August 2, 2024

The Honorable Rohit Chopra
Director
U.S. 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]

Dear Director Chopra,

The Consumer Federation of America applauds the leadership of the Consumer Financial Protection Bureau (CFPB) in prioritizing the tackling of junk fees in housing and seeking to help make housing more affordable for homebuyers and those refinancing their mortgage. We welcome this opportunity to provide public input, as the CFPB is closely examining the ways to reduce unnecessary and inflated mortgage closing costs for consumers.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.[1] Today, nearly 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. As one of the most prominent national consumer advocacy organizations in the country, our experts lead consumer advocacy on issues ranging from homeownership affordability and fair and accessible insurance, to junk fees and credit access.

Our comments below focus on the key factors that put consumers at a disadvantage during closing transactions, offer some broad solutions, and provide in-depth guidance on how to reduce costs and introduce more competition in title insurance and real estate commission fees.

[1] Consumer Federation of America. "About CFA." 2024. https://consumerfed.org/.

Being Priced out of Homebuying

The costs of buying a home in the United States have reached their most expensive point in decades: millions of potential homebuyers have been priced out of homeownership as persistently high home prices and high interest rates have pushed up monthly mortgage payments.[2] For many first-time homebuyers, the upfront costs of buying also constitute a significant barrier. Upfront costs include a down payment and a wide array of closing costs and fees.

Over the last few years, closing costs have significantly increased. CFPB research has found that from 2021 to 2022 median total loan costs (one indicator of closing costs) increased by 22 percent on home purchase loans: consumers paid a median amount of nearly $6,000 in costs and fees in 2022.[3] High closing costs add to the price of buying (and selling) a home, drain from the wealth-building opportunities of homeownership, and raise barriers to first-time homebuyers. Given the stark racial wealth gap, which is shaped in part by the persistent racial homeownership gap and intergenerational wealth inequalities, Black and Hispanic homebuyers are disproportionately impacted by high closing costs. They are more likely than white homebuyers to buy a home for the first time and less likely to benefit from cash down payment assistance from relatives.[4] A greater share of Black and Hispanic renters is also severely housing cost-burdened compared to white renters, and so struggle to save enough to buy a home.[5]

Power and Information Asymmetries in the Homebuying Transaction

For many consumers, buying a home is the biggest financial transaction in their lives. Consumers go through many steps to make that dream a reality. First-time homebuyers often save up to afford to buy a home for years. Their prospects have become more challenging due to the twin pressures of steeply rising housing cost-burdens for renters (diminishing their capacity to save) and starkly rising closing costs (increasing the upfront sum needed to buy).[6]

In addition, many first-time homebuyers take homebuyer classes and/or work with an individual housing counselor, for example, to repair their credit history and improve their credit scores, to be able to qualify for a mortgage. Once they have a mortgage pre-approval in hand, they face the other barrier of our extremely limited housing inventory nation-wide, especially in the most

[2] Harvard Joint Center for Housing Studies, "The State of the Nation's Housing 2024" (Cambridge, MA: Harvard University, June 20, 2024), https://www.jchs.harvard.edu/state-nations-housing-2024.
[3] Julie Margetta Morgan. "Junk Fees Are Driving up Housing Costs. The CFPB Wants to Hear from You." *Consumer Financial Protection Bureau (CFPB)*, March 8, 2024. https://www.consumerfinance.gov/about-us/blog/junk-fees-are-driving-up-housing-costs-the-cfpb-wants-to-hear-from-you/.
[4] National Association of Realtors, "2024 Snapshot of Race and Home Buying in America" (Washington D.C.: National Association of Realtors, 2024), 47–48, https://www.nar.realtor/sites/default/files/documents/2024-snapshot-of-race-and-home-buying-in-america-02-20-2024.pdf.
[5] Harvard Joint Center for Housing Studies, "The State of the Nation's Housing 2024."
[6] Ibid

affordable segment. Since the pandemic, many homebuyers have had to engage in competitive bidding to "win" their chance of buying a home.[7] Overbidding has become normalized in this market. Even in historically more affordable markets such as Detroit, Buffalo, and Minneapolis, every third home continues to be sold over listing price in 2024.[8] Many homebuyers also resort to waiving contingencies to stand out in a crowded market: a 2021 NAR survey found that contingencies were waived in three out of four home sale transactions that year.[9]

With so much pressure to even find an affordable home, **finalizing the mortgage approval and getting through closing** are some of the most high-pressured weeks for consumers. Many consumers never shop around for a mortgage.[10] Research has indicated that many consumers could save thousands of dollars over the life of their mortgage if they price compared between different lenders and brokers.[11]

Even fewer consumers shop around for closing costs: if they only apply to one lender, they have no opportunity to compare and negotiate. And lenders often present the closing sheet to consumers as a given, rather than something that can be negotiated. Lenders currently are only required to provide the final Closing Disclosure statement three business days before closing – a window that in theory is supposed to give consumers the opportunity to ask questions and negotiate, but in practice offers little time without risking closing delays. Feeling under pressure, being so close to making one of the largest financial purchases of their lives, and often doing so for the first time ever, consumers face serious information and power asymmetries compared to the housing brokers they work with.

