

# AMERICANS *for* TAX REFORM

722 12<sup>th</sup> Street, N.W. • 4<sup>th</sup> Floor • Washington, D.C. 20005



July 30, 2024

Comment Intake—Residential Mortgage Fees Assessment  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

**Re: ATR Comment Letter Responding to the “Request for Information Regarding Fees Imposed in Residential Mortgage Transactions” (Docket No. CFPB-2024-0021)**

*Submitted via electronic mail*

To whom it may concern:

Americans for Tax Reform (ATR)<sup>1</sup> appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (CFPB) request for information (RFI) regarding mortgage closing costs.<sup>2</sup> ATR believes that the CFPB misses the mark on the real contributors to unaffordable housing in the U.S. The RFI assumes that closing costs “along with increased home prices and interest rates” have contributed “to a lack of access to credit and decreased home affordability.”<sup>3</sup> In reality, numerous studies and statistics demonstrate the primary contributors to housing unaffordability are a shortage of housing supply, high interest rates due to restrictive monetary policy, and rising property taxes.

### **Monetary Policy**

The current interest rate environment has made it more expensive for borrowers to refinance or enter a new mortgage contract, which ostensibly weakens demand for housing. Home sales are declining due to higher interest rates.<sup>4</sup> At the same time home prices are rising sharply. In May 2024, home prices rose 5.8 percent compared to the previous year—reaching a median of \$419,300.<sup>6</sup> In June 2024, existing-home prices hit another record—rising to a median price of \$426,900.<sup>7</sup> Over

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<sup>1</sup> ATR is a nonprofit, 501(c)(4) taxpayer advocacy organization that opposes all tax increases and supports limited government, free market policies. In support of these goals, ATR opposes heavy regulation and taxation of financial services. ATR was founded in 1985 at the request of President Ronald Reagan.

<sup>2</sup> 89 FR 48400.

<sup>3</sup> <https://www.federalregister.gov/d/2024-12443/p-12>.

<sup>4</sup> <https://www.barrons.com/articles/us-new-home-sales-6a081eb0>.

<sup>5</sup> <https://www.bloomberg.com/news/articles/2024-06-21/us-existing-home-sales-fall-a-third-month-as-prices-set-a-record>.

<sup>6</sup> <https://www.wsj.com/economy/housing/home-prices-hit-a-record-high-4028acf2>.

<sup>7</sup> <https://www.wsj.com/economy/housing/u-s-home-prices-hit-record-in-june-for-second-consecutive-month-cbe00c76?st=2qfz952j8gk378o>.

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the past fifty years, the median sales price of a house sold in the U.S. has increased by 1,058 percent.<sup>8</sup> Closing costs only make up a fraction of the overall price of a home. Depending on a homebuyer's state of residence, closing costs only make up about one to five percent of a home's sale price.<sup>9</sup>

## *Supply and Demand*

The number of housing starts has fallen short as interest rates have remained elevated.<sup>10</sup> The data, illustrating the dynamics of the housing market in its present form, should compel the CFPB to stop its current tactics in trying to tame housing costs by going after insurers, originators, credit bureaus, and credit score models. These entities face unwarranted scrutiny from the CFPB when the real culprit is the federal government—whose actions have contributed to unaffordable housing.<sup>11</sup>

Rent controls in New York and California are also a major instigator of instability in the U.S. housing market. Rent controls on multifamily housing in New York largely contributed to the instability at New York Community Bank (NYCB).<sup>12</sup> Additionally, large exposure to properties under “California rent regulations” are contributing to instability at First Foundation Bank.<sup>13</sup> Any consideration to federally impose rent controls to ameliorate housing affordability should be rejected.

Supply shortages are a product of rent controls. A new study from Chapman University found that California's housing policies have contributed to extreme unaffordability in the state—making it difficult for young people, minorities, and immigrants to move up the economic ladder.<sup>14</sup> Economists also studied the effect of San Francisco's 1994 rent control laws. They found a “6 percent reduction in housing supply resulted in a ‘5.1% increase in rental prices.’ In San Francisco, rent control forced landlords to develop condominiums and redevelop buildings to ‘exempt them from rent control.’”<sup>15</sup> According to a report published by KKR, “U.S. rental vacancies are at their lowest levels in 40 years” and at the same time, “household formation is outrunning the

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<sup>8</sup> <https://fred.stlouisfed.org/series/MSPUS>.

