AMERICAN
LAND TITLE
ASSOCIATION

October 14, 2022

Federal Housing Finance Agency
Office of the Director
400 7th Steet, S.W.
10th Floor
Washington, DC 20219
Submitted Electronically

Re: Fintech in Housing Finance RFI

The American Land Title Association (ALTA), which represents the real estate settlement services, abstract and title insurance industry, appreciates the opportunity to offer comments on employing innovation in housing finance.

A thoughtful approach to the use of fintech in real estate transactions is vital to mitigating both consumer and economic risks. To that end, for the last several years, initiatives around navigating digital transformation have been included in ALTA's strategic priorities, which are set annually by the board of directors.

Over the past decade, as an industry, our members have actively identified ways to responsibly innovate, utilizing technology to improve the customer experience. These initiatives have been conducted in compliance with state and federal legal and regulatory frameworks. While certain flexibilities and incentives offered by FHFA could aid adoption of new technology, it is critical efforts to innovate do not bypass established consumer protection measures. Short-term goals should not impair the long-term objectives of expanded homeownership and stability in the housing market.

ALTA's advocacy efforts around innovation have centered on modernization that does not erode certainty in the real estate transfer process or come at a cost to consumers. For example, ALTA has led efforts to expand use of Remote Online Notarization (RON), championing legislation at both the state and federal levels that is safe for consumers, technology neutral and reliable for use in a real estate transaction.

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As a result of the COVID-19 pandemic, consumers expect greater use of technology by organizations, making the formation of the Office of Financial Technology timely. FHFA is positioned to support and encourage responsible innovation in the housing finance arena. This new office can most effectively drive adoption of technology by coordinating closely with other FHFA programs and ongoing initiatives.

ALTA offers the following comments based on the title industry's unique role of facilitating the transfer of real estate. Our members provide insurance coverages that create certainty around homeownership, and prior to closing, conduct extensive search and examination services and take curative actions to clear title. This certainty and title curative work provides the bedrock for the US Housing Finance economy. Additionally, the industry's duty to defend, which means a title insurance company will handle litigation and pay a homeowner's defense costs, further demonstrates how ALTA members help consumers protect their property rights.

Q A.2: How could FHFA facilitate adoption of "responsible innovation"?

When it comes to innovation, the primary focus should be on initiatives that a) improve the overall experience for the consumer b) reduce costs in the process or c) lower the risk to the parties involved. ALTA recommends FHFA put particular emphasis upon innovation initiatives that address the needs of all homebuyers and protect the privacy of consumers.

Conversely, innovation that evades established regulatory frameworks or compromises security or privacy should be excluded from consideration. As such, ALTA has recently questioned GSE plans promoting the use of attorney title opinion letters in lieu of traditional title insurance, because extensive comparative analysis, which we've share with FHFA, shows attorney opinion letters do not offer nearly the same protections as traditional title insurance. Historically, the value of title insurance in mitigating risks and providing strong protections has been preferred by lenders to the static examination of title records included in attorney opinion letters. These alternative title products increase risks which are ultimately shifted to both lenders and consumers. Should a title issue arise on a property covered by an attorney opinion only, the buyer would need to prove negligence on the part of the attorney to pursue a claim. If negligence is not proven, a claimant would likely need to pay the legal costs involved to litigate the title matter. Additionally, consumers could be pushed into foreclosure, as that is a condition to make a claim under terms of alternative products currently in the market. By contrast, title insurance policies are backed by statutorily required financial reserves to cover future claims risks.

Finally, responsible innovation measures should incorporate tech neutrality. Policies or initiatives should not benefit one company or vendor in the marketplace over another. Rather, any standards should prioritize consumer safeguards versus use of a particular technology. For example, ALTA has applauded Freddie Mac's guidance on RON, which embraces the highest level of consumer protections and anti-fraud measures.

Q A.3: What factors currently inhibit the adoption of fintech and innovation in the primary and secondary housing finance sector? Are there specific challenges related to privacy laws, industry standards, or current practices?

There are three significant barriers to innovation the industry encounters. First, the cyclical nature of the real estate industry drives slow and inconsistent adoption of new technologies, which makes realizing efficiencies difficult due to the lack of consistent repetitive processes. Second is the ever evolving and inconsistent adoption of privacy laws. Significant improvement in the real estate process will involve disconnected entities interacting and collaborating effectively via technology. This collaboration inevitably involves data sharing. Inconsistent and constantly shifting laws and regulation regarding consumer data sharing significantly impacts the velocity of innovation. Finally, and probably most significantly, is the patchwork of state laws and regulations enabling the use of various technologies. Non-uniform legislation and regulatory enforcement makes implementing new technologies difficult for national or multi-state entities. For example, California's privacy law and New York's cyber security regulations present unique compliance challenges.