Lenders and brokers only have limited interest in negotiating the lowest closing costs for consumers, including on services that are contracted out, such as attorney fees and title insurance fees. In a system that relies highly on referrals and kickbacks, brokers rarely negotiate for the lowest prices and rates for consumers. Instead, the industry functions through long-standing relationships and mutual referrals, which dampen competition on price and quality. As also explained below, title insurance companies often compete for relationships with referrers, rather than competing on price and quality for consumers: so-called "reverse competition." Similarly,

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[7] See forthcoming CFA report (2024), Sharon Cornelissen and Austin Harrison, "Outcompeted: The Challenges of FHA Buyers in Tight Markets". Consumer Federation of America

[8] Zillow. "Home Values Rising Fastest in Costliest Metros." April 15, 2024. https://zillow.mediaroom.com/2024-04-15-Home-values-rising-fastest-in-costliest-metros.

[9] National Association of Realtors Research Group, "2021 Loan Type Survey," April 2021, https://cdn.nar.realtor/sites/default/files/documents/2021-loan-type-survey-06-08-2021.pdf .

[10] Anna Jefferson and Hannah Thomas, "Mortgage Journeys: A Video Ethnography of the Homebuying and Mortgage Process," *Cityscape* 22, no. 1 (2020): 7–36.

[11] Katie Visalli, Laurie Goodman, and Alexei Alexandrov, "Shopping and Negotiating for Mortgage Interest Rates Could Save Borrowers More Than $100 a Month," July 16, 2024, https://www.urban.org/urban-wire/shopping-and-negotiating-mortgage-interest-rates-could-save-borrowers-more-100-month.

real estate agents often receive referral fees when they refer consumers to lenders, but working with such a referred lender does not guarantee the consumers' best financial interest.

Finally, the financial interests of housing brokers are often best served by speed and an artificial sense of urgency, which further undermines consumers' ability to shop around for mortgages and negotiate the lowest rates and closing costs. Many housing brokers are paid on commissions and so can maximize their income if they maximize their transaction volume and the speed of transactions.[12] **Consumers feel rushed**, especially in today's overheated markets, where the sheer facts of winning a bid and closing on a house *at all*, are celebrated as successes. We are worried about this industry-imposed rush and sense of urgency. While this industry-imposed rush and sense of urgency helps to maximize real estate agents' and lenders' commissions, it reduces consumers' opportunity to take the time to make a thoughtful decision about the house they are buying, shop around and negotiate for the best mortgage rates, and negotiate on closing costs and fees.

In this comment letter, CFA offers several general recommendations to lower closing costs for consumers, followed by a more in-depth discussion on title insurance and real estate brokerage fees.

General Recommendations on Closing Costs

As noted, consumers are ill-positioned to negotiate closing costs both due to *situational* factors (i.e. final closing costs are only shared late in the game, consumers face one of the most high-pressured purchases in their lifetime) and *systemic* factors related to industry structure (i.e. commission-based pay adds artificial urgency to transaction speed, the industry is highly dependent on referrals, reverse competition problems). To address this multitude of issues, CFA's general recommendations to the CFPB include the following:

- Focus not only on resolving information asymmetries (such as through consumer education), but also on addressing power asymmetries that undermine fair competition and inflate prices for consumers. Consumer education can only go so far if the system is fundamentally stacked against them.
- Require lenders to negotiate on price with closing vendors directly and require vendors to charge these costs to lenders rather than to consumers. Having the scale advantages of a large volume of annual transactions, lenders will be in a much better position to negotiate with title insurance companies, for instance, than individual consumers do. Having lenders pass on these costs to consumers indirectly through slightly higher loan costs also has the added benefit of providing greater price transparency upfront to consumers.

[12] Max Besbris, *Upsold: Real Estate Agents, Prices, and Neighborhood Inequality* (Chicago, IL: University of Chicago Press, 2020), https://press.uchicago.edu/ucp/books/book/chicago/U/bo56555421.html.

