



November 21, 2022

Comment Intake Mortgage Refinances and Forbearances RFI  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Docket Number CFPB-2022-0059: Request for Information Regarding Mortgage  
Refinances and Forbearances

To Whom It May Concern:

Title professionals play a critical role in helping consumers during a mortgage refinance. From ensuring all the documentation gets appropriately executed, to reducing lien priority risks for lenders, title professionals make refinances easier and more affordable for consumers. As the Consumer Financial Protection Bureau (CFPB) explores ways to improve mortgage refinances for homeowners and further support household financial stability, the American Land Title Association (ALTA)<sup>1</sup> believes it is important to understand the critical role of title insurance and settlement services in the process.

Title insurance is critical when refinancing on a home to protect both the lender and consumer. When a consumer is refinancing their mortgage, they are satisfying one loan (and potentially other outstanding debts) and getting a new one. Making sure this happens correctly is critical to ensuring that consumers obtain the benefits of the refinance. Similar to most industries, the title insurance industry continues to innovate to reduce time and costs of the process through the use of automation and application programming interfaces (APIs). As we saw during the recent refinance wave, in many refinance transactions, the title company can produce a commitment to insure in 48 hours or less.

The business of title insurance is comprehensively regulated by state regulatory agencies (commonly the state insurance department), the CFPB through RESPA, and where applicable, the state bar/supreme court rules. States oversee the industry's practices and rates, ensuring they are not excessive, inadequate, or unfairly discriminatory. As the CFPB knows, all fees charged by title

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<sup>1</sup> The American Land Title Association (ALTA) is the national voice of the title insurance and settlement services industry. We work with consumers at the most critical juncture of their financial lives: closing on their home purchase and mortgage. Title insurance professionals are the people at the closing helping to answer consumers' questions. The title insurance industry works hard to educate homebuyers about every step of the process in a refinance and explain why a new title search and loan policy is needed to protect their investment in the property.

companies are disclosed to the consumer on both the Loan Estimate and Closing Disclosure. The regulatory structure of the title insurance industry provides robust protection for consumers and is crucial to ensuring a refinance can be completed in an accurate, swift, and secure manner.

### **How Title Insurance Reduces Risk During a Refinance**

The role of the title industry is critical to the success of the mortgage transaction. 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. Additionally, the consumer has the option to update their owner's coverage as well.

As with any mortgage, a critical part of the underwriting process is determining real property ownership and identifying outstanding interests against the property. Title professionals provide this service by conducting a new title search and examination. Unlike other forms of insurance, title insurance protects against risks in the history of a property's ownership. This makes it prudent that most of the focus of title insurance underwriting is on risk identification and loss prevention.

Even if a home has been recently purchased, problems can arise that would need to be resolved in order for the lender to obtain the appropriate lien priority. Some examples from real world title claims on refinance policies paid in the past five years include:

- 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 to the validity of a mortgage lien because the borrowers name was misspelled;
- Priority disputes because a subordination agreement was not properly executed.

These are in addition to the standard underwriting and coverage issues due to tax and mechanics' liens, both of which can take priority over the mortgage even if they are not publicly recorded at the time of settlement. Also, fraud and forgery in the execution of mortgage documents is a significant source of claims in both purchase and refinance transactions.

The title insurance industry backs the coverage they provide with \$5.7 billion collectively in reserves to pay claims after a policy is issued, providing safety and soundness to the consumer as well as to the housing market as a whole.

### **Innovation Has Driven the Cost and Time for Producing a Refinance Policy Down**

Given that less underwriting is typically needed in a refinance transaction, title companies offer reduced rates for these transactions. These reissue discounts can often be substantial. For example, in Texas, if a consumer refinances within four years of their current loan, they will receive a 50% discount of the regular premium. If it is between four and eight years, the discount would be 25%. Additional discounted rates may be available depending on the level of integration between the lender and title company or other transaction factors that can lead to a lower expense or risk for the insurer.

To further push down industry costs and increase transaction speeds, the title insurance industry

has invested heavily in data acquisition and automated decision engines. This investment in technology has already brought down costs, with the national average cost of title insurance coverage decreasing by 6% in the last 10 years. This contrasts with home prices, which have increased 67% in the same time frame.

