August 2, 2024

Residential Mortgage Fees Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Request for Information Regarding Fees Imposed in Residential Mortgage Transactions (Docket No. CFPB-2024-0021 or RIN 3170-AB04)

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Consumer Financial Protection Bureau's (Bureau or CFPB) Request for Information, "Regarding Fees Imposed in Residential Mortgage Transactions" (RFI). America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide. America's Credit Unions appreciates the opportunity to comment on the fees included in real estate closing costs and who bears the burden of those fees. Credit unions account for 7.4 percent of total mortgage originations, and their share of small dollar loans is 10.2 percent.[1]

America's Credit Unions writes to clarify the role of credit unions as mortgage lenders and express concern that community-based mortgage lenders will be asked to take on unsustainable burdens currently held by other members of the homebuying process. Credit unions have minimal control over the fees included in many closing costs and are not situated to negotiate the prices of, for example, credit reporting, title insurance, government fees, or loan-level price adjustments. Additionally, these fees are clearly disclosed in loan documents along with information regarding which fees are available for comparison shopping. Credit unions have no influence on these third-party fees and do not have the resources or leverage to negotiate them. We are concerned that shifting the burden of negotiating these fees to mortgage lenders will eliminate the clear disclosures that currently exist and the fees will be packaged as part of a larger processing fee.

General Comments

A home is the largest purchase most families will make. The average homeowner will negotiate sales prices in the hundreds of thousands of dollars and down payments totaling tens of thousands. Homebuyers are informed that they are permitted to negotiate a number of the fees charged in closing costs. However, while collecting documentation, packing up their existing home, and planning their relocation, borrowers may find shopping around for a savings of less than one hundred dollars may seem like a waste of time when a settlement company has already

[1] 2023 FFIEC/CFPB Home Mortgage Disclosure Act (HMDA) and America's Credit Unions.

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brought all those fees under one umbrella. Some borrowers do expend the time and energy to price alternative sources and compare those costs to ensure the best bargain. Some do not. Some intend to do so and fail to follow through. This decision is personal to each borrower and reflects a number of factors such as available time of the borrower, availability of providers, difference in prices, and ease of negotiation.

Credit unions that make mortgage loans charge an origination fee which covers the cost of underwriting and the time of the employees who put together the loan offer. However, that fee is not a profit source and does not always cover the cost of doing business. Accordingly, although credit unions have control over this origination fee, it is already set at the lowest possible level to cover or almost cover operating expenses.

The numerous other fees involved in closing costs are not under credit unions' control. The RFI suggests that mortgage lenders may be able to more effectively negotiate costs with providers such as credit reporting agencies (CRAs). But the lack of competitive options makes it difficult for lenders, especially small community lenders like credit unions, to find the leverage to negotiate prices. A lender can refuse to do business with a company until a discount can be negotiated, but this risks delaying the loan or having to find another servicer. During this time, the lender could lose the consumer's business to a large bank or other mortgage lender that may be able to process the loan faster. Small lenders typically do business with local settlement companies, title insurers, CRAs, appraisers, and others and may rely on continued good faith with their contacts to continue to obtain favorable pricing for their customers. Volume-based lenders hold an advantage over community lenders in this area and could withhold business while they negotiate volume-based discounts that community lenders could not offer.

These community-based lenders like credit unions are also the institutions primarily serving those that the CFPB seeks to protect with this inquiry into mortgage costs. Research shows that low-income and underbanked areas are more likely to be served by credit unions. In February 2024, the Federal Reserve Bank of Philadelphia released a report, "U.S. Bank Branch Closures and Banking Deserts."[2] Census tracts without a financial institution branch rose 6 percent since 2019, while bank branch closures doubled at the same time. Banks with $10 billion or more in assets created nearly two-thirds (62 percent) of new banking deserts through branch closures. Credit unions were able to "cure" these deserts in about 36 percent of all instances by opening a branch in a tract where one had not previously existed.[3] Credit unions also only closed branches that created a banking desert 8 percent of the time compared to 45 percent for very large banks (with $50 billion or more in assets), 17 percent for large banks (between $10 billion and $50 billion in assets), and 30 percent for community banks (under $10 billion in assets).[4]

[2] "U.S. Bank Branch Closures and Banking Deserts," Federal Reserve Bank of Philadelphia (Feb. 2024), https://www.philadelphiafed.org/-/media/frbp/assets/community-development/reports/banking-deserts-report-feb-2024.pdf.
[3] *Id.* at 14.
[4] *Id.*

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Credit unions are more likely to serve consumers who are living hand-to-mouth (described as households with net liquid assets of less than two weeks' income). More specifically, 38.9 percent of households where a credit union is the primary financial institution can be described as living hand-to-mouth, compared to 35.5 percent of households where a bank is the primary financial institution.[5]

Median income for credit union members is 12 percent less than median income for bank customers.[6] As low-income and first-time homebuyers, the rise in closing costs is especially impactful on credit union members. Many of those costs are fixed and are the same for small dollar loans as for high-income purchases.