- As also proposed in the comment letter by the National Consumer Law Center (NCLC), CFA supports the Bureau in moving towards an all-in finance charge disclosure that includes closing costs (in the disclosed annual percentage rate, or "APR") to help consumers better compare apples-to-apples when shopping around for a mortgage and include considerations of closing costs in choosing the best and most affordable loan for them.[13]

Title Insurance: Addressing Reverse Competition

Insurance purchases that are often required by lenders – title insurance and private mortgage insurance – add significantly to the closing costs of homebuyers. When homebuyers are told they need to buy title insurance, most have no idea what the product is, what it covers, who it protects, or why they need it. While title insurance – and the title clearing work done in conjunction with its purchase – plays an important role in securing reliable property sales, consumers generally only learn that they need to purchase **at a late stage in the purchase proces**s and **have no bandwidth** to figure it out, let alone effectively shop for a policy.

Because the title insurance purchase is such an infrequent transaction in consumers' lives, and because it presents itself at a moment of maximum pressure, this is not a product where focusing on consumer education would create the demand side customer power to tame unfairness in the marketplace. Indeed, the structural flaws in the market, not the information asymmetries, are what drive up the costs and lead to unfair and unnecessary burdens on consumers.

Key to lowering this aspect of closing costs is **addressing the reverse competition** central to the title insurance market's current structure.[14] Reverse competition occurs because title insurance is marketed not to the homebuyers who purchase the policies, but to those who are in the position to refer homebuyers to a particular insurer. The entities with the market power in title insurance are those who are able to steer consumers to particular title agents or title insurers. The competition among title companies for the business of the real estate professionals and not for the consumers paying for the title insurance causes premiums to increase as title companies spend money and provide various considerations to the referrers of title business. Instead of competing with other carriers to win over customers with the best product at the best price, competition is focused on providing the best incentives to transaction intermediaries with this power of referral. In short, reverse competition drives selling costs higher rather than generating efficiencies that lower the administrative cost.

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[13] NCLC, 2024, "Fees Imposed in Residential Mortgage Transactions: Comments to the CFPB" (August 2, 2024).
[14] Feinburg, R., Kuehn, D., McKernan, S. M., Wissoker, D., & Zhang, S. (2012). What explains variation in title charges? A study of five large markets. *A Study of Five Large Markets (June 20, 2012). Prepared for US Department of Housing and Urban Development Office of Policy Development and Research*. https://www.huduser.gov/portal/publications/hsgfin/title_charges_2012.html

Although the title product is different than other insurance products in that there are relatively more front-end underwriting and loss prevention costs than in other lines of coverage, the typical loss ratio – less than five cents spent on claims for every dollar paid in premium[15] – makes it abundantly clear that the product is dramatically overpriced.

Moreover, CFA notes that the profit of title insurers does not accurately reflect the profitability of the title transaction. This is because so many title insurance policies involve a title agent that is either owned by or in an affiliated business arrangement with the title insurer underwriting the policy. Even though the insurer may ultimately own the title agent's profits or receive a split of the profits from the affiliate arrangement, this additional profitability is opaque in reporting on title insurance transaction profitability. Simply put, **too much of the title premium is used to fund the referral incentives** that push homeowners to one insurance company or another. This perversion of competition leads to a market built to serve its customers inefficiently.

But what is also of central importance to consumers is the very question of who the customers of title insurers are. Homeowners pay for the title policy, which is mandated by their lender, but the product serves as a risk transfer tool for the mortgage company, not the homeowner. That disconnect is at the heart of the high cost of title insurance. The good news is that there is a straightforward way to tackle this misalignment, which also addresses the reverse competition inefficiencies and thereby helps lower closing costs.

CFA recognizes that lenders quite reasonably want the protection of title insurance, so they should buy it rather than require homeowners to do so. Lenders can choose to build the cost of their title policies into the cost of a loan, just as they do with other expenses they incur to underwrite the loan.

Moving the title insurance into the lenders' hands will lower the cost of homeownership. This change would create systemic savings and not just move the same cost burden to a different monthly bill. When title insurers need to win business from mortgage companies that need tens of thousands of policies each year, rather than from individual homebuyers who need one policy every ten years, the cost of the referral incentives will largely disappear from the market. The **mortgage lenders become the shoppers** and will demand that title companies provide a product that meets their specific risk transfer needs at the lowest possible cost. Homebuyers who want to purchase an owners' title policy to protect their equity in the home can then benefit from the low cost of simultaneous issue *and* the competitive effects of a more equal supply and demand environment that is not burdened by reverse competition.

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[15] National Association of Insurance Commissioners, 2024. "U.S. Property & Casualty and Title Insurance Industries – 2023 Full Year Results." (p. 13) https://content.naic.org/sites/default/files/inline-files/2023%20Annual%20Property%20%26%20Casualty%20Insurance%20Industries%20Analysis%20Report.pdf

Without a reshaping of this market, homebuyers and owners who refinance will continue to pay hundreds and often thousands of dollars more than necessary in the closing process.