<sup>9</sup> <https://www.bankrate.com/real-estate/average-closing-costs-by-state/#how-much>.

<sup>10</sup> <https://www.bloomberg.com/news/articles/2024-05-16/us-new-home-construction-rebounds-by-less-than-forecast>.

<sup>11</sup> <https://www.atr.org/blame-unaffordable-housing-on-the-government/>.

<sup>12</sup> <https://www.wsj.com/articles/new-york-community-bancorp-real-estate-losses-rent-control-signature-bank-8338b8fb>.

<sup>13</sup> <https://www.wsj.com/finance/banking/investors-give-lifeline-to-texas-bank-confronting-real-estate-risks-33a75b51?st=7amlx31kav9veik>.

<sup>14</sup> <https://www.newsweek.com/www-newsweek-com-california-progressive-policies-blamed-housing-market-crisis-1913930>.

<sup>15</sup> [https://www.nber.org/system/files/working\\_papers/w24181/w24181.pdf](https://www.nber.org/system/files/working_papers/w24181/w24181.pdf).

<sup>16</sup> <https://www.realclearmarkets.com/articles/2023/08/15/how-rent-controls-and-subsidies-distort-us-housing-972891.html>.

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construction of new rental units.”<sup>17</sup> More supply is needed from the market to satisfy current demand levels. Less regulation is needed to incentivize developers to build. Additional restrictions being placed on top of existing ones will only further worsen the supply shortage.

Using Congress or Fannie Mae and Freddie Mac (the GSEs) to impose rent controls would worsen the U.S. housing supply situation.<sup>18</sup> The GSEs back a substantial number of mortgages and rental units in the U.S. According to one article:

*Fannie Mae and Freddie Mac accounted for 58% of newly originated apartment loans in 2023, according to a report from Morgan Stanley. More than 16 million renters live in federally financed properties, about one in four rental households.*<sup>19</sup>

Intervention from GSEs is a significant contributor to increased housing prices. According to one analysis, GSE “interventions have led to higher prices by increasing demand through easy access to mortgage credit, which may have adversely affected poor and low-income groups.”<sup>20</sup> Recently, Freddie Mac proposed to buy second mortgages for single family homes.<sup>21</sup> It stands to reason that this would distort the market by incentivizing homeowners to take on more debt and artificially incentivize demand for housing—further contributing to the widening gap between demand and supply.

Restrictive zoning permits and other hurdles facing developers also stymie homebuilding construction. Deregulation is key for incentivizing builders to add to existing housing inventory. Data from the Federal Reserve Bank of St. Louis shows a four-month continuous decline in new single-family housing units.<sup>22</sup> Privately-owned housing units authorized by permits has been relatively flat since 2022 and is seeing slower growth than parts of the 1970s, 1980s, and the late 1990s.<sup>23</sup> At the same time, the total number of U.S. households has gone up by more than 92 percent over the past fifty years.<sup>24</sup> Interestingly, the number of new privately-owned housing units under construction is nearly the same now as it was in 1973.<sup>25</sup> The number of households is far outpacing the supply of homes being constructed. A recent article stated that “[w]hile the number of

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<sup>17</sup> <https://www.barrons.com/articles/kkr-energy-biotech-apartments-74358761?st=b2f8mqed0e5m5b8>.

<sup>18</sup> <https://www.foxbusiness.com/politics/biden-rent-control-plan-blasted-experts-trade-groups>.

<sup>19</sup> <https://news.bloomberglaw.com/banking-law/biden-adds-new-tenant-protection-for-federally-backed-mortgages>.

<sup>20</sup> <https://www.heritage.org/housing/report/housing-market-without-fannie-mae-and-freddie-mac-effect-home-prices>.