FHFA can help alleviate these barriers by creating safe harbors and providing adoption incentives. The GSEs, acting in concert with FHFA could modify relevant guidelines, purchase loans executed with the certain technologies, and modify pricing structures to encourage the use of fintech.

Q B.2: What are the typical time requirements of each process within the mortgage lifecycle? What are the "critical path" activities that drive the mortgage timeline and borrower expense? How could fintech be applied to improve efficiency, reduce costs, reduce time requirements, or facilitate equitable outcomes for borrowers?

The title industry has spent the last decade implementing technologies and processes that have reduced search and cycle times. These investments have eliminated title related impediments to reduced timelines. For example, while curative time can vary, title search-related innovation has shrunk the time to complete a title search from days or weeks to hours and in some areas minutes.

Title insurance rates are set state by state under the guidance and supervision of state departments of insurance. While title premiums have decreased 7% since 2004, we welcome opportunities to expand collaboration with industry partners to assist in their efforts to speed up transactions and reduce consumer costs. Additionally, ALTA has been working with Congress and the CFBP to modify the TRID disclosures to accurately reflect the lower title premium costs in states where discounts are offered when a lender and owner policy are issued simultaneously.

A final factor to consider is the role local land record offices play in mortgage transactions. The electronic availability of records, as well as the time to record submitted documents can vary significantly by jurisdiction. Title companies have innovated to address accessibility issues by generating and utilizing title plant data. Additionally, title companies offer insurance to cover the recording gap, ensuring mortgage lien priority.

Q B.4: What are the existing data challenges that most prevent data-driven decision-making in the mortgage lifecycle?

In real estate transfer and mortgage transactions there are duplicative efforts to gather accurate and reliable consumer information. The timely and consistent sharing of data from upstream could create benefits and efficiencies throughout the transaction process. For example, communicating identity verification data points early in a transaction could help combat the growing challenges of real estate fraud.

While data sharing could yield positive outcomes, it also raises questions around data privacy. In addition to comprehensive data privacy laws that regulate and restrict the sharing and retention of consumer data, legislative efforts are underway at both the state and federal levels to limit the access of an at-risk individual’s personal information contained in land records.

In addition to compliance with these privacy measures, any data sharing initiatives should require information be accessed through secure and standardized technologies, such as APIs, to minimize the risk of data compromise and to permit the data custodians to dictate how data is accessed and protected.

QB.5: What are the existing regulatory and policy barriers to adopting and implementing fintech within the mortgage lifecycle?

Legal or regulatory uncertainty of any kind will negatively impact adoption and implementation of new processes and technologies. In the financial services space, legislative action is often required in all 50 states in order to employ new technology. A good example of this is the on-going advocacy efforts to approve the use of RON in real estate transactions. Even though 43 states have approved RON legislation over the last 5 years, the lack of a 50-state solution creates inconsistencies that impact acceptance. Certainly, a lack of consistent polices will impede expanded adoption and national implementation of fintech.

At the same time, it is often unclear what regulatory entities are responsible for evaluating the safety and soundness of fintech. Further, it is difficult to determine what banking, lending or insurance regulations trickle down to fintech providers and who is responsible for overseeing compliance with those requirements. For example, if a lender regulatory obligations impacting services provided by a fintech vendor retained by a title company, how is compliance communicated and managed? A clear set of rules and understanding of enforcement permit industry participants to focus on innovating in their core area of competency while retaining consumers' trust.

Q C.2: What emerging techniques are available to facilitate or evaluate fintech compliance with fair lending laws? What documentation, archiving, and explainability requirements are needed to monitor compliance and to facilitate understanding of algorithmic decision-making?

Undoubtably, certainty and enhanced understanding of fair lending regulation as it applies to fintech would benefit consumers and market participants. Even beyond the financial services sector, questions about unintentional and inadvertent discrimination have arisen particularly around the use of Artificial Intelligence (AI).

The title industry has recently begun to employ AI tools to improve efficiencies, however, due to the unique structure of title insurance AI is not, and is unlikely in the future to be, used in determining insurability, coverage approval, or title insurance premiums. As a result, in context of equitable access title premium costs are not related to risk based on the individual or personal characteristics of consumers, rather costs are determined by regulatory requirements. That said, the title industry recognizes the need for transparency regarding consumer security, protection, and benefits when it comes to the use any fintech and specifically AI.

Q D.1: What risks do fintech and fintech firms present to the economy and the financial sector? To the housing finance sector? To FHFA-regulated entities? To counterparties of FHFA-regulated entities and other third parties? To mortgage borrowers and consumers?

The ability for hostile foreign-state governments actors to interfere in transactions increases as our digital footprint grows. Criminals continue to target real estate transactions and without adequate safeguards, digital transactions are increasingly susceptible to attack. Additionally, with increasing frequency local governments are victims of ransomware attacks, creating vulnerabilities around submitting documents or accessing the land records.

