



GSE Activity Report

Wednesday, April 10, 2024

Totaling Title?

Summary

Bloomberg [today](#) reports that the CFPB may simply ban consumer payment for lender title insurance. Could it? In short, yes, but that won't be easy, necessarily good for borrowers, or quick.

Impact

As we have [noted](#), lender title insurance has been a target at FHFA and the GSEs, which are experimenting with ways to promote alternatives for refis and otherwise reduce cost without adding risk. More potently – not to mention politically – lender title has been featured in the President's [State of the Union](#), followed by statements from [NEC Director Brainard](#) and a CFPB report tacking an array of mortgage [closing costs](#). Since then, discount points have moved to the fore, with a new CFPB [report](#) taking specific issue with them ahead of specific fee restrictions and disclosures outlined in our recent analysis.

Could lender title come next? *Bloomberg* suggests that the next step for the Bureau is a request for views on the spectrum of closing costs. This would encompass discount points, lender title, and – as we've noted – MI. Notably, these RFIs take time and time is not on the Bureau's side if it wants to go after discount points or lender title in a formal rulemaking. This is the approach it adopted for [credit-card fees](#), but the agency is also more than happy to release "circulars," "advisories," "guidance," and other documents under its sweeping UDAAP edict that have the effect of setting rules by restricting certain practices or prices. To date, the Bureau has never bowed to arguments that a direct fee ban leads to indirectly higher cost or perverse consumer impact, and maybe lender title would be a first.

But, likely not. Instead, the Bureau would simply decree not only that charging consumers for lender title is UDAAP, but passing through is as well. Proving pass-throughs is no easy feat, but saying they are violations nonetheless affects industry practice. The CFPB by law has no power over insurance companies and thus cannot use like-kind pressure on title insurers to protect consumers or small lenders.

Outlook

The Bureau will almost certainly use this UDAAP window to go after title insurance should it decide to do so after the RFI comment deadline closes. This route is subject to higher litigation risk, but also to less political risk since it throws Bureau actions outside the notice-and-comment process expressly subject to the Congressional Review Act. As the CFPB knows, edicts change practice even if, unless or until edicts are successfully overturned.