<sup>21</sup> <https://www.atr.org/letter/atr-and-center-right-groups-oppose-freddie-macs-second-mortgage-product/>.

<sup>22</sup> <https://fred.stlouisfed.org/series/HOUST1F>.

<sup>23</sup> <https://fred.stlouisfed.org/series/PERMIT>.

<sup>24</sup> <https://fred.stlouisfed.org/series/TTLHH>.

<sup>25</sup> <https://fred.stlouisfed.org/series/UNDCONTSA>.

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homes on the market has risen in recent months, it is still well below historical norms.”<sup>26</sup> A dearth of housing supply continues to be a primary contributor to housing unaffordability.<sup>27</sup>

Scrutinizing closing costs will have no effect on this imbalance of housing supply and demand. Simply focusing on closing costs is ineffective in curtailing rising housing prices.

## ***Property Taxes***

Reducing property taxes is a better way to lower the cost of owning a home and increase home affordability. Low-income households are harmed by high property taxes more than any other group. In fact, “[r]ising property taxes can lead to displacement and widen the racial wealth gap.”<sup>28</sup> According to a paper from The University of Chicago, “the property tax disproportionately burdens owners of less valuable homes.”<sup>29</sup> Another recent paper from the Joint Center for Housing Studies of Harvard University finds high housing costs continue to be a problem.<sup>30</sup> According to Fox Business, “[t]he report cites that higher interest rates and rising property taxes are partially to blame for the high housing costs.”<sup>31</sup> The report states that “property taxes are on the rise, further increasing the cost of homeownership.”<sup>32</sup> Data highlighted in the report shows that “[s]ingle-family property taxes also grew an average of 4.1 percent in 2023 to \$4,062.”<sup>33</sup> The report goes on to say that “for those with low incomes, the financial burden of rising insurance premiums and property taxes will threaten household stability, pointing to the need for policies to provide tax relief and access to affordable insurance.”<sup>34</sup> Lowering property taxes would be an effective way to make homes more affordable for Americans.

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<sup>26</sup> <https://www.wsj.com/economy/housing/u-s-home-prices-hit-record-in-june-for-second-consecutive-month-cbe00c76?st=2qfz952j8gk378o>.

<sup>27</sup> <https://www.foxbusiness.com/economy/home-prices-set-another-record-high-may-affordability-crisis-worsens>.

<sup>28</sup> <https://www.habitat.org/costofhome/why-they-matter-property-tax-relief-programs#:~:text=Low%2Dincome%20households%2C%20particularly%20Black,widen%20the%20racial%20wealth%20gap>.

<sup>29</sup> <https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/6/2330/files/2019/04/Berry-Reassessing-the-Property-Tax-3121.pdf>.

<sup>30</sup> [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2024.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf).

<sup>31</sup> <https://www.foxbusiness.com/real-estate/high-housing-costs-hitting-record-highs-harvard-university-report-says>.

<sup>32</sup> [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2024.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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## Discount Points

The CFPB's concerns with discount points are misplaced. The CFPB's analysis of discount points describes their variability depending on the lender.<sup>35</sup> The report also talks about how "borrowers would need to get offers from multiple lenders that have either the same interest rate or the same amount of discount points."<sup>36</sup> The CFPB is wrong in deeming rate shopping as harmful—it should be viewed as a positive manifestation of a competitive market. Borrowers will have more options to choose from when looking for a mortgage. While paying more upfront can be a downside risk, the advantages of discount points come to fruition when "the upfront cost is offset by the long-term savings from lower monthly payments."<sup>37</sup> Discount points are also tax deductible, which can prove to be significant for borrowers seeking tax relief.<sup>38</sup> Discount points are not "junk fees," instead they are an optional tool borrowers can use when determining how to best allocate their equity. In a high interest rate environment, borrowers may appreciate the option to buy discount points to offset higher borrowing costs. The CFPB should not do away with a vital tool making housing more affordable for homebuyers. Stifling what market participants can and cannot charge will only pass costs onto consumers in the future.

