

## **Talking Points for Biden Administration's Title Waiver Program**

**The recent title waiver announcement by the White House will not help homeowners but will hurt small title businesses across the country.**

- The Biden Administration's announcement approving a pilot program to waive the requirement for lender's title insurance on certain refinances to reduce closing costs for homeowners is a purely political gesture offering a false promise of savings for homeowners while exposing consumers, lenders, and taxpayers to greater financial risk.
- The decision overrides the FHFA's decision to halt the pilot due to its associated risks and bipartisan congressional opposition last August.
  - Several members of Congress asked FHFA Director Sandra Thompson about such a pilot during a May 23, 2023, House Financial Services Committee hearing and expressed concern that Fannie Mae would be expanding outside their charter by operating in a primary market business with this pilot program.
- The approval of this waiver is a hollow attempt by the White House to placate Americans' current economic frustrations.

**The title waiver pilot would do nothing to help expand affordable homeownership opportunities to those most in need.**

- Importantly, the pilot program only applies to refinances for those with so-called "low risk" (which translates ultimately to wealthier homeowners).
- The pilot does nothing to reduce costs for homebuyers (and first-time homebuyers) and low-income families in need.

**This pilot program calls into question the independence and credibility of the regulatory process around housing initiatives.**

- Title insurance is highly regulated and has stringent oversight by state regulatory agencies and insurance commissioners including to ensure pricing is fair and non-discriminatory.
- The new pilot program also makes a mockery of the FHFA's new products and activities rule finalized last year, which requires a public comment period or open process if a new activity by the GSEs is determined to be a new product.

**The GSEs are not in the title insurance business, and they are not licensed, regulated, or reserved for such purposes.**

- This pilot program expands the authority of the GSEs beyond their mission and charter – essentially turning them into a de facto primary market insurer.
- If title issues arose under this pilot, mortgage companies would request resolution from Fannie Mae instead of title companies paying to settle the issue, exposing lenders and taxpayers to greater risk.

**Allowing the GSEs to move into the insurance business will hurt small businesses across the country.**

- If Fannie Mae and Freddie Mac expand into the title insurance industry, it will force small businesses across the country to shut down
- More than 90% of the title insurance companies are small businesses that operate in their local communities.
- The title industry employs more than 155,000 individuals across the country, supports \$13 billion in wages and contributes \$30 billion to the nation's gross domestic product (GDP).

**A lender's title insurance policy is essential – even on refinance transactions.**

- To the lender, a refinance loan is no different than a loan to purchase a home. Lenders require title insurance to ensure the new loan is protected.
- During a refinance, homeowners are paying off an old loan and getting a new one. If this is not done correctly, the homeowner could still face collection on a past debt thought to have been paid off. Similarly, a lender could face the risk that they do not have the required lien priority. This is why consumers purchase a new lender's title insurance policy in a refinance.
- Some examples from real world title claims on refinance policies include:
  - Increased risk of fraud by the borrower between when the borrower took title and refinanced. One example is a husband that tries to take the wife off title and the mortgage ahead of a divorce.
  - Mistakes in the execution, acknowledgment, or recording of the mortgage leading to loss of priority.
  - Claims that a mortgage was invalid because the documents were executed with an improper power of attorney.
  - Failure of a prior lender to properly close a Home Equity Line of Credit (HELOC) after settlement.
  - Challenge the validity of a mortgage lien because the borrower's name was misspelled.
  - Priority disputes because a subordination agreement was not properly executed.
- Given that less underwriting is typically needed in a refinance transaction, title companies offer reduced rates for these transactions.

**Congress must pass the bipartisan Protecting America's Property Rights Act to avoid serious risks to our housing finance system.**

- The Protecting America's Property Rights Act, which would require title insurance on all loans purchased by the GSEs, has been introduced with bipartisan support in Congress.
  - There is bipartisan support of the Protecting America's Property Rights Act, which has been introduced in both the Senate and House. Lead sponsors of H.R. 5837 include U.S. Reps. Andrew Garbarino (R-NY) and Vicente Gonzalez (D-TX), and cosponsors include Young Kim (R-CA), Brad Sherman (D-CA) and Wiley Nickel (D-NC), as well as Del. James Moylan (R-Guam). In the Senate, S. 2687 is sponsored by Sen. John Kennedy (R-LA) and cosponsored by Sen. Katie Britt (R-AL)
- There must be greater accountability on the FHFA on unilateral decisions that pose long-term risks to consumers, lenders, and taxpayers.
- The last time the GSEs engaged in significant risk taking, they imploded the housing finance system and American economy in 2008 to the tune of \$200 plus billion in taxpayer dollars. Members of Congress should not allow this pattern to repeat itself.