August 2, 2024

Comment Intake
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 Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) Request for Information on Mortgage Closing Costs (RFI). Given the widespread affordability challenges facing the housing market in recent years, the CFPB is seeking public input on the overall impact of closing costs on borrowers, lenders, and the mortgage market more broadly.

While ICBA supports ongoing efforts to expand affordable and sustainable homeownership, we are deeply concerned about the Bureau's inaccurate characterization of certain necessary, transparent, and fully disclosed mortgage-related fees as "junk fees." The costs and fees highlighted in the RFI are integral parts of a mortgage transaction – they fund necessary services that allow lenders to cover operational expenses, meet safety and soundness and regulatory requirements, and provide direct or indirect protection to the consumer. Moreover, mortgage lenders are subject to existing disclosure regimes, including the combined Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) – also known as TRID. These disclosure requirements, mandated by statute and enforced by the CFPB, exist to ensure the borrower is neither misled nor under-informed about the fees they are charged.

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[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

Prior to any rulemaking or proposal, ICBA strongly urges the CFPB to meaningfully engage with stakeholders and develop solutions that reflect an accurate and nuanced understanding of the role of mortgage fees in the housing finance system. It is critical to consider the potential impact of any additional regulation, particularly when it deviates from explicit statutory authority or imposes added costs or complications to the mortgage lending process.

The existing regulatory framework has proven to be overwhelmingly burdensome for many community banks. Onerous regulation, with its layers of complexity and added costs, continues to pressure smaller institutions to exit the housing space, resulting in more industry consolidation. We urge the Bureau to explore options that do not exacerbate the current regulatory challenges facing community banks.

Closing Costs, Origination Fees and Other Necessary Services

The Bureau seeks information about how mortgage-related fees are determined, why costs are increasing, and whether some fees cause hardship for consumers. While gathering information is an important precursor to any proposed rulemaking, the focus and content of the RFI implies the Bureau has the authority and inclination to set or cap the pricing of certain fees and services. We find this very concerning for multiple reasons.

- Congress has not granted the CFPB this authority; in fact, Congress has determined time and again that the best ways to provide consumer protection, while expanding consumer choice and market competition, are through robust disclosure laws and regulations.[2] Community banks have invested significant time and resources into adopting TRID disclosures, and it is crucial that the Bureau consider the cost to move away from or add to the existing requirements.

- Mortgage fees are necessary to cover a range of costs and are fully disclosed, as required by TRID. Often, they are priced by third parties – in the case of title insurance, appraisals, and credit reporting – or they reflect real compliance, regulatory, and personnel costs incurred by the lending institution. Any effort to cap or prohibit fees, particularly those provided by third parties, will force the lending institution to absorb those costs or pass them to consumers.

- Given the robust disclosure framework, consumers are well-positioned to understand the various costs that are included in loan estimate and closing disclosure. They are equipped to shop and compare alternatives. That said, ICBA encourages the Bureau to pursue ways to improve consumer education regarding the mortgage process. Working with lenders to ensure

[2] *See* 15 U.S.C. § 1601(a) and S. Rep. No. 93-866 at 6546 (1974).

the consumers are well-informed of their many options will help them make prudent decisions about what will likely be the most significant financial investment of their lives.

Challenges of the Existing Regulatory Environment

In the context of any discussion related to mortgage fees and housing affordability, it is vital to recognize the effects of ongoing and overly burdensome regulations affecting smaller institutions. Community banks find it more and more challenging to serve their customers as they try to adjust to a crushing regulatory framework. This is especially apparent in the mortgage space. ICBA recommends the Bureau focus its efforts on understanding the cause and effect of existing and potential regulations on the cost and availability of mortgage credit.

We suggest a holistic approach that considers the cumulative effects on affordability resulting from regulations issued by the Bureau, particularly in areas such as TRID, Qualified Mortgage (QM), mortgage servicing, the Home Mortgage Disclosure Act (HMDA), and Automated Valuation Models quality control. The effects of these regulations are compounded by the regulatory actions of the Federal Housing Finance Agency (FHFA) through Fannie Mae and Freddie Mac, along with the Department of Housing and Urban Development/Federal Housing Administration (HUD/FHA) and the other banking agencies. The accompanying costs to originate and service mortgage loans have certainly driven many community banks out of the mortgage market.

As an example, regulations that govern the collection and reporting of various types of information – ranging from HMDA, appraisals, and language access – require personnel to review, monitor, collect, and report that information to the appropriate agency or entity. This often necessitates additional staff and investment in technology – costs that many community banks cannot continue to justify in the current economic environment with lower mortgage origination volumes. The liability for making mistakes in data reporting – fines, enforcement actions, loan buybacks – is very costly. That cost manifests itself in fewer community bank mortgage originators and servicers. We believe this undermines competition and ultimately harms consumers and the communities where they live, as they no longer have the diversity of choice as they consider their mortgage financing options.

As the Bureau considers actions related to mortgage fees, ICBA hopes there is a shift away from the problematic and inaccurate assumption that banks are charging “junk fees.” They are not. Using such language ahead of any consideration of stakeholder feedback calls into question the Bureau’s receptivity to legitimate and nuanced information. We also hope this inquiry is the first step in an ongoing engagement process. As discussed above, we strongly urge the Bureau to consider mortgage fees and housing affordability within the context of the existing disclosure and regulatory framework and be aware of any potential negative effects on smaller lenders that may be disproportionately impacted.

ICBA looks forward to working with the Bureau on this important issue in the coming months.

Sincerely,

Tim Roy
Vice President – Housing Finance Policy