In 2021, the industry invested over \$200 million into this type of technology. This is on top of more than \$175 million invested in 2020. While new technology comes with high upfront costs, the expectation is that by leveraging decision engines, title companies will be able to speed up underwriting and reduce the number of manual processes needed to get to closing. Since staff costs account for the majority of title premium dollars, this should further help reduce costs over time.

Enhancing the consumer experience drives many of these investments and changes. Between the COVID-19 pandemic and the new-era of advancements in automation, title industry professionals have spearheaded efforts to serve their consumers and continue to reduce risks while providing the same comprehensive protection. The industry has been proactive in creating products specifically for refinance transactions such as short form policies.

### **The Title Insurance Industry is Crucial to the Safety and Soundness of the Mortgage Market**

History shows us that the title insurance industry plays a key role in keeping the mortgage market safe and sound. Risk reduction is the crux of why the title insurance industry exists. Our goal is that when a person buys a home, they actually own that property and can stay in it, even if someone challenges their ownership. This is not only what a consumer should demand, but it is what they deserve; a home is, for most buyers, the biggest purchases of their lives.

Given the cyclical nature of housing markets, title insurance regulation is designed to make sure companies will be able to stand behind policyholders for the long run. The title insurance industry has \$5.7 billion in reserves to pay out claims, as previously noted, and is regularly subject to market conduct exams and audits at the state level that provide assurance that underwriters are properly financed to weather tough economic circumstances.

For these reasons, it is very concerning when new unregulated products appear in the market purporting to provide title-like services to consumers. Following the release of Equitable Housing Finance Plans by Fannie Mae and Freddie Mac noting they intend to pilot attorney opinion letters (AOLs) as a title insurance alternative, a number of companies have popped up and made announcements that they are going to offer these AOLs. These alternatives claim to be structured just like title insurance – but they are not title insurance products or regulated in the same manner (if at all) to ensure there are appropriate consumer protections. Unlike title insurance, they do not have the same requirements for fair, transparent, and nondiscriminatory pricing. Additionally, those providing these alternatives do not have the same reserving requirements, financial oversight, and capacity as title insurers. These products also do not appear to have the same critical coverages that would protect consumers and lenders in many of the scenarios described above, all of which title insurance would cover.

While ALTA continues to work with the GSEs to help them understand the differences between title insurance and alternative products in coverage and protection, we want to ensure that the CFPB is aware of the increased risk to both lenders and consumers. These title insurance alternatives provide less coverage, and undermine the property rights of homebuyers, particularly low- and moderate-income homebuyers. For example, one core protection of title insurance is

that it protects against fraud or forgery related to the property rights purchased by the buyer. This is one of the largest sources of claims paid in the industry and is not covered by certain alternative products. This is just one of several gaps in protection that exist between title insurance and emerging alternatives. Consumer protection drives the title insurance industry's work. However, alternative products do not provide the same safeguards in a refinance and expose homebuyers to additional risks.

The CFPB knows well that having a strong regulatory framework ensures standards are high and that consumers are fully protected, including when refinancing a home.

## **Conclusion**

We believe refinancing can be beneficial for homeowners and support efforts to expand affordable and sustainable homeownership opportunities for Americans across the country. Title insurance provides the continued and much needed protection when refinancing mortgages. Innovation over the past ten years has made this process easier and faster than ever. We are proud of the work the industry has done to help consumers throughout this process. Homeowners deserve peace of mind and robust protection from potential problems that can disrupt their lives.

ALTA appreciates the opportunity to submit a comment to the CFPB on this issue and is happy to serve as a resource for any questions that may arise. We are pleased to have partnered with the Bureau several times over the last decade on educating consumers about the homebuying process and want to assist in any efforts to make homeownership a reality for more people across the country. Please reach out to Steve Gottheim, General Counsel, at [sgottheim@alta.org](mailto:sgottheim@alta.org) or Chris Morton, Senior Vice President of Public Affairs and Chief Advocacy Officer, at [cmorton@alta.org](mailto:cmorton@alta.org) with any inquiries.

Sincerely,

*Chris Morton*

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Senior Vice President of Public Affairs & Chief Advocacy Officer  
American Land Title Association