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August 2, 2024

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Submitted via Email: 2024-RFI-ResidentialMortgageFees@CFPB.gov

**Re: Response to Consumer Financial Protection Bureau Request for Information Regarding Fees Imposed in Residential Mortgage Transactions, Docket No. CFPB-2024-0021**

On behalf of National Taxpayers Union (NTU), I am honored to submit the following comments regarding Docket No. CFPB-2024-2021 ("the RFI"), in which the Consumer Financial Protection Bureau (CFPB) is "seeking information and comments from the public related to fees charged by providers of mortgages and related settlement services."

## I. Introduction

NTU is the nation's oldest taxpayer advocacy organization, founded in 1969 to achieve favorable policy outcomes for taxpayers with Congress and the executive branch. Our experts and advocates engage federal policymakers on important matters affecting taxpayers in a variety of settings, including tax administration, financial services, protection from government liabilities, product and service regulation, trade, telecommunications and technology, transportation and infrastructure, and health care. It is the first four items on this list which intersect and provide NTU with an opportunity to offer its views today.

## II. Comments

### *"Junk Fee" Is a Political, Not an Economic Term, One which Regulators Should Shun.*

While the White House has been making increased use of the term "junk fee" to describe private-sector fees it may find objectionable, there is disagreement in the economic and fiscal policy communities over how to meaningfully define it. In February 2024, Thomas Kingsley, Director of Financial Services Policy for the American Action Forum (AAF), provided a useful chart with no fewer than 12 examples of how federal entities have attempted to sharpen the concept of "junk fee," with less than satisfying results.[1] Kingsley describes a definition from the White House of "unnecessary, unavoidable, or surprise charges that inflate prices while adding little to no value" to be "one of the more explicit" among the dozen, yet these words are fraught with subjective interpretations. What is a "necessary" charge, and who determines it—the provider, the consumer, or the government? How is "little to no value" measured?

[1] See Kingsley's analysis at https://www.americanactionforum.org/insight/what-is-a-junk-fee-anyway/.

By this lexicon, more than a few government fees could be easily described as "junk," depending upon the perspective of the stakeholder. In 2013, a portion of the Passenger Security Fee charged by the Transportation Security Administration began to be diverted into general revenues,[2] thereby providing "little to no value" for an air traveler expecting all the fee to be spent on services enhancing their safety. Extensions of customs fees years into the future—long a tactic for Members of Congress seeking revenue offsets for unrelated spending programs[3]—certainly seem "unnecessary" for the nearer-term operation of the U.S. Customs and Border Protection agency. Furthermore, a whole plethora of federal charges—e.g., for passports, animal and plant health inspections for passengers, and patents—are practically "unavoidable," since most American citizens and businesses do not have a choice of which national government to patronize.

The underappreciation of the intricacies with government-imposed charges is a phenomenon which, unfortunately, NTU and its research arm have noticed among other federal entities taking a renewed interest in fee policies.[4] It is explored in greater depth for purposes of CFB-2024-0221 below.

This matter of exclusion aside, the vagaries of the policy process toward fees and the language surrounding it are already creating practical problems among federal agencies. AAF's Director of Technology and Innovation Policy Jeffrey Westling very recently provided illustration of how two rules with the same purpose proposed by the Federal Trade Commission (FTC's "total pricing") and the Federal Communications Commission (FCC's "all-in pricing") can conflict and overlap:

> While these rules may sound identical, in practice there are some important differences. For example, the FCC rule excludes fees such as those for equipment rentals, while the FTC proposal could require inclusion of those charges into the consumer's price. Further, the FCC rule allows providers to include language in ads that say prices start at a specific value, understanding that different markets may have different prices, while the FTC does not include these types of exceptions. Regulators should make clear what exactly companies must do to comply with federal rules.[5]

The hazards of conflict and overlap are even more pronounced in the housing finance area, given the immense number of local, state, and federal entities involved in prescribing regulations, guidelines, and oversight for products and services that consumers utilize.

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[2] See a concise explanation here: https://www.meritalk.com/articles/tsa-officials-recapturing-security-fees-would-help-boost-tech-adoption/.

[3] See a concise explanation here: One Weird Trick Congress Uses to Game Budget Numbers - Foundation - National Taxpayers Union (ntu.org).

[4] See, for example, National Taxpayers Union Foundation's February 2024 comments to FTC here: https://www.ntu.org/foundation/detail/ntuf-submitted-comments-and-request-for-a-public-hearing-on-the-unfair-or-deceptive-fees-nprm. FTC issued a rulemaking to address "unfair and deceptive fees" in a variety of consumer-facing situations including prepaid calling cards, funerals, hotels, membership programs, and product discounts. One flaw NTUF identified was FTC's attempt to exclude taxes and government charges from the dictates of the rulemaking. According to NTUF, "The Proposed Regulation would exclude taxes and fees only if they are 'imposed on consumers by a Federal, State, or local government agency, unit or department,' and not any charge 'that the government imposes on a business and the business chooses to pass on to consumers.'" This distinction would overturn most of the longstanding U.S. system that defines how a tax, penalty, or charge operates, versus who is obligated to remit or collect it. As a practical matter, NTUF notes, the FTC's framework would "require every retailer in America to engage in a confusing and massive alteration of business sales and payment processing systems. Retailers would have to understand that they must differentially treat certain states' sales taxes, excise taxes, and other charges based entirely and counterintuitively on whether the authorizing statute imposes the charge on consumers or on business."