The RFI discusses the rise in prices of credit reporting, title insurance, and appraisals. Our members have also reported price increases in income verification, government fees, and loan-level pricing adjustments (LLPAs). Title insurance and escrow fees are often subject to state regulation. These all contribute to the inflation of closing costs and these costs are out of the control of the lender.

The RFI's assertions that rising costs of certain fees are "too high" or are rising too steeply implies that price control is the solution to the concerns described in the RFI. The CFPB's recent rulemakings on overdraft and insufficient fund fees further support that implication. The CFPB is primarily focused on protecting consumers in the financial marketplace through regulation, enforcement, and education. Its mission includes ensuring that consumers have access to fair, transparent, and competitive financial markets. The CFPB's mandate does not include price regulation. Its role is to enforce existing consumer protection laws and ensure fair practices, not to determine the prices that financial institutions charge for their products and services. Engaging in price setting would exceed its statutory authority and constitutes an overreach of its regulatory and market monitoring powers as described in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Recent judicial decisions have discouraged regulatory agencies from expanding their authority to questions traditionally in the purview of the legislature. Accordingly, we caution the CFPB against expanding its statutorily prescribed authority to prescribe pricing, an authority it cannot justify. Rather than attempting to regulate lower prices into existence, we recommend support of other initiatives, whether directly actionable by the CFPB or not. Among those, we suggest the CFPB coordinate with the Federal Housing Finance Agency (FHFA) to encourage the Government-Sponsored Enterprises (GSEs) to revisit their LLPA matrices and support Congressional action to establish programs to benefit communities.

[5] America's Credit Unions calculations using data from Federal Reserve 2022 Survey of Consumer Finances, *available at* https://www.federalreserve.gov/econres/scfindex.htm.
[6] 2023 FFIEC/CFPB Home Mortgage Disclosure Act (HMDA) and America's Credit Unions.

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Negotiation of Fees

The RFI asks whether lenders would be more effective at negotiating closing costs than consumers. We believe there would be very little benefit from having lenders negotiate closing costs. In addition, doing so would be outside their purview and would result in a greater burden for a mortgage product that is often offered at a loss at origination.[7] Some stakeholders have noted that the lenders most likely to succeed in bargaining for a discount are volume lenders that can offer bulk purchase of those services and then resell the loans rather than servicing them personally. On the other hand, credit unions, as relationship banking institutions, take pride in servicing loans for their members to maintain member engagement throughout the life of the loan. Traditionally, those volume lenders service fewer loans than they make and do not cultivate that same type of everyday, long-lasting financial relationships with their borrowers that one sees with credit unions and other community lenders. This personal touch to financial services facilitates regular communication, which can, for example, encourage loss mitigation measures before the borrower has fallen too far behind. For other lenders that sell parts of their loans but retain a stake, delinquencies on those loans can raise the cost of doing business.

There are other important reasons lenders should not bear the burden of negotiating closing costs. Tasking lenders with negotiating lower prices and most effective products would require lenders to serve as fiduciaries and acting in a borrower's best interest. The CFPB does not have the authority to assign fiduciary responsibilities to lenders.

Fees on the Rise

As noted in the RFI, many of the fees included in closing costs are rising. These include the price of credit reports, appraisals, income verification, and LLPAs. When surveyed by America's Credit Unions on the types of fees that have increased in cost in past years, several credit unions provided the below responses. Many credit unions make tremendous efforts not to pass these fees along to their consumers and absorb the cost of the increases. However, some costs, including LLPAs, are so significant that they must be passed on.

Credit Reporting Agencies

Several credit unions have reported that credit reporting fees have increased drastically in the past two years. One member reported that, "In 2020, a year of extremely high mortgage volume, our credit cost for the year was $94,120. In 2023, a year in which we did not originate even half of the volume we did in 2020, our credit cost was $103,893. Through June 2024, our cost is $66,627; annualized, the cost for 2024 will be $133,254 and we will do a third of the volume we did in 2020." The same credit union noted that competition among credit vendors is scarce, limiting the ability to shop for lower fees. When that credit union asked its credit reporting

[7] "Lenders keep losing money on every loan produced, MBA says" National Mortgage News, May 23, 2024.

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vendor why the costs had risen so steeply, they were told that technology and regulatory costs required increased fees.

