MBA
MORTGAGE BANKERS ASSOCIATION

MBA SUMMARY

CFPB – Request for Information Regarding Fees Imposed in Residential Mortgage Transactions

(May 30, 2024)

Overview

The Consumer Financial Protection Bureau (CFPB or Bureau) released a **request for information** (RFI) concerning fees charged in connection with the origination of mortgages and settlement services. The RFI contains nine questions that address issues such as the use of fees, recent increases in closing services, and consumer behavior. The purpose of this RFI is to determine the reason for the increase in closing costs. Comments are due by **August 2, 2024,** and MBA will be filing comments.

Background

The CFPB's RFI states that closing costs, and specifically the costs the lender imposes on the borrower as part of the costs of getting the loan, have increased over 36% from 2021 to 2023. Given that many of these costs are fixed and do not change based on the size of the loan, this results in a heightened impact on borrowers with smaller mortgages, such as lower income or first-time homebuyers.

Moreover, the RFI notes that complex pricing or sets of fees may result in borrowers paying more. The CFPB cites to a study it conducted suggesting that consumers pay more when prices are separated into multiple fees. Another study has demonstrated that mortgage borrowers underreact to closing cost pricing.

The RFI also heavily focuses on the rising costs of credit reports and the Bureau's interest in learning more about what is driving the increase in costs and the variability in fees lenders pay for credit reports. MBA has previously weighed in on this issue by encouraging the CFPB's Research, Markets and Regulations Division to research credit score pricing increases to provide transparency as to the source and rationale for the fee increases. Last but not least, the RFI mentions title insurance as one of the costliest settlement services at closing.

Accordingly, the CFPB seeks input on the impact closing costs have on borrowers and the mortgage market, including the degree to which they add overall costs or otherwise cause borrower harm, and any impact such fees may have on the ability to purchase a home, anticipate and afford monthly payments, or refinancing an existing mortgage.

CFPB RFI Questions

While the CFPB is interested in receiving any comments, the following questions are listed in the RFI:

1. Are there particular fees that are concerning or cause hardships for consumers?

2. Are there any fees charged that are not or should not be necessary to close the loan?
3. Provide data or evidence on the degree to which consumers compare closing costs across lenders.
4. Provide data or evidence on the degree to which consumers shop for closing costs across settlement providers.
5. How are fees currently set? Who profits from the various fees? Who benefits from the service provided? What leverage or oversight do lenders have over third-party costs that are passed onto the consumer?
6. Which closing costs have increased the most over the past several years? What is the cause of such increases? Do they differ for purchase or refinance? Please provide data to support if possible.
7. What is driving the recent price increases of credit reports and credit scores? How are different parts of the credit report chain (credit score provider, national credit reporting agencies, reseller) contributing to this increase in costs? What competitive forces are or can be brought to bear on these costs? What are the impacts on consumers of the increased costs?
8. Would lenders be more effective at negotiating closing costs than consumers? Are there reports or evidence that are relevant to the topic?
9. What studies or data are available to measure the potential impact closing costs may have on overall costs, housing affordability, access to homeownership, or home equity?

Initial Thoughts & Next Steps

Existing regulations ensure that fees in the mortgage industry are disclosed and that consumers are only charged for services actually provided. Congress has clearly mandated this disclosure regime through the Dodd-Frank Act and the CFPB has implemented a regulatory regime with granular and prescriptive disclosure requirements during the mortgage origination process. The Truth in Lending Act (TILA) requires the accurate and standardized disclosure of costs so that consumers can shop for products from other lenders. Similarly, the Real Estate Settlement Procedures Act (RESPA) requires the disclosure of fees charged in connection with mortgage settlements and the provision of information to assist borrowers in understanding mortgage transactions. Neither statute sets caps or numerical limits on fees or provides the Bureau the clear authority to do so.

One of the CFPB's most extensive disclosure requirements is the TILA-RESPA Integrated Disclosure (TRID) Rule. TRID merged the mortgage disclosures previously required by TILA and RESPA into an initial loan estimate and closing cost disclosure. Under TRID, lenders and settlement service providers are penalized for underestimating fees to gain competitive advantage. The fees are also disclosed with a mandatory waiting period to ensure borrowers have time to review and fully understand the associated costs of credit before closing. The process thus requires both a clear disclosure of comparable fees before a borrower chooses a lender and clear disclosure of the fees associated with the loan.

The RFI appears to be a continuation of the CFPB's efforts to combat so-called "junk fees." In March, the CFPB released a blogpost arguing that these junk fees were driving up housing costs. The MBA has continuously pushed back on this framing. MBA's President and CEO Bob Broeksmit subsequently released a statement pointing out that the TRID forms created by the CFPB were created to increase clarity and transparency and to help facilitate consumer shopping. Additionally, MBA has previously pushed back on this framing in a letter responding to a previous CFPB RFI concerning fees.

The RFI questions are very data driven and MBA will work with the MBA Research Department and the Mortgage Industry Standards Maintenance Organization (MISMO) to help develop a response to the RFI. MBA also looks forward to hearing from members.

If you have any questions please contact Justin Wiseman (jwiseman@mba.org), Alisha Sears (asears@mba.org), or Gabriel Acosta (gacosta@mba.org).