

President
Claire Hartman, CTIP



Executive Vice President & CEO
Leslie Midgley, CAE

August 1, 2024

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**Re: Request for Information regarding Mortgage Closing Costs
Docket No. CFPB-2024-0021**

Dear Director Chopra,

The Texas Land Title Association (TLTA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) Request for Information (RFI) regarding fees present in residential mortgage transactions. Founded in 1908, TLTA is a statewide trade association representing the Texas title insurance industry and currently serves over 20,000 professionals involved in the safe and efficient transfer of real estate. With active members in virtually every county in Texas, TLTA membership comprises over 80 percent of all title insurance agents and underwriters licensed to do business in Texas. In the course of their daily work, our membership serves over a million consumers each year. As a result, our membership is in a unique position to educate the CFPB about the value of title insurance to borrowers and the real estate market, the existing consumer protections offered by Texas law, and the inherent risks of interfering with a lender's ability to require a borrower to pay for a loan policy.

Summary

Title insurance plays a critical role in the real estate market and in the American Dream of homeownership. Title insurance ensures safe and efficient property transfers removing significant risks from lenders, which keeps borrowing costs low. Regulation over title insurance belongs to the states for good reasons given the local nature of real estate markets. The Texas system underscores this fact, serving as an exemplary model of comprehensive state regulation. Texas's regulatory system provides for clear disclosure requirements and pricing regulations that ensure significant consumer protections. Lessons can be learned from the Consumer Financial Protection Bureau's (CFPB) past national one size fits all interventions which led to inefficiencies and consumer confusion for Texas homebuyers. It's vital to preserve state authority in regulating insurance pricing. Federal interference risks unintended consequences and will encourage market centralization and consolidation resulting in significant consumer harm. We encourage the CFPB to recognize the effectiveness of state regulation and the potential harm of disrupting established systems, particularly in a significant real estate market like Texas.

Comments

1. The Importance of Title Insurance – Safe and Efficient Transfer of Real Estate Keeps Borrowing Costs Down

Sellers, buyers/borrowers, and lenders rely on title insurance agents and companies to transfer property efficiently and safely, which in turn reduces the costs of borrowing money. Title insurance protects consumers and keeps the costs of borrowing down. First, title insurance agents serve an important role as a third-party neutral with a fiduciary duty to the buyer, seller, and lender – in Texas, it is an undivided loyalty. People trust escrow officers with their money. Second, the lender's funds are protected by a Closing Protection Letter and associated controls, which mitigates the risks relative to the funds involved in the transaction. This increases the security of the transaction and prevents higher borrowing costs. Third, title insurance provides coverage that makes buyers confident that their property rights are protected and lenders comfortable that their financial interests are covered. The coverage includes not just unknown defects in title, but fraud and forgery as well. The overall economic impact, as economists like Dr. Ted Jones, have testified in previous rate hearings in the Southwest Region, is the lower cost of a loan.¹

Lenders sell their mortgages on a secondary mortgage market to obtain the capital needed to make more loans. Without title insurance, there would be no certainty as to the existence and quality of collateral for the lender or the secondary mortgage market. Without the liquidity of the secondary market, the American Dream of homeownership would be out of reach for most consumers. This fact is self-evident when one examines the access to homeownership prior to World War II and after when the secondary market (and the proliferation of title insurance) emerged. Thus, not only is the existence of quality title insurance a basic necessity of lower costs, but it is also an absolute necessity for consumer access to the concept of homeownership and it allows lenders to make more loans to more consumers. The result being more affordable homes for Americans.

2. The Importance of State Regulation – Real Estate is Local and States Understand What Local Consumers Need Best

Insurance is regulated at the state level because each market has its own issues and challenges. In terms of title insurance, all real estate is local. State regulation of insurance is comprehensive and considers many factors, including the competitive mix in the market, the solvency of insurers, proper reserves to ensure claims handling and consumer certainty, all aspects of consumer protection, and importantly, price regulation. Lenders are not regulated insurers equipped to manage this risk.

