2 billion. In addition, at least one group of industry participants told us they took the fact that regulators had taken little action in the past to mean that they would not get caught if they engaged in illegal activity.”

The GAO Report also referenced the October 2006 Washington State Report, An Investigation into the Use of Incentives and Inducements by Title Insurance Companies which listed violations by company name, types of violations, and associated dollar values. The Report cited one company as a “prime example of how illegal inducements can help a company attain superior market share” stating that the company “clearly ignored its obligation to the law” by committing over 100 violations per month during the 18-month review period, using *co-advertising* as a primary tool and “routinely [paying] more than \$20,000 per month on this category of inducement, not including picking up the production costs and postage for flyers advertising real estate sales.” After citing other types of incentives and inducements, the Report stated that “all told, the company averaged in excess of \$120,000 per month funding these activities and giveaways.” Do the math and that totals over \$2 million paid in incentives and inducements over an 18-month period in just three counties within the greater Seattle area for the purpose of influencing transaction middlemen (real estate agents, banks, lenders, builders, developers and others) to steer title insurance business to the company.

Although a decade old, both Reports are worth mentioning, especially in light of CFPB’s RESPA enforcement actions as well as its release of Bulletin 2015-05 regarding RESPA Compliance and Marketing Services Agreements; and NAIC’s consideration as to potential benefits of drafting a companion notice/bulletin at the state/jurisdictional level as well as its continued focus on affiliated business arrangements.

During workshops leading up to the 2012 Proposed TRID Rule, the CFPB stated that some lenders might decide to take the settlement process in-house, via “*lender-owned, lender-affiliated, or lender-preferred-partner providers*.” The TRID Final Rule, in referencing settlement agents providing creditors a copy of the agent-prepared Seller’s Closing Disclosure, includes the caveat, “*unless the creditor IS the settlement agent*.” The most likely “*preferred-partner providers*” for national lenders are national title insurers with significant direct-operation and vendor-management services footprints. Today, the top two national title insurer “families” control approximately 60% of all title insurance business in the United States, with the top four “families” controlling in excess of 86%, leaving only 14% to be shared by 25 independent title insurers. When we factor in CFPB expectations regarding creditor [lender] oversight of service providers [title (settlement) agents] as well as the Bureau’s focus on its eClosings project – coupled with the ability of title insurers to harness the power of technology as a non-agent delivery system for lenders’ title insurance coverage – it creates an environment where an increasing number of small and midsize providers may be forced to shutter their doors. If nothing else, the escalating cost of annual or biennial Best Practices third-party certification is sure to drive many small and midsize title agencies, law firms, and settlement/escrow companies out of business.

This is not an indictment of recent government and industry actions; but, rather, an indication of normal industry evolution. That said, true consumer protection begins with unfettered consumer choice. Should we be left with a handful of national lenders and insurers dominating the marketplace, any hope of restoring a level playing field among providers flies out the window, taking with it the last vestiges of consumer choice. The surest way in which to effect true consumer protection is to preserve consumers’ right-to-choose their settlement providers from a wide array of potential providers of all shapes and sizes. The answer to the question of consumer protection is not “Big.” Consolidation of power in the hands of a few rarely serves the best interests of the many.

Regardless of what the future may hold for small and midsize independent title (settlement) agents, the current focus on regulatory compliance, as well as consumer education regarding the importance of owner’s title insurance coverage, must move forward. NAIC is well-positioned to offer state/jurisdictional-level model guidance on both issues. My purpose in providing copies of the Federal Compliance Trilogy textbooks to Task Force members is to encourage members to learn more about the issues currently impacting industry professionals. In addition to the enclosed, we also offer the Multi-State Study Manual for Title Insurance as well as the Multi-State Study Manual for Title Examiners to interested Task Force members.

While I understand the Task Force's long-standing alliance with the American Land Title Association, it may prove beneficial to consider *other* educational sources as well. The Koogler Group has been an ALTA member since 1998 and worked closely with the Land Title Institute [LTI], along with myriad State Land Title Associations, for over a decade on CE/CLE educational programs and products – including updating the exam components for LTI Courses I and II and providing half-day to full-day CE/CLE sessions at ALTA conventions and meetings. The long-standing collaboration between LTI and The Koogler Group continued until its long-term Director of Education, Patricia Berman, retired in 2008.

In 2009, ALTA began heading in a new direction, offering 20-minute to one-hour professional development sessions on multiple topics of interest to its members as part of a multi-day agenda. While this is an excellent manner in which to expose attendees to a wide range of topics, The Koogler Group chose to continue pursuing a more formal approach to education, by providing full-day and multi-day educational industry prelicensing and CE/CLE programs. The latter included the full-day 2008 RESPA Final Rule Program as well as the full-day TRID Final Rule Program and various other half-day and full-day programs offered as part of our National Lecture Series. Many of our 300-400 page textbooks may be used as 90- to 180-day self-study programs for those who prefer to consume education bite-by-bite. For closing agents and title examiners we offer secured protocol online examinations for those completing self-study courses based on the *Multi-State Study Manual for Closing Agents 2nd Edition* or the *Multi-State Study Manual for Title Examiners*. We believe both approaches – informational and educational – have their place within the industry and look forward to potential collaboration in the future.

Task Force members are encouraged to learn more about The Koogler Group and the educational programs and products we provide by reviewing the attached Professional Biography. As you will see, industry education, with a focus on consumer protection and regulatory compliance, is our only business. In the first six months of 2015, The Koogler Group provided over 12,000 hours of CE/CLE credits to approximately 1,500 title agents and attorneys as part of its full-day TRID Rule Program.

Although our company has always offered free education to industry regulators, 2015 was the first time I publicly took a position on current regulatory matters impacting the industry, via my March 2015 letter to State Governors, Insurance Commissioners, and Attorneys General. I was honored when invited by Chairman Namge to speak to the Title Insurance Task Force regarding my concerns. I remain no less concerned regarding the state-of-the-industry today, than I was at that time – but am hopeful CFPB's Notice of Proposed Rulemaking will, at minimum, provide some much-needed guidance; and marginally hopeful the Bureau may improve its stance on disclosure of title insurance premium on TRID Rule disclosures.

I am particularly excited about the Task Force's interest in a *Title Insurance Education and Training Course*. I agree that such course should address topics set forth on the sample outline from an objective perspective and, to the extent possible be both regulator- and consumer-centric. Having authored over 25 title insurance textbooks during a span of 30 years, I offer my services to the Task Force to write a comprehensive textbook for Insurance Commissioners regarding title insurance basics and current regulatory issues. The textbook may be used as a self-study course, for Task Force members and their respective staff who wish to consume education bite-by-bite or, if preferred, as the foundation for a full-day program of instruction. In addition, I believe it important for education to be interactive and therefore encourage individual Task Force members and/or staff members whose direct job-focus is on title insurance regulation [auditors/investigators] to email me any questions they may have.

Each year, The Koogler Group donates approximately \$100,000 in educational programs, products and consulting services to industry professionals and regulators. I would be honored to work with the Title Insurance Task Force to ensure that its members – along with all State Insurance Commissioners – receive a final product that meets or exceeds expectations. Should the Task Force choose to pursue other options, I remain available to answer any questions individual Insurance Commissioners may have regarding industry products or practices. Please email me at KarenKoogler@KooglerGroup.com.

Thank you for the opportunity to be of service. I hope the enclosed *Federal Compliance Trilogy* does not prove too overwhelming. I strongly suggest reading the *Multi-State Study Manual for Closing Agents 2nd Edition* first and perhaps add the other two manuals to your research library for later reading or for industry-reference purposes. I look forward to hearing from you.