CFPB’s So-Called “Junk Fees” Revolution Targets Residential Mortgage Loan Closing Costs

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On March 8, 2024, the Consumer Financial Protection Bureau (CFPB) announced it was seeking public input on so-called “junk fees” incurred as part of the closing process for residential mortgage loans.

The residential mortgage market is highly regulated. In fact, in 2015, the industry implemented the CFPB’s TILA-RESPA Integrated Disclosures (TRID) Rule, which significantly reformed residential mortgage disclosures provided to borrowers. Notwithstanding this, the CFPB’s “junk fees” crusade has recently targeted these disclosures and the closing costs associated with residential mortgage loans.

According to the CFPB, the median amount of loan costs and fees paid by borrowers on home purchase loans is approaching $6,000 and rose sharply by 21.8% from 2021 to 2022. These closing costs include origination fees, appraisal and credit report fees, title insurance, and discount points, and are generally paid by borrowers at the time of closing or are rolled into the loan, causing a higher loan balance and other borrower costs.

In a blog post, the CFPB indicated it was focused on the following with respect to residential mortgage loan closings:

- **Discount Points:** According to the CFPB, lenders sell discount points to borrowers to reduce interest rates, but these points may not always save borrowers money. In 2022, over 50% of home purchase borrowers paid discount points, up from 32.1% in 2021. The median discount points paid for home purchase loans also rose to $2,370 in 2022, up from $1,225 in 2021. Because the cost of discount points may add to borrower’s costs, the CFPB has sought public input on the costs.
- **Perceived Lack of Competition and Choice:** The CFPB also expressed interest in exploring whether closing costs are increasing because of an alleged lack of competition, with an emphasis on lender’s title insurance and credit reports. As the CFPB noted, lenders typically require borrower’s to pay for a lender’s title insurance policy, even though the policy may only protect the lender against possible title claims, not the borrower. The CFPB implied that this cost may not be fair as a result. Regarding credit reports, the Bureau noted that the credit reporting industry is concentrated in a handful of companies that set the price of credit reports and scores. According to the CFPB, this results in a lack of competition, which could increase the price of the scores and reports used for mortgage underwriting.

The industry’s response to the CFPB’s announcement was swift. According to Bob Broeksmit, CMB, President of the Mortgage Bankers Association, “[t]he fees mentioned are clearly disclosed to borrowers well before a home purchase on forms developed and prescribed by the Dodd-Frank Act and the CFPB itself." Moreover, "[t]here are CFPB-imposed limits on fees that lenders can charge, and the services covered by these fees are integral to the efficient operation of the mortgage market." President Broeksmit went on to note that the mortgage industry did share the CFPB's concern on the rising costs associated with credit reports and expressed a desire and willingness to continue to work with the CFPB and the Biden Administration to curb such costs.

It remains to be seen how the CFPB will utilize the public comments it receives to potentially issue new rules and guidance regarding competition, choice, and affordability of closing costs paid by borrowers in the residential mortgage context.

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