Unlike other services and fees highlighted in this request for comments, it is vital to understand that title insurance is subject to price regulation. Title insurance pricing is subject to state

¹ Direct Testimony of Ted C. Jones, PHD, IN THE MATTER OF THE 2021 BIENNIAL TITLE INSURANCE RATE HEARING – Docket No. 2021-006, pg. 4

oversight. In Texas, the price is set by the state based on actual expenses and revenues experienced by the industry.²

3. The Texas System – Department of Insurance Requires Clear Disclosure and Requires a \$100 Simultaneous Issuance Rate for Loan Policies and Mandated Discounts for Refinance Transactions

Texas has a comprehensive system of regulation of title insurance such that it is completely regulated.³ By that, we mean the contents of the forms (how title is insured) and the price, including such components as the “simultaneous issue” where the loan policy is deeply discounted to \$100 when purchased simultaneously with the owner’s policy. In addition to the simultaneous issue, refinances require a significant discount of the loan policy premium at 50% for the first 4 years after the last loan policy purchase and 25% for the next 4 years.^{4 5}

The price of title insurance in Texas is set by the Texas Department of Insurance after a public rate-making process, including input from the public, the industry, Department staff, and consumer protection representatives, including the Office of Public Insurance Counsel. Texas title insurance premium rates have increased only once in 26 years and have decreased by 20% over the past 30 years.⁶

The Texas experience is a perfect illustration of why the states are best equipped to protect the consumer relative to the quality and price of title insurance.

4. CFPB’s Past Intervention Created Problems Later Solved by State Regulation – Closing Disclosures Do Not Correctly Estimate the Cost of Loan Policy

In 2013, the CFPB promulgated a new Closing Disclosure to replace the long-standing “HUD form” settlement statement. In this effort, the CFPB acknowledged that consumer transparency and freedom of choice are paramount.

However, the CFPB Closing Disclosure failed to accommodate the thorough price transparency required by the Texas Department of Insurance. It did not fully allow for the “simultaneous issue” of the loan and owner’s policy to be properly disclosed. Worse, it requires this information to be incorrectly presented to the consumer, creating a fiction relative to how the money flows between the parties and to the ultimate payee. To remedy the situation, the Texas Department of

² TEX. INS. CODE, Sec. 2703.152.

³ TEX. INS. CODE, Sec. 2501.002. Note: The purpose of the Act is to “completely regulate the business of title insurance.”

⁴ *Basic Manual of Title Insurance*. Rule R-5, Simultaneous Issuance of Owner's and Loan Policies, Section III, Texas Department of Insurance. *Basic Manual of Title Insurance*. R-8. Loan Policy on a Loan to Take Up, Renew, Extend or Satisfy an Existing Lien(s), Section III, Texas Department of Insurance.

⁵ Texas statutes require agents to have a “title plant” whereby all of the local land records are reproduced and re-organized geographically (versus the grantor-grantee approach of public land records)

TEX. INS. CODE, Sec. 2501.004, Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

⁶ “Title Insurance Works: Declining Rates” – TLTA



Insurance promulgated the “Texas Disclosure” which must accompany the CFPB’s “Closing Disclosure” to correct the misrepresentations necessitated by the federal form.⁷

The following illustration demonstrates that the CFPB may be operating under the wrong assumptions as it involves the estimated costs of a loan policy of title insurance in Texas. Most all Closing Disclosures, when compared to the Texas Disclosure, demonstrate that the estimated cost of a loan policy greatly exceeds the actual charge a borrower pays:

- **Illustration – Simultaneous Issuance Credit. The CD estimated the cost of a loan policy at \$2,115 in a home-buyer transaction, when the Texas Disclosure stated the actual cost of the loan policy to be \$100.**

The Closing Disclosure and Texas Disclosure for a home-buyer transaction that closed in Texas during the past year are attached to demonstrate that the CFPB may be relying on the wrong information when concluding that borrowers are paying too much for the lender’s loan policy.⁸ The names and any personal identifying information have been redacted. In this transaction, the lender estimated and the Closing Disclosure presented the cost of the loan policy at **\$2,115**. This rate was based on the Basic Premium Rate. It is **2,015%** greater than the actual cost paid. Texas regulations require a simultaneous issuance rate of \$100 under Rate Rule R-5, and the borrower in this case paid it, as evidenced by the Texas Disclosure. And, as is traditional in our State, the seller paid for the cost of the Owner’s Title Policy. The simultaneous issuance rate of \$100 is hardly a barrier to homeownership, nor is it a substantial percentage of the overall closing costs.