## Credit Reports

The Fair Credit Reporting Act was enacted to ensure "fair and accurate credit reporting."<sup>39</sup> After a consumer makes one request for a credit report, the credit reporting agency (CRA) "may impose a reasonable charge on a consumer" as long as it does not exceed \$15.50 as adjusted for inflation.<sup>40</sup> The CFPB criticizes CRAs for the increase in the price of credit reports without considering how the \$15.50 price cap may affect prices on other services offered by the CRAs. The price cap may affect how much CRAs will charge resellers and then pass on that cost to lenders. The price cap may also affect the price of "rapid rescors."<sup>41</sup> A loss of revenue from certain services is likely to increase prices for other services. However, the CFPB makes no attempt to study how congressional price caps on CRA revenue could impact closing costs. The CFPB is trying to pin closing cost "junk fees" on private businesses, but it is more reasonable to presume that government intervention is the

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<sup>35</sup> <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-trends-in-discount-points-amid-rising-interest-rates/>.

<sup>36</sup> *Id.*

<sup>37</sup> <https://www.amres.com/amres-resources/the-economics-of-discount-points-when-does-it-make-sense-to-buy-points>.

<sup>38</sup> <https://www.irs.gov/taxtopics/tc504#:~:text=You%20can%20deduct%20the%20points,the%20year%20you%20pay%20them>.

<sup>39</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fcra-may2023-508.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fcra-may2023-508.pdf).

<sup>40</sup> <https://www.federalregister.gov/documents/2023/11/15/2023-25172/fair-credit-reporting-act-disclosures#:~:text=SUPPLEMENTARY%20INFORMATION%3A,will%20be%20%2415.50%20for%202024>.

<sup>41</sup> <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-mortgage-bankers-association/>.



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problem.<sup>42</sup> Legislation to alleviate price controls on credit reporting would benefit CRAs, their clients, and consumers. Price controls distort the market and ultimately harm consumers. Instead of limiting costs, price controls shift costs onto other products or services. Targeting credit reports fails to get at the root of the problem.

## *Title Insurance*

Title insurance provides benefits to homebuyers. The CFPB's RFI "overlooks the fact that obtaining lender's title insurance benefits the borrower indirectly insofar as it permits the borrower to finance the purchase of a home, since the lender needs assurances that its security interest in the property will be protected from the consequences of title defects."<sup>43</sup> Interestingly, Harvard points out how tangled titles have negatively impacted minority homeowners.<sup>44</sup> Title insurance could conceivably alleviate issues related to tangled titles. Targeting title insurance as a "junk fee" could, in effect, harm minorities by inhibiting efforts to prevent tangled titles.

## *Conclusion*

The CFPB should redirect its attention away from mortgage closing costs and focus on the real contributors to unaffordable housing. Making housing more affordable in the U.S. can be done by increasing supply, eliminating government subsidized demand, reducing property taxes, and removing burdensome regulations and rent controls that have distorted the market for years. It is also imperative to loosen the GSEs' grip on the U.S. housing market while they remain in conservatorship.<sup>45</sup> GSE conservatorship is supposed to be temporary. The U.S. taxpayer should not perpetually backstop the GSEs' losses.

Lawmakers must unleash housing supply development and remove regulatory barriers making housing unaffordable for Americans. A bloated government presence in the U.S. housing market is the root of affordability issues.

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If you have any questions or need any additional information, please contact Bryan Bashur at [bbashur@atr.org](mailto:bbashur@atr.org).

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<sup>42</sup> <https://www.consumerfinance.gov/about-us/blog/junk-fees-are-driving-up-housing-costs-the-cfpb-wants-to-hear-from-you/>.

<sup>43</sup> <https://www.huschblackwell.com/newsandinsights/cfpb-targets-mortgage-closing-costs-as-junk-fees>.

<sup>44</sup> [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2024.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf).

<sup>45</sup> <https://www.forbes.com/sites/norbertmichel/2024/07/29/prospects-improve-for-housing-reforms-in-the-next-congress/>.

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Sincerely,

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