Fintech innovation should be closely scrutinized to ensure new digital processes do not create additional avenues or expand existing fraud or identity theft threats. For example, identity proofing capabilities should be built into fintech whenever possible. In a digital world, certainty of a person's identity becomes more critical.

With all the hype surrounding blockchain technology in real estate, we encourage FHFA to review the pilot programs run by county recorders in Chicago and Vermont. Local property records were the original distributed public ledger and existing use cases for their transfer to blockchain all effectively upend our property rights system. Lastly, attempts to tokenize real estate transfers through placing ownership of property in LLCs and then transacting using Non-Fungible Tokens (NFTs) opens real estate and mortgage assets to additional risks, including money laundering.

Risks to the certainty of homeownership carry clear consumer and economic harms, as demonstrated during the 2008 housing crisis. Knowing that, fintech should be regularly and appropriately evaluated, and any innovation determined to place the certainty of homeownership at peril should be soundly rejected by regulators and industry participants.

Q D.3: What particular risks to consumer privacy have been associated with fintech? What practices are being used to manage these risks?

Leveraging digital services to enhance the speed, efficiency, and effectiveness often requires cross-platform access to consumer data. However, how this access is achieved and protection of a consumer's privacy and security are critical considerations.

Today, data collected and utilized by the title industry is regulated under the Gramm-Leach-Bliley Act (GLBA), comprehensive state data privacy laws, like the California Consumer Privacy Act, and both state data privacy and security laws enforced by state insurance commissioners.

The GLBA has strictly limited financial institutions' use and sharing of customers' personal information. Financial institutions must also assure the security of this information and provide comprehensive disclosures regarding use, sharing, and safeguarding of personal information to consumers.

In the insurance and financial services space, the GLBA sets privacy requirements for title insurance companies. However, states have historically regulated insurance activities. To harmonize GLBA with the historical state regulation of insurance, GLBA mandated that insurance activities would be "functionally regulated" by the States (GLBA § 301, 15 U.S.C. §6711). To this end, the GLBA privacy and security requirements are enforced under state insurance law by state insurance regulators for "any person engaged in providing insurance." (GLBA § 505(a) (6), 15 U.S.C. § 6805(a) (6)).

Q F.1: What forms of stakeholder engagement are most effective in facilitating open, timely, and continuous discussion on the challenges and opportunities presented by the application of fintech to housing finance?

There are multiple industries that intersect with the mortgage and real estate financial services ecosystem. Including the valuable perspectives of all these parties in conversations regarding innovation will help stimulate new ideas and ultimately hasten adoption and implementation efforts. Inviting feedback from all the relevant experts ensures critical regulatory and integration factors aren't overlooked. ALTA and our members value being active contributors in these ongoing discussions.

Q F.2: What are some topics for a housing finance-focused "tech sprint" and how could FHFA encourage participation?

The unconditional receipt and irrevocability of payments and disbursements in real estate transactions is critical to achieving finality of transfer. The advent of Real Time Payments (RTP) and projected 2023 launch of FedNow have created an opportunity to utilize a new electronic funds transfer methods in real estate transactions.

The title insurance industry supports efforts to modernize the process of transferring funds for escrow, closing or settlement purposes. ATLTA's Board of Governors has designated "leveraging modern payment systems" as a strategic priority for 2023, and given the value to consumers, we encourage FHFA to consider similarly prioritizing this initiative.

The FBI reported more than $350 million in real estate-related wire fraud in 2021, a 64% increase over the prior year. Implemented appropriately, new methods of digital funds transfer have the potential to reduce the prevalence and success of fraud schemes, which are often perpetrated in foreign countries where prosecution avenues are severely limited. For example, RTP and FedNow accommodate the use of request for payments functionality and secure funds transfer mechanisms not previously available.

Historically, new payment rails have seen slow adoption. A "tech sprint" promoting the rapid implementation of these payment services would advance on-going efforts to protect consumer funds from being diverted by fraudsters and foster an industry-wide understanding of the payment methods approved under state laws for use in real estate transactions.

Additionally, although since 2019 ALTA and MBA have offered multiple Digital Closing and eMortgage Boot Camps, featuring GSE presenters, a "tech sprint" on eMortgage adoption and the expanded acceptance of RON and In Personal Electronic Notarization (IPEN) would facilitate taking this initiative further. ALTA's most recent digital closing survey data shows RON use has remained static post-pandemic and IPEN use has decreased. While not unexpected given decreased pandemic pressures, the data suggests there are remaining integration, communication, and alignment hurdles to address. For reference, additional survey information can be found here: https://blog.alta.org/2022/09/ron-use-projected-to-increase-in-2022.html

Thank you again for the opportunity to provide comments. Should you have any questions, please do not hesitate to contact Elizabeth Blosser at eblosser@alta.org.