

April 18, 2023

The Honorable Sandra L. Thompson
Director, Federal Housing Finance Agency
400 7th St S.W.
Washington, D.C. 20024

David C. Benson
President and Interim Chief Executive Officer, Fannie Mae
1100 15th St N.W.
Washington, D.C. 20005

Michael DeVito
Chief Executive Officer, Freddie Mac
8250 Jones Branch Drive
McLean, Virginia 22102

Dear Director Thompson, Mr. Benson, and Mr. DeVito:

On behalf of the National Bankers Association (NBA), we write to raise our concerns regarding Fannie Mae and Freddie Mac's (Enterprises) recommendations regarding the use of Attorney Opinion Letters (AOLs) in lieu of traditional title insurance policies. As the leading trade association for the country's Minority Depository Institutions, we embrace the unique role that our institutions play in making homeownership a reality for homebuyers of color. We are concerned that a shift toward AOLs introduces unnecessary risk and potentially significant costs to all homebuyers and particularly already cost-burdened homebuyers of color and low and moderate-income homebuyers. We encourage the Enterprises to more fully consider the risks and costs associated with AOLs and to reconsider its current positions on AOLs.

In each of your Equitable Housing Finance Plans (Plans), you announced initiatives to encourage lenders to allow borrowers to utilize an AOL in lieu of traditional title insurance. This would constitute a significant shift in risk to homebuyers and lenders. Any such policy shift should be accompanied by clear and convincing evidence that this would produce significant cost savings for homebuyers at minimal risk to homebuyers and lenders alike. Instead, the Plans recommend a potential product that introduces potentially significant additional risk to lenders and homebuyers and leaves homebuyers without the protections and recourse afforded by traditional title insurance – all without a clear factual basis for the recommendation or an explanation of the relative costs and benefits of AOLs relative to traditional title insurance.

While AOLs may offer savings for closing costs in some instances, there are significant risks that could cost homeowners in underserved communities their investments if their interests are not properly insured. Further, should a title dispute arise for a homebuyer with an AOL, it would be up to the homebuyer or the lender to sue the attorney issuing the AOL at their own expense. In contrast, title insurance companies defend homebuyers and lenders against title disputes at no



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additional cost to the homebuyer. This is risk particularly troubling, because gentrifying neighborhoods like those in Brooklyn, New York have seen a sharp increase in title fraud issues perpetrated by individuals taking advantage of vulnerable communities in fast growing markets.¹ Many of our institutions serve these fast-growing markets where title fraud is the most pervasive. Our institutions seek to preserve homeownership for homebuyers of color in these communities and they deserve the full protection of traditional title insurance.

It should come as no surprise that as mission-driven institutions, we lend to homebuyers that may present higher credit risks. Our institutions cannot be expected to take on higher credit risk *and* the risk of uninsured defects in title, title fraud, or the various risks title insurance protects against. There is a reason why lenders tend to prefer traditional title insurance. We trust title insurance because it fully protects us and our customers from improper claims of ownership interests, improperly recorded documents, fraud, forgery, liens, encroachments, easements and many of the other various risks associated with transferring title. At a time when homeownership is increasingly out of reach for borrowers of color, we take the position that the Enterprises should not recommend products like AOLs that leave already vulnerable borrowers more vulnerable and compounds the risks associated with mission-driven lending to the communities that we serve.

NBA respectfully requests the Federal Housing Finance Agency and the Enterprises reconsider the guidance concerning AOLs in their Plans and work more closely with organizations like NBA in vetting proposals like recommending AOLs that could disparately impact mortgage lenders and homebuyers of color. We look forward to your response and continued engagement on this matter.

Respectfully,

A handwritten signature in blue ink that reads 'N Elam'.

Nicole A. Elam, Esq.
President & CEO

¹ Kimiko de Freytas-Tamura, *Why Black Homeowners in Brooklyn Are Being Victimized by Fraud*, NEW YORK TIMES, Oct. 21, 2019, <https://www.nytimes.com/2019/10/21/nyregion/deed-theft-brooklyn.html>.