5. Authority – States Regulate Insurance Pricing, Not the Federal Government

“Chokepoint”, or asymmetrical regulation, is not appropriate for any type of insurance. Due to the complexity and comprehensive nature of state regulatory systems, Congress has refrained from providing the CFPB any statutory authority to regulate title insurance.

Congressional restraint is wise since any federal manipulation of the multistate insurance markets will create significant problems. As noted throughout this letter, insurance markets vary from state to state.

6. Risks of Centralization and Other Unintended Consequences – CFPB’s Policy Initiative Would Encourage Market Consolidation and Reduce Consumer Options

Assuming any requirements on lenders to not allow consumers to purchase the loan policy pass Constitutional muster, the consequences of such a policy would be a disaster for the U.S. title insurance market and the consumer.

Lenders will look to streamline the process and reduce expenses and time associated with working with the title insurance provider. Accordingly, there is a real risk that large lending

⁷ *Basic Manual of Title Insurance*. Rule P-73, Closing Disclosure and Texas Disclosure (Form T-64), effective August 1, 2015 (Order 4038), Section IV, Texas Department of Insurance.

⁸ Attached CD and Texas Disclosure to illustrate the difference with all personal information blacked out. (Texas CD – Home Purchase.pdf)



institutions would only work with large insurance institutions. This would eliminate most of the thousands of small businesses that make up the title insurance industry nationwide.

It is important to understand the makeup of the title insurance industry, namely the “agent” and the “underwriter.” In other forms of insurance, such as property and casualty, the agent serves as a marketing arm and modestly participates in the premium in the form of a “commission.” The bulk of the premium goes to the national or regional insurer, who will be paying the claims.

However, in title insurance, the opposite is true. The larger portion of the premium goes to the agent or attorney performing the closing and the title mitigation work, and that work is backed by the insurance company. It is true that the insurance companies may perform both of these functions, but it is also true that the majority of transactions around the country are performed by small independent title agents, or in other states besides Texas, they can be performed by attorneys.

Forcing banks to pay for the loan policy and denying the consumer the opportunity to choose the title company would greatly disrupt this ecosystem of independent title agents and could promote a national consolidation. In the short run, the apparent efficiencies may encourage this evolution. In the long run, the government forced centralization and monopolization in the title insurance market will result in consumer harm in the same way these dynamics harm the consumer in any market lacking competition, transparency, and consumer choice.

The unintended consequences of the CFPB’s policy initiative to shift the responsibility for paying for a loan policy should also be considered in the context of the importance of the Owner’s Policy, disruptions to the way rates are set in Texas, and how federal conditions will impact consumer choice:

- ***The Owner’s Policy Protects the Buyer and is Paid for by the Seller; The Loan Policy Protects the Lender’s Financial Interest and is Paid for by the Borrower; When Issued Simultaneously the Loan Policy is Only \$100.***

The “Owner’s Policy” protects the consumer and in most jurisdictions is a companion to the Loan Policy purchase. This is called the “simultaneous issue.” A simultaneous issue is when the owner’s policy is purchased for the owner and the loan policy is purchased for the lender in the same transaction at the same time for a significantly reduced price. In Texas, the owner’s policy is traditionally paid for by the seller. The loan policy, which is usually paid for by the borrower, is a set \$100 for the policy plus any amounts necessary for endorsements. Recall our real life example above. Without simultaneous issue the consumer would have to pay \$2,115 for the loan policy and \$2,545.75 for the owner’s policy (effectively doubling the title insurance costs).⁹

- ***Higher Costs: Disrupting the “Simultaneous Issue” System Will Decrease the Likelihood that a Loan Policy will be eligible for the Reduced Rate and Increase the Likelihood that Title Insurance Will Cost Consumers More.***

⁹ Attached CD and Texas Disclosure to illustrate the difference with all personal information blacked out. (Texas CD – Home Purchase.pdf)

If the simultaneous issue system is disrupted, then the consumer is exposed to significant harm. First, any policy which frustrates the ability of the consumer to benefit from the simultaneous issue means that the consumer will have to pay more for each policy. Second, the removal of the transparency of the lenders' policy increases the odds that the consumer may not purchase their own policy and therefore will remain unprotected. The Texas Legislature has recognized the importance of coverage for the homebuyer and the transparency of the relationship between the owner's policy and the loan policy (and its pricing) by requiring the borrower to sign a document to affirmatively reject the owner's policy.¹⁰