Real Estate Brokerage Fees: Ending Price Setting and Lowering Closing Costs

On average, over 5 million existing homes are bought and sold every year. In a normal year, Americans spend around $100 billion a year on commissions.[16] When reviewing the cost of American real estate commissions compared to international standards, the rates are much higher than in other countries: the average total commission in the US is around 5.5 percent, compared to 4.5 percent in Germany, 2.5 percent in Australia, and only 1.3 percent in the UK.[17] Currently, **real estate commissions are not really negotiable**. This price fixing and anti-competitive behavior has kept the cost of selling a home artificially high.

Unlike in other industries, technological innovations (such as the ability of consumers to inspect MLS listings and schedule home viewings themselves on websites such as Zillow) have not led to reduced commission costs for consumers. For virtually everyone, home price inflation has outpaced income growth. The home price-to-income ratio reached its highest point on record in 2022, with the median home sale price being *5.6 times higher* than the median household income.[18] Amidst this growing disconnect between home prices and incomes, **real estate commissions remain directly linked to home price growth**, and consumers have seen no relief on this closing cost. With an average commission of 5.5 percent nationwide, and the median home selling for $412,300 in Q2 of 2024, the median seller pays $22,700 to real estate agents.[19] As most homeowners only stay in their homes between 7 and 10 years, many can expect to pay that amount three to four times throughout their lives: this substantial cost adds barriers to their mobility and drains from the wealth-building potential of homeownership.

CFA believes it is essential that we introduce more competitive pricing to real estate commissions through decoupling linked buyer-seller commissions, removing the advertising of these linked commissions on MLS, and facilitating transparent price and service disclosures in buyer and seller contracts. Recently the National Association of Realtors agreed to a settlement,

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[16] Brobeck, Steve, 2024. "Why Commission Uncoupling Will Help First-Time Home Buyers." Consumer Federation of America. https://consumerfed.org/wp-content/uploads/2024/04/Commission-Uncoupling-Report-April-2.pdf

[17] Leonhardt, David. 2024, March 18. "The Realtors' Big Defeat." The New York Times. https://www.nytimes.com/2024/03/18/briefing/real-estate-agent-commissions-free-market.html

[18] Alexander Hermann and Peyton Whitney, "Home Price-to-Income Ratio Reaches Record High," Harvard Joint Center for Housing Studies, January 22, 2024, https://www.jchs.harvard.edu/blog/home-price-income-ratio-reaches-record-high-0.

[19] Median home sale price Q2 of 2024 retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MSPUS July 31, 2024

in response to a range of class action lawsuits, to change the price-setting that is currently enforced through its multiple listing services (MLS). Changes are supposed to go into effect this summer, but a lot of uncertainty persists. Many consumers have questions about how this change will impact them and how it will change the way that they buy and sell homes. Heavy lobbying and national advertising by the real estate agent industry trying to maintain the status quo has also introduced much misinformation and has raised the chances of anti-consumer practices (including those that may disproportionately impact first-time, and Black and Hispanic homebuyers) in what may become a chaotic transition period.

Consumer buyers' contracts will vary by State and region and a range of examples have already emerged across the country. Attorney Generals' offices will likely play a key role in enforcing local consumers' rights and ensuring that buyer contracts are fair and transparent. However, the CFPB can also contribute to a fair and smooth transition, by contributing consumer education resources on finding a real estate agent, on how to negotiate for real estate broker fees, and on how to evaluate a sound and fair sellers' or buyers' contract. In its consumer education, **the CFPB can also elevate the role of HUD-certified housing counselors**, as truly independent advisors who can help guide consumers through their homebuying and homeownership journeys.

Real estate brokerage fees add to the outsized closing costs of homeownership. Over the long term, **more competitive broker practices will benefit all consumers** and bring down the high price of paying for real estate brokerage fees. As all homebuyers will become home sellers – indeed most homeowners sell and buy multiple times over their lives – such changes will also help support greater wealth-building for first-time homebuyers.

Conclusion

CFA commends the CFPB's work to address the burden of junk fees and other inflated costs in mortgage closing, aiming to make homeownership more affordable. Inflated mortgage closing costs disproportionally impact first-time homebuyers, who include many homebuyers of color. CFA's recommendations emphasize tackling both informational and power asymmetries in the homebuying process, advocating for direct price negotiations between lenders and closing vendors, and moving towards greater transparency in mortgage costs.

If you have any questions, please contact Sharon Cornelissen at scornelissen@consumerfed.org and Doug Heller at douglasheller@consumerfed.org.