HPC
HOUSING POLICY COUNCIL

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April 4, 2022

Comment Intake – Fee Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: **Docket No. CFPB-2022-0003; Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services**

To Whom It May Concern:

The Housing Policy Council[1] (HPC) appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (the Bureau) Request for Information regarding Fees Imposed by Providers of Consumer Financial Products or Services (RFI).[2] As detailed below, we want to reaffirm HPC's commitment to the Bureau's goal to provide consumers with fair and consistent treatment and service, and we offer the following points for the Bureau's consideration:

1. The Bureau has publicly recognized the importance of data in its decision making and should continue to be a data-driven agency;

2. The Bureau has engaged in prolonged rulemakings to advance transparency in the mortgage market; and

3. Undisclosed fees are bad for everyone, and we stand ready to work with the Bureau if issues are identified.

The Bureau is and should continue to be a data-driven agency.

Since the Bureau's inception, the agency's leadership publicly acknowledged the importance of evidence-based policymaking.[3] "The consumer bureau should not blindly follow the conventional wisdom of the time, but must be a thinking, investigating, questioning agency – and it's my hope that if the agency is truly committed to examining data and making its decisions based on data, it can avoid capture by ideology or intellectual fashion."[4] This insightful statement is as true today as it was one decade ago.

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.
[2] 87 Fed. Reg. 5801 (Feb. 2, 2022).
[3] See, e.g., Consumer Fin. Prot. Bureau, Building the CFPB: A Progress Report 21 (July 18, 2011) [hereinafter *Building the CFPB*] ("This division [Research, Markets, and Regulations] is responsible for understanding consumer financial markets and consumer behavior and for evaluating whether there is a need for regulation and the costs and benefits of potential or existing regulations. Before the Bureau acts, it will seek to be fully informed.").
[4] Testimony of Elizabeth Warren Before the House Financial Services Committee (Mar. 16, 2011) ("To support a transparent market operating under effective rules, the CFPB must be driven by the facts. That means getting good data and learning from many parties, including learning from lenders about their experiences.").

As such, we encourage the Bureau to continue to use a data-driven approach to regulate consumer financial markets, consistent with the most recently proposed strategic plan.[5] Using this method, the Bureau can gather information about a particular market, product, or service to perform "research and rigorous policy evaluation"[6] and rely on its supervisory authority to identify concerning patterns or practices in need of additional assessment and analysis. The Bureau has access to a substantial amount of data and information through its supervisory authority, its authority to collect information ad hoc to monitor consumer financial products and services,[7] and collection pursuant to agency rules, such as the Home Mortgage Disclosure Act. Based on the considerable information already at its disposal, if the Bureau identifies a significant consumer protection problem, we encourage the Bureau to initiate a formal rulemaking to consider policy options and receive feedback from interested parties.

In that spirit, the source of many of the fees and other costs associated with the mortgage process and identified in the RFI are associated with mandatory services provided by market participants and public authorities (e.g., state and local taxing authorities, real estate agents, appraisers, and insurance companies). These services are often required by various laws and regulations, and many are not "imposed by providers of consumer financial products or services" as the RFI suggests. Furthermore, some of these costs, such as insurance, should not be characterized as fees. Insurance companies charge premiums that are set in accordance with state regulation and subject to rigorous evaluation. Additionally, several servicing and loss mitigation-related expenses and fees are controlled by reimbursement limits established by the GSEs, FHA, VA, and USDA.

The Bureau has engaged in prolonged rulemakings to advance transparency in the mortgage market.

It is important for the Bureau to publicly recognize that various regulations, many of which the Bureau promulgated, provide transparency for consumers to make informed decisions and establish limitations on fees and charges. The following regulations are examples where the CFPB has done just that:

TILA Respa Integrated Disclosure Rule (TRID Rule): The RFI fails to mention the comprehensive mortgage disclosure regime the CFPB put in place after the financial crisis. The process of developing the TRID Rule was years in the making, with several rounds of quantitative and qualitative consumer testing of disclosures ("Know Before You Owe") in an effort for consumers to better understand the cost and key terms of their mortgage. The final disclosures (Loan Estimate and Closing Disclosure) include key terms and fees, including late fees. The CFPB has also provided model disclosures. Lender's use of the same or similar disclosures facilitates the ability of a consumer to compare products and services.

Furthermore, the rule imposes strict limitations on the ability of a mortgage lender to add or increase fees at closing. In fact, the Bureau's own recent assessment found that the TRID Rule improved consumers' ability to locate key information, compare terms and costs between initial disclosures and final disclosures, and compare terms and costs across mortgage offers.[8] The TRID Rule facilitated the

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[5] Consumer Fin. Prot. Bureau, Strategic Plan: FY 2022 - 2026 13 ("Goal 3: Inform public policy with data-driven analysis on consumers' experiences with financial institutions, products, and services.").
[6] Building the CFPB, 21.
[7] 12 U.S.C. § 5512(c)(4).
[8] Consumer Fin. Prot. Bureau, Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) Rule Assessment 8-9 (Oct. 2020).

consumers' ability to shop and choose a mortgage loan and helped to advance a competitive marketplace. This assessment should be integral to any further research or analysis on disclosures of fees in mortgage origination.

RESPA/Regulation X – Servicing and Loss Mitigation**:** For mortgage servicing, the CFPB has engaged in thorough rulemaking under RESPA/Regulation X to address servicers' obligations to provide delinquent borrowers with information and opportunities to pursue loss mitigation and avoid foreclosure. Regulation X also includes limitations on certain fees (e.g., no charges are permitted for error notices or information requests and no assessment of fees related to force-placed insurance, with some exceptions). Additionally, Regulation X prohibits kickbacks and unearned fees related to settlement services and explicitly permits certain payments for services actually provided. If the Bureau identifies significant problems in the servicing space, we encourage the use of public notice and comment on the subject to consider policy options and receive feedback.

TILA/Regulation Z - Periodic Statements: Mortgage servicers are required to send periodic statements, following model disclosures under Regulation Z. These statements include key amounts, dates, and specific information for borrowers who have missed their mortgage payments. TILA/Regulation Z also mandates disclosures at certain events, including mortgage servicing transfers. If the Bureau is concerned that its own disclosure regime is not working as intended, it should conduct a fulsome analysis, engaging with consumers and the industry to assess the effectiveness of these disclosures.

Hidden fees are bad for everyone, and we stand ready to work with the Bureau, if it identifies issues.

To be clear, we firmly believe that hidden fees are bad for everyone. We have worked with the Bureau since its inception to support the development and implementation of rules that would enable borrowers to understand the terms of their mortgages and the implications and options available if they are unable to make their mortgage payments.

If the Bureau identifies an issue in mortgage origination or servicing, we stand ready to work with the Bureau to ensure it utilizes its evidence-based approach and, through interaction with interested parties and iterative processes, creates solutions that work as intended.

Thank you for the opportunity to comment on this RFI. Should you have any questions regarding these comments, please contact Matt Douglas, Vice President of Mortgage Policy, at 202-589-1924 or Matthew.Douglas@housingpolicycouncil.org.

Yours truly,

Edward J. DeMarco

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President
Housing Policy Council