- ***Less Protection: Disrupting the “Simultaneous Issue” System Will Decrease the Likelihood that an Owner’s Policy that Protects the Home Buyer Will Be Purchased***

The Loan Policy only protects the lender's financial interest. If the consumer does not have their owner's policy, they are subject to financial and existential risk. The homeowner will not have the benefit of title insurance to address any title issues, such as tax liens, fraud, and a host of potential title issues prior to the foreclosure of the lien against their property by the lender, who would then make any necessary claims against its title policy and the homeowner.

Title problems impact the homeowner and the lender differently. For the lender, a title problem is a financial issue that can be remedied by a check from the insurer. For the homeowner, a title problem is an existential threat impacting their ability to remain in their home. The importance of title insurance to the home buyer is recognized by the Texas Legislature. A real estate sales agent must advise a buyer in writing that the buyer should have an abstract examined by an attorney or obtain a title policy when an offer to purchase real estate in Texas is signed.¹¹ The notice is deemed so important that failure to provide it before closing a real estate transaction is grounds for disciplinary action.¹²

- ***Lower Customer Service Levels: Disrupting the “Simultaneous Issue” System Will Shift a Consumer’s Ability to Choose Where to Purchase Title Policies and Closing Services Based on Service to Large Financial Institutions Based on the Lender’s Own Interests***

Any interference in the ability of the consumer to decide where to purchase the loan policy will greatly disenfranchise the homebuyer.

¹⁰ TEX. INS. CODE. Section 2704.051(b) (requiring the issuance of an owner's policy to the owner of the property when a loan policy is purchased, which recognizes the nature of the coverage offered by each policy and the rate reduction that is lost when only a loan policy is purchased). See also TEX. INS. CODE, Section 2704.052 (requiring the homebuyer to reject the owner's policy in writing on a Form T-56, available at online at https://www.tdi.texas.gov/title/documents/form_t-56.pdf, which recognizes the importance of the property understanding that no coverage will be afforded to them by a loan policy).

¹¹ TEX. OCC. CODE. Section 1101.555

¹² TEX. OCC. CODE. Section 1101.652(b)(29)



Most often, the closing of the real estate transaction is tied to the purchase of title insurance. The title insurance policy is absolutely necessary for the typical transaction since it involves a loan, and the lender will need to be assured that their collateral is in good standing.

If the consumer loses the ability to decide the source of the Lender Policy, they will lose their ability to decide where they close their transaction. This will also affect their ability to choose their title insurer. Thus, all of the important service elements associated with these transactions (such as quick, efficient, and high-quality closings) will no longer be enforced by competition amongst providers.

In Texas, title agents compete on service. Trusted professionals such as Realtors or attorneys help advise the homebuyer on which firms deserve their business based on the quality of service provided. If the buyer does not have the final say as to where their lender policy is purchased, then their ability to control the quality of their transaction is completely removed.

7. Transparency, Common-Sense, and Equity in Pricing Should be Maintained – The Suggestion that Lenders Pay for the Loan Policy is Not the Solution to the Housing Affordability Crisis

- *Transparency Allows Consumers to Make Informed Decisions; Particularly When Advised by a Real Estate Sales Agent or Attorney*

We acknowledge that there has been an attempt to study consumer behavior when they have more price information versus less conveyed to them in a given transaction.¹³ We would caution against overreliance on this study and its findings.

There is a big question of context. The nature of the transaction can be key to how a consumer interfaces with pricing data. Are we talking about auto transactions, mortgage transactions, or buying a pizza? All of these have dramatically different contexts in which a consumer is making decisions.

However, without litigating all potential flaws in the study discussed in this letter, we note this initial observation and one among many other potential questions which could and should be put to this study and its methodology. Our basic observation is that any reliance on a study should be based on a study that is thoroughly peer-reviewed. Absent such peer review, the study may be interesting but should not be foundational for any policy considerations.

Price transparency is an important value to uphold. Texas does have an “all-inclusive rate” for title insurance where a more comprehensive fee is presented versus a detailed breakdown of functions and prices associated with each service. But, these services are provided by the same two companies (i.e., the agent and underwriter working together to produce a single product), and this comprehensive premium is based on actual expenses and revenues and set by the state.

