



We send out this update to keep you informed on the latest activity from the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac, including developments related to unregulated title insurance alternatives and other issues that could imperil the stability of the housing market and property rights of the homeowners we serve.

To celebrate National Small Business Month in May, I had this [article published](#) in *HousingWire* highlighting the important work title professionals provide to protect property rights.

In the face of economic instability over the past few years, the title industry has continued to [generate jobs and economic growth](#) across the country while also protecting the property rights of Americans. The title waiver pilot, which would waive the requirement for lender's title insurance on certain refinancing transactions, threatens these small businesses and the consumers and communities they serve.

We should find ways to support small businesses like title agencies—the type of companies that make up 90% of the industry—and advocate for policies that lift them up, not tear them down.

Continuing to raise awareness, Deborah Bailey, founder and managing member of Bailey Helms Legal LLC as well as a member of ALTA's Board of Governors, had this [article published](#) in *National Mortgage Professional* explaining that the federal government

continues to push proposals that would dangerously expose lenders and taxpayers to additional risk.

Not only did Bailey highlight issues with the title waiver pilot and why title insurance is needed for refinances, but she also reminded readers about the risks associated with unregulated alternative title insurance products like attorney opinion letters (AOLs). Bailey explains that despite being promoted as a cost-savings over title insurance, AOLs can be more expensive for homebuyers, while at the same time exposing them to more risk.

Last week, I appreciated the opportunity to speak at the Texas Land Title Association's Annual Conference. I gave a presentation on what's driving the misguided pressure on closing costs. I shared the latest on the title waiver program, our recently released research, and shared our response to the Consumer Financial Protection Bureau's attack on closing costs and title insurance.

Our education efforts are making a difference. Legislators at the state and federal level have now [voiced concerns](#) with the pilot since title insurance is comprehensively regulated at the state level.

It's more important than ever for you to have conversations with your lender customers and explain to them the importance of title insurance and how it protects them and consumers.

ALTA has a host of material to help in your education efforts. This [document](#) is a great resource to quickly explain the benefits and cost of title insurance. There also are many resources [here](#), including multilingual handouts.

This [article](#) by *The Wall Street Journal* about the attempted fraudulent sale of Graceland highlights the important work the industry provides, and the unparalleled protection title insurance provides homeowners. The article quotes ALTA General Counsel Steve Gottheim explaining the difference between the ALTA Owner's Policy and the ALTA Homeowner's Policy of Title Insurance. It's a great article to reference when highlighting the value of title insurance.

We agree that homeownership should be more attainable and affordable for more Americans. However, the notion that title insurance is in any way a principal driver of affordability challenges is wrong. Title insurance is a crucial benefit protecting homeowners and lenders.

Comments and questions are always welcome. Email me at [dtomb@alta.org](mailto:dtomb@alta.org).

# Attorney Opinions Don't Count

Title waiver pilot, unregulated title alternatives a risky game for lenders and taxpayers

By **Deborah Bailey**

*Founder and Managing Member*

The federal government continues to push proposals that would dangerously expose lenders and taxpayers to additional risk.

In March, the Biden Administration released plans during the State of the Union to revive a previously discredited and shelved pilot program that would waive the requirement for lender's title insurance on certain refinances. Additionally, unregulated products such as attorney opinion letters (AOLs) have been promoted in the marketplace, branded as "full coverage" alternatives to title insurance. Fannie Mae recently expanded guidance to permit the use of AOLs for additional types of transactions.

It is critical that lenders and consumers understand the significant risks of the title waiver pilot on refinances and unregulated alternative title insurance products.

Under the pilot, lenders will pay Fannie Mae a fee to cover the risk if there is an unexpected title defect. Basically, Fannie Mae will become a primary market insurer, expanding beyond its mission and charter. The last time Fannie Mae engaged in significant risk taking, it, along with Freddie Mac, imploded the American economy in 2008 to the tune of \$200 plus billion in taxpayer dollars. We can't allow this pattern to repeat itself.

The title industry isn't alone in voicing concern about the pilot. Ed DeMarco, who was acting director of the Federal Housing Finance Agency (FHFA) during the Obama Administration and now heads the Housing Policy Council trade group, in a letter to the FHFA implored the agency to "approach this issue with caution and a sensitivity to the role title insurers and title insurance plays in lowering risk for lenders and consumers alike." U.S. Reps. Andrew Garbarino, Bill Huizenga, and Warren Davidson wrote in a letter to the FHFA that a change like this "requires rigorous scrutiny." Additionally, 18 House Democrats recently signed a letter to President Biden stating, " ... allowing the GSEs to assume unnecessary risk outside their core mission, possibly violating their charters, is not the path we should take."

Title insurance is necessary for refinance transactions

On a refinance, lenders require title insurance to ensure the new loan is protected. If not done correctly, a lender could risk not having lien priority. Risk of fraud is another reason why lenders need title insurance on a refinance. After a couple purchased a home, the husband attempts to refinance and take his wife off the title and mortgage ahead of a pending divorce. The lender would be protected from any claims made by the wife down the road. Additional examples of title claims on lender's policies include the failure of a prior lender to properly close a HELOC after settlement, boundary line disputes, and invalid mortgages because documents were executed with an improper power of attorney.

The title industry has a lower claims rate than other lines of insurance because of the curative work title professionals perform. Preventing claims is the title industry's goal. It's why 70 cents of every dollar in premium the industry collects are spent acquiring and analyzing public real estate records data. Further, while rates for other forms of insurance have increased in recent years, the cost of title insurance coverage has decreased 7.8% since 2004, based on recent industry financial statements.

Despite being promoted as a cost-savings over title insurance, alternatives can be more expensive for homebuyers, while at the same time exposing them to more risk.

Title insurance is a well-known, established step in the homebuying process and is regulated by state insurance and consumer protection regulators. AOLs don't have similar oversight. Title insurance companies must maintain financial reserves to cover future claims risks. AOL providers do not. Additionally, AOLs typically do not provide an unlimited duty to defend the policyholder in the event of a claim, leaving homeowners open to future financial burden.

Despite being promoted as a cost-savings over title insurance, AOLs can be more expensive for homebuyers, while at the same time exposing them to more risk. In most states, the seller pays for the homebuyer's title insurance policy. This means homebuyers only pay a reduced fee for the lender's policy at closing. This often can cost the homebuyer as little as \$150. When combined with other discounts, title insurance is not only less expensive, but more protective, than AOLs.

## Policymakers have concerns about the title waiver pilot and AOLs

When the FHFA considered this pilot concept last year, several members of Congress from both sides of the aisle asked FHFA Director Sandra Thompson about it during a House Financial Services Committee hearing. The legislators expressed concerns that Fannie Mae would be expanding outside their charter by operating in a primary market business with this pilot program. Additionally, U.S. Reps. Young Kim (R-CA) and Brad Sherman (D-CA) sent a letter on Feb. 27 to the FHFA sharing concerns over the promotion of unregulated AOLs in place of title insurance.

These risks are why Reps. Andrew Garbarino (R-NY) and Vicente Gonzalez (D-TX) have introduced the bipartisan Protecting America's Property Rights Act to require title insurance from a state-licensed title insurance company on all loans purchased by Fannie Mae and Freddie Mac. Garbarino called the Administration's pilot proposal "a misguided reversal of a decision made by FHFA and Fannie Mae last year after bipartisan disapproval."

Without understanding the full extent of risks that are associated with the title waiver pilot and AOLs, lenders may find their lien priority in jeopardy while consumers may face increased threats to their ownership rights. When it comes to one of life's greatest investments, lenders and consumers should protect that investment the absolute best way they can — with the proven security of title insurance.