

STATE OF TENNESSEE

Office of the Attorney General



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Director Sandra Thompson  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, D.C. 20219

Dear Director Thompson:

Last year, the Federal Housing Finance Agency considered a pilot program to remove title insurance requirements for certain loans sold to Fannie Mae. After receiving significant bipartisan backlash from Congress and criticism from industry experts, the Agency abandoned the program—and for good reason. Title insurance plays a critical role in protecting homeowners from ruinous fraud and exploitation and costs about the same monthly as an Amazon Prime subscription. *See* Mark Fleming, *Missing the Forest for the Fees – Borrower Life-of-Loan Costs*, First Am. Fin. Corp. (Dec. 8, 2023), <https://perma.cc/H5AV-B7MM> [hereinafter *Forest for Fees*]. We, the Attorneys General of fourteen states, write because the Agency recently revived a pilot program similar to the one it scrapped last year. We respectfully call on the Agency to halt this misguided effort because the proposed program fails to address the core issue of housing affordability, harms homeowners and small businesses, and improperly expands Fannie Mae’s authority.<sup>1</sup>

The Biden Administration pitched the pilot program to the American public as a way to counter soaring housing costs. *See* The White House, *Remarks of President*

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<sup>1</sup> Of additional concern, the Agency approved the pilot program without subjecting it to public notice and comment. This appears to conflict with the Agency’s own rule that the Director should allow public notice and comment for a new activity to determine if it is “in the public interest.” 87 Fed. Reg. 79,229-231; *see also* Letter from 3 Republican members of Congress to President Biden (Mar. 15, 2024), <https://perma.cc/6VZW-7PWS> [hereinafter *Republican Letter*].

*Joe Biden – State of the Union Address As Prepared for Delivery* (Mar. 7, 2024), <https://perma.cc/Q2RC-D9W2>. But it does no such thing. For one, because the program only applies to Fannie Mae’s “lower risk” refinance loans for homebuyers who have a loan to value ratio of less than 80 percent, it does not meaningfully help first-time and low-income homebuyers. See FHFA, *Title Acceptance Pilot FAQs* (last visited June 21, 2024), <https://perma.cc/929F-FRWP>. The program also fails to address the actual housing barriers for first-time and low-income homebuyers, such as high interest rates and the limited supply of affordable housing. See Jehmu Greene, *Title Insurance Helps Protect Homeownership*, RealClear Policy (Mar. 29, 2024), <https://perma.cc/N3MU-NM4F>. Title insurance is a one-time upfront cost that generally constitutes less than half a percent of the purchase price and protects homeowners from catastrophic financial harm. See *Forest for Fees*. Given these shortcomings, the pilot program has understandably drawn ire from Democrat and Republican lawmakers alike. See, e.g., Letter from 18 Democrat members of Congress to President Biden (Apr. 17, 2024) [hereinafter *Democrat Letter*], <https://perma.cc/8483-6VPP>; *Republican Letter*. The Agency would do better to focus on the actual barriers facing American homeowners.

The pilot program also opens homeowners up to potential fraud and abuse. Home title fraud is not an academic risk. While title theft is not common, tens of thousands of people have been victimized by deed scams, and even the most famous private home in America is not immune to attempted fraud. See Ingrid Vasquez, et. al., “*Tenn. Attorney General ‘Looking Into’ Graceland Foreclosure Sale Attempt Riley Keough Called ‘Fraudulent,’*” *People Magazine* (May 24, 2024), at <https://perma.cc/V7BQ-H43R>. More commonly, title insurance protects against title defects such as liens or alternative claims of ownership. Title companies invest significant resources in maintaining databases, training workers, and digitizing documents to ensure that homeowners get the most accurate title information possible. Even homeowners who are refinancing need title insurance because latent issues, such as boundary line disputes or discovery of unpaid debt, can arise at any time. The pilot program will remove these protections and force homeowners and lenders “into a completely experimental claims resolution process with” Fannie Mae and place homeowners at risk of “being forced into property sale or foreclosure.” *Democrat Letter* at 2.

Removing title insurance requirements will allow Fannie Mae to “push aside small businesses in our communities” and damage local economies. *Id.* at 2. More than 90% of title companies across the United States qualify as small businesses. See *id.* In 2022, the title and settlement industry employed 155,000 workers and generated \$30 billion of gross domestic product. Ernst & Young, *Economic contribution of the U.S. land title insurance and settlement services industry in 2022*, Prepared for the Am. Land Title Ass’n (Jan. 2024), <https://perma.cc/PB4K-YRLP>. The title industry will be significantly harmed if this program moves forward.

And the pilot program will shift title risk on refinanced loans purchased by Fannie Mae from state-regulated title insurance companies to Fannie Mae itself. *Democrat Letter* at 1. This will place a high level of risk on Fannie Mae in an area of the market in which “it has no experience [or authority.” Ike Brannon, *Misguided Attacks on Title Insurance Could Have Grave Consequences*, *Forbes* (Feb. 2, 2024), <https://perma.cc/A93J-YW65>. The last time Fannie Mae took on too much risk, the enterprise’s poor choices precipitated the 2008 financial crisis. In short, “[i]t certainly is disturbing to think that Fannie Mae ... might displace title insurance by taking on this insurance itself ... Frankly, [it] simply do[es] not belong in the primary market.” *The Current Mortgage Market: Undermining Housing Affordability with Politics: Hearing Before the Subcomm. on Hous. & Ins.*, 118th Cong., 1:01:50-1:02:14 (May 17, 2023) (statement of Mr. Edward DeMarco, Acting FHFA Director under President Obama).

Title insurance is a state-regulated industry, and homeowners will be better served if it stays that way. The affordable housing crisis is a nationwide problem in need of meaningful bipartisan solutions, not shortsighted regulatory overreach. See Jeff Karoub, *Survey finds rare bipartisan agreement on housing issues among US voters*, *University of Michigan News* (Apr. 15, 2024), <https://perma.cc/W3KV-8YZX>. Yet the Agency’s title waiver program is neither a meaningful nor bipartisan solution. We call on the Agency to terminate implementation of this misguided pilot program.

Sincerely,



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Tennessee Attorney General and Reporter



Steve Marshall  
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