¹³ Beckett, Dustin. *Price Complexity in Laboratory Markets*. Consumer Financial Protection Bureau, 30 Apr. 2024. [Consumer Financial Protection Bureau](#).

However, when you have third-party service expenses that become part of the lender's expense, then not only does the consumer lose control over which parties to employ for these services, but the actual costs of the services go into a "black box." Additionally, Texas regulations require that charges for various services in the real estate closing be specifically itemized and communicated to the consumer. The federal government should not undermine this policy choice by the states.

- ***Common-Sense Economic Factors Should Drive Policymaking, Not Oversimplistic Thinking***

Shouldn't there be an allowance for conditions and consumer choices when money is being borrowed, and hasn't there always been? While the borrower pays only \$100 at the time of closing for the loan policy, which is good for the entire life of the loan, lenders also require that borrowers maintain homeowners' insurance, which can cost on average \$243 a month.¹⁴ This makes economic sense to require a borrower to incur these costs. The lender is comfortable loaning money when the bank is confident that the loan was used to actually acquire the property and their lien is in first position, which is the purpose of title insurance. The bank is also comfortable allowing for installment payments to pay down that loan over a long period of time when insurance is in place that covers the value of the physical dwelling, which is the purpose for homeowners' insurance. Conditions on loaning money like these can be seen throughout the financial system and in other insurance lines (e.g., credit life insurance and collateral protection insurance). This makes economic sense and is simply common sense.

Perhaps a study that explores the economic impact of shifting the responsibility from the borrower to the lender would be valuable to inform the CFPB of the unintended consequences of this public policy initiative. If a borrower currently pays \$100 for a loan policy in Texas, how much would they pay in additional costs over the life of the loan if the lender absorbs this fee and passes the cost on to the borrower in the form of higher interest rates? If the lender will have to pay, will it lead to further market consolidation, and reduce the number of independent title agents? Is this public policy initiative that is designed to save consumers money actually going to harm borrowers by dictating who can and can't pay for a loan policy?

- ***Non-Discrimination is a Hallmark of Texas and Federal Law, the CFPB Should Not Seek to Dictate Who Pays or Demand Illegal Discounts***

With limited exception, the State of Texas does not allow for price discrimination. While it is true that a key feature of the Texas promulgated rate is to ensure that sophisticated commercial consumers do not enjoy an outsized benefit relative to the burden carried by the residential consumer, price discrimination is not allowed under Texas state law.

Although there will always be sympathetic consumers such as veterans and first-time home buyers, it is important from a systemic perspective that all residential consumers are treated equally in their purchase of title insurance and associated escrow costs.¹⁵

¹⁴ Howard, Pat. "Best Homeowners Insurance in Texas (2024)." *Policygenius*, 1 July 2024, edited by Jennifer Gimbel, reviewed by Kristi Sullivan, CFP®, www.policygenius.com/homeowners-insurance/texas/. (\$243 on average for a home valued at \$300,000)

¹⁵ See TEX. INS. CODE. Section 2502.051, TEX. INS. CODE. Section 2501.002.



Conclusion

Texas represents a significant percentage of all real estate transactions nationally, and the real estate market drives the US economy. A market based on the principles of competition, local solutions designed for the citizens of that State, and existing arrangements for assigning costs and shifting risk works. Introducing a one-size-fits-all proposal that actually harms consumers and ignores the many unintended consequences is not good public policy. Actions by the CFPB which dismantles the Texas system also undermines the system for a substantial fraction of the United States. Texas regulation solves for any pricing and consumer shopping concerns. Texas has a healthy market with several market participants on the underwriter side and has hundreds of independent title agents. The CFPB should not, with authority it does not enjoy, undermine the Texas title insurance system by dictating that lenders pay for loan policies or attempting to wade into price setting that is a power reserved to the Commissioner of Insurance.

Thank you for considering these comments. We hope the CFPB will recognize the importance of state regulation and the potential harm of disrupting the current system, particularly in a real estate economy as significant as Texas.

Sincerely,



Claire Hartman, CTP
President



Leslie Midgley, CAE
Executive Vice President and CEO