

July 12, 2024

The Honorable Sandra L. Thompson  
Director  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, DC 20024

VIA ELECTRONIC MAIL

Dear Director Thompson:

The undersigned groups support the interests of homeowners and potential home purchasers, especially low- and moderate-income families and communities of color. We write to express our support for recent announcements from Fannie Mae and Freddie Mac (“the GSEs”) reflecting their intention to explore carefully-crafted pilot programs aimed at reducing closing costs for homeowners—specifically, a [“title acceptance” pilot](#) program to waive the requirement of a lender title policy (or an attorney opinion letter) in certain refinance transactions. Instead of traditional title insurance, the GSEs would, for these loans, use an automated title review process to assess title risk. If the automated title review process confidently assesses that title risk is low, lenders will not be required to provide additional independent verification and instead will pay a fee to Fannie Mae or Freddie Mac to cover the risk that there is an unexpected title defect.

As housing costs have remained high in recent years and continue to drive inflation, finding ways to broaden access to homeownership and preserve stable existing homeownership is extremely important. Mortgage closing costs have been identified by some researchers as an important piece of the puzzle.

Title insurance can be a significant closing cost and consumers have limited ability to shop around. The pricing of this product is not transparent; in some states the title insurance includes some of the costs of title clearing and preparing for the closing; in others the premium is supposed to reflect only the cost of risk. Yet there does not appear to be a significant difference in the price of title insurance between those two kinds of states. For a lender title policy, in the current system the lender requires the policy, but the homeowner is required to pay for it. Therefore, there has been no downward market pressure on the price of lender title insurance. State insurance regulators have authority to regulate the cost of title insurance, and yet questions

remain about whether those regulators are sufficiently overseeing the price of the product.

Our organizations support the general approach of a carefully planned pilot to examine whether alternatives to a lender title policy can provide comparable benefits for certain refinance loans backed by the GSEs. Use of title alternatives has the potential to place downward pressure on these costs. At the same time, during any title pilot, the GSEs should be required to report on any harms that flow to consumers from a lack of a lender title policy. Because the pilot is restricted to the refinance context, potential risks to homeowners are more limited than they would be for purchase transactions. Most homeowners likely have an owner title policy from the purchase of their home, which is understood to protect them for their entire tenure in the home.

It seems likely that the greatest cost savings would be concentrated among homeowners with higher-balance mortgages, given that the title insurance premium increases with the amount of coverage and the amount of coverage on a lender's title policy increases with the amount of the loan. We urge FHFA to gather data to evaluate which homeowners benefit from the pilot project's savings and the nature of those benefits. In cases where the automated title review does not result in waiver of the requirement of title insurance or where there is an attorney opinion letter, FHFA's data collection should include the pricing or terms of title insurance products and FHFA should analyze those differences with a particular eye to any concerning patterns, such as disparate impact. We also hope and expect that the GSEs will ensure that certain controls will be maintained to minimize title risks during a pilot and any adoption of an alternative system, such as the described title review. FHFA should more fully describe the nature of the "automated title review," the extent of the title search in that review, and the thresholds for eligibility for title waiver. Data on results of these title reviews should be made public and should be disaggregated by the race and ethnicity of the homeowner. Further, the program will include a lender fee to cover any curing of title defects. Data should be made public regarding the costs and components of those fees, whether they are fixed or vary with the loan amount, whether they are passed on to consumers, and the actual costs of any title clearing. Finally, program design and data reporting should address the issue of loans sold out of the GSE portfolio in note sales (and whether the GSE would still cover any title issues if the loan was part of a title alternative program) and also situations where title concerns may arise after origination and purchase of the original title policy, such as when a second mortgage is taken out afterwards (which therefore would not be covered by the owner's purchase policy).

Given the many important actions of title clearing and pre-closing preparation that are carried out by closing attorneys, FHFA and the GSEs should examine whether and how

much homeowners are required to pay in separate fees to closing attorneys who were previously compensated in part by insurance premiums. Moreover, in instances where title disputes arise with alternatives to traditional insurance, the program should more clearly state the course of action in such circumstances.

While we support GSE exploration of the potential benefits from title alternatives in refinancings, we would have concerns about expanding title insurance waiver pilots to the home purchase context, where an owner's policy is often purchased in concert with a lender's policy. Homebuyers get important protections from an owner title insurance policy, and it is not at all clear that the waiver pilot or attorney opinion letters provide equivalent protection, such as protections against fraud and forgery and coverage of legal fees to clear any title issues that arise. In addition, owners get the benefit of a simultaneous issue rate when the same insurer provides an owner and lender title policy at home purchase. As a result, any cost savings from waiving a lender policy at this stage likely would be minimal without more significant reforms to the title market.

Indeed, we urge FHFA to advocate for broader reforms of the title insurance market to more effectively address the burden the current market imposes on consumers. "Reverse competition" in the title insurance market is fueled by costly referral incentives and payments to real estate professionals, which are in turn passed along to the homeowner. This market structure is largely driven by the fact that homeowners must pay for the lender's policy, even though it provides no direct coverage to the homeowner. If, instead, lenders paid for their own protection, it appears likely that insurers would directly compete for mortgage companies' business and diminish the unnecessary costs built into the current system. We encourage FHFA to work with the CFPB on lender-paid policies for lender coverage.

While much of the public discussion has been about the title insurance waiver pilot, [Fannie Mae](#) and [Freddie Mac](#) also allow limited use of attorney opinion letters as a substitute for a lender title policy. Many of the same questions arise with attorney opinion letters regarding adequate protection for homeowners at the time of home purchase, especially those without the means to otherwise address issues with their property's title. It will be important for FHFA and the GSEs to carefully examine whether attorney opinion letters and title waivers provide comparable protections to a homeowner.

We recognize and appreciate that FHFA and the GSEs are pursuing a variety of avenues to help make homeownership attainable and affordable. We look forward to continuing to work with you on a range of homeownership efforts, including carrying costs (taxes and insurance, costs of repairs), heirs property, language access,

streamlined refinancings, small dollar mortgages, special purpose credit programs, appraisal reform, first-generation programs, and the Section 8 Housing Choice Voucher homeownership program.

Thank you for your attention to the needs of homeowners. We look forward to robust public reporting on the outcomes of the title acceptance pilots and the GSEs' use of attorney opinion letters. We encourage you to actively work with a diverse group of stakeholders on this pilot and its evaluation and evolution. If you have questions, please contact Alys Cohen, senior attorney at the National Consumer Law Center, at [acohen@nclc.org](mailto:acohen@nclc.org).

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)  
Americans for Financial Reform Education Fund  
Center for Economic Justice  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America  
Jacksonville Area Legal Aid, Inc.  
Lincoln Institute of Land Policy  
Massachusetts Action for Justice  
National Coalition for Asian Pacific American Community Development (National CAPACD)  
National Community Reinvestment Coalition (NCRC)  
National Disability Rights Network (NDRN)  
National Fair Housing Alliance  
National Housing Law Project  
National Housing Resource Center  
North Carolina Justice Center  
Rebuilding Together