Appraisals

Other credit unions have expressed concerns about the inability to shop for appraisal fees. One stated, "Due to regulatory requirements and the need for unbiased, independent valuations, we cannot 'shop' for or negotiate appraisal fees on a pre-loan basis. This ensures that appraisals remain impartial and comply with industry standards." Another notes that the price of an appraisal is influenced by the required complexity of the process and that lenders are required to be impartial. 12 USC 1026.42(d) states that, "No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed." Subsequent sections detail what this interest may look like and how compensation may be calculated. Therefore, credit unions and other lenders do not have the legal ability to "shop" for an appraisal on behalf of a borrower.

Income Verification

One credit union reported that the cost of verbal verification of employment without income verification has tripled. That member stated that employment verification costs approximately $12,000 per year. The burden of verification has shifted from employers, as a function of their human resources departments, to verification services. These services are a self-sustaining new industry that profits from its single purpose of responding to employment requests it can verify through connection with human resource information systems. Responsible underwriting requires confirmation that a borrower is employed and earning the income they claim, but the outsourcing of this information has imposed a new fixed cost on lenders, which cannot be negotiated.

LLPAs

Several credit unions have raised concerns about the increase in LLPAs. One stated, "The third-party fees have certainly gone up but the increase in those fees is typically minimal compared to the increase in the LLPAs charged by the GSEs." Another said, "Perhaps for many loans, the largest fee is charged by either Fannie Mae or Freddie Mac. Their risk-based pricing, or [LLPAs] are outrageous and unnecessary." They further noted that, "Many of these categories are completely unnecessary," and provided an example of a borrower with a credit score between 740 and 759 and a loan-to-value ratio of 80.01 to 85 percent has a pricing adjustment of 1 percent on the loan amount, which seems unnecessary and is a significant cost, especially considering the borrower is required to have private mortgage insurance in place.

Other Solutions

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Should the CFPB decide to pursue requiring lenders to "shop" for better prices for borrowers, that runs the risk of violating Congress's intent in passing mortgage servicing laws. Moreover, even if a court found the statutory language was ambiguous, the CFPB's interpretation of the Real Estate Settlement Procedures Act (RESPA)[8] would not automatically receive deference. Recently, in *Loper Bright v. Raimondo*,[9] the Supreme Court overturned the long-held *Chevron* doctrine, which required courts to defer to regulators when a statute contains ambiguous language.

RESPA's section 8 prohibits fees, kickbacks, or things of value for any referrals incident or part of a settlement service. Requiring mortgage lenders to research and negotiate fees associated with settlement services creates a higher risk of inadvertent violation of section 8 when settlement companies and lenders work together.

Instead of pushing the bounds of the CFPB's statutory authority to mandate further requirements for lenders, America's Credit Unions recommends the CFPB work with the FHFA to find ways that the GSEs can lower their LLPA fees. The Freddie Mac LLPA matrix for purchase mortgages shows that all borrowers with a loan-to-value (LTV) ratio of less than 80 percent are subjected to additional fees that inflate the cost of their loan. Even borrowers with excellent credit must pay a 0.375 percent fee with an LTV between 75 and 80 percent, but someone with an LTV greater than 95 percent would only pay a 0.125 percent fee. Those fees increase the interest rate the borrower would otherwise be paying, which increases their monthly payment.[10] The GSEs should lower their LLPA percentages, especially for those with higher credit scores to make home purchases more affordable.

America's Credit Unions also supports Congressional action. The Homes for Every Local Protector, Educator, and Responder Act of 2023, or the HELPER Act (S. 1514 and H.R. 3170), establishes a program to provide mortgage assistance to law enforcement officers, elementary and secondary school teachers, firefighters, or other first responders. Specifically, these individuals may be eligible for a first-time mortgage on a primary family residence with no down payment. Instead, the mortgage is subject to a one-time, up-front mortgage insurance premium. This program echoes the U.S. Department of Veterans Affairs mortgage loan guarantee for our community heroes.

Credit unions support and advocate for innovative programs, including pilot programs, for first time homebuyers. Credit unions are community-oriented and have an interest in any voluntary pilot programs focused on vulnerable and underserved communities. We support expansion of these programs and their funding. Previously, one of America's Credit Unions' legacy associations supported a zero down payment, adjustable rate loan program for first-time homebuyers, modeled on the Wealth Building Loan Program (WBLP).[11]

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[8] 12 USC, Chapter 27.
[9] *Loper Bright Enterprises v. Raimondo, Secretary of Commerce*, 603 U.S. ___ (2024).
[10] https://guide.freddiemac.com/euf/assets/pdfs/Exhibit_19.pdf.
[11] NAFCU Letter to FHFA re: Pilot Programs to Increase Access to Mortgage Credit, December 2, 2021.

Conclusion

America's Credit Unions appreciates the opportunity to comment on this topic. If you have any questions or concerns, please do not hesitate to contact me at asmith@AmericasCreditUnions.org or (703) 842-2803.

Sincerely,

Amanda L. Smith
Regulatory Advocacy Senior Counsel

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