[5] See https://www.americanactionforum.org/insight/web-of-junk-fee-rules-causing-more-confusion-than-the-fees/#ixzz8hfZr7H7b.

For all of these reasons, CFPB's embrace of the appellation, "junk fee," is less than ideal for being open to the perspectives of all consumers, taxpayers, and other stakeholders.

***Many Non-Governmental Fees in the Mortgage Space Exist for Cost Recovery Purposes of Providing Legitimate Services. Some Offer Key Taxpayer Protections.***

CFPB should already be aware of the pricing dynamics for many types of fees that private sector providers charge for financial services. Therefore, only a few examples should suffice:

- Interchange fees on credit and debit cards are not determined on a whim by the networks providing them. They are structured, under patient negotiation with retailers, to provide sufficient cost recovery for constant network security updates, losses from non-payments by network participants, account administration, and various rewards programs that benefit providers, retailers, and consumers. Yet, according to the Competitive Enterprise Institute's Senior Fellow and Director of Finance Policy John Berlau, the Federal Reserve's price caps on interchange for debit cards, imposed in 2011, have "resulted in banks sharply reducing free checking for low balance accounts and in debit card rewards virtually disappearing, as the bulk of the costs of processing debit cards shifted from retailers to consumers. And academic studies showed that little if any of the retailers' savings from the price controls were passed on to consumers."[6]

- Bank overdraft and delinquent payment fees, a recent focus of CFPB's attention, are likewise important cost recovery methods for maintaining accounts at institutions, as well as funding access to a broader range of consumers. Both the average charge, at $35, as well as total overdraft revenue, are heading downward without further government intervention.[7]

  Yet, as *Washington Post* financial columnist Megan McCardle noted, previous experience shows that overdraft fees help to balance the costs of offering free checking and low minimum balance accounts. She wrote, "This seems to have happened in the past, judging from what we saw when federal regulators preempted some state fee caps in 2001. According to researchers from the New York Fed, the exempted banks both raised overdraft fees and expanded available overdraft credit, while lowering minimum balance requirements. The rate at which checks were returned for insufficient funds declined by 15 percent. And the share of low-income households with a bank account rose by 10 percent, suggesting that minimum balance requirements had kept those households from opening accounts."[8]

A similar dynamic exists in CFPB's examination of total loan costs. The 7-page RFI devotes nearly an entire page to the example of credit reports, asserting that "Lenders have reported to CFPB that their cost to obtain credit reports have increased 25 to 400 percent in recent years. This is blamed on "a handful of dominant players dictating the price of credit reports and scores."

It is important to acknowledge that the credit *score* provider and credit *report* provider are different entities, with different issues surrounding each. Also vital is an exploration of how score providers' cost

[6] See the analysis in CEI's comments to the Federal Reserve here: https://cei.org/regulatory_comments/cei-comments-opposing-the-worsening-of-durbin-amendment-debit-card-price-controls/.
[7] See, for example, https://www.nytimes.com/2024/01/17/business/cfpb-bank-overdraft-fees-rule.html.
[8] See https://www.washingtonpost.com/opinions/2024/01/24/cap-overdraft-fees-hurt-poor-families/.

recovery needs and pricing structures may have evolved as the industry demanded more predictive, vigorously tested models.[9]

In addition, thorough analysis is necessary surrounding the Federal Housing Finance Agency's (FHFA's) decision requiring Fannie Mae and Freddie Mac to utilize two different credit score models for loan evaluations—a decision CFPB appears to cite uncritically. In fact, major questions remain over the process for reaching this directive,[10] whether it will deliver benefits to competition that outweigh implementation costs to the entire lending sector,[11] and whether it could worsen risks to the taxpayers who have been unwilling conservators over the two entities for 15 years.[12]

Whether one chooses the dramatic narrative of a 25-400 percent cost increase for a "tri-merge" report, or the more grounded narrative that charges have risen $30-$60 for some lenders, many readers would struggle to understand why so much emphasis was placed on this expense in the RFI, out of a total typical cost of nearly $6,000 that CFPB cites. It is especially concerning in light of the much heavier burdens left undiscussed in the RFI (but addressed in the next comment appearing below).

Of greater magnitude in the RFI is CFPB's mention of title insurance, whose "premiums can be significant, and typically range from 0.5-1 percent of the purchase price." Despite the RFI flagging this expense as a concern for <u>consumers</u>, it is a vital protection for <u>taxpayers</u>. In lending programs backed by the federal government—such as the trillions in housing Government-Sponsored Enterprises (GSEs), veterans,' and Federal Housing Administration loans—the risks of uncured title problems, unpaid taxes, and fraud could very easily translate into taxpayer bailouts without the buffer of private insurance.[13]

The same can be said of other services that generate fees during the homebuying or refinancing process. The charge for flood determination in the mortgage process is a critical element in ensuring that adequate insurance protection becomes a consideration for homes located in flood zones. Taxpayers have long been burdened by the National Flood Insurance Program, which is plagued by repetitive losses, poor risk rating, and lack of adequate risk transfer.[14] Foregoing this step in closing, for the purpose of reducing an up-front fee, could mean immense back-end taxpayer liabilities.

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[9] One score provider noted in a public commentary that its own charge for a score in the home loan area has indeed risen in stages after relicensing negotiations that began in 2012. This remains a fraction of the tri-merge report's total average cost. This is likely true for all score providers. See, for example, https://www.fico.com/blogs/ficos-adoption-and-pricing-mortgage-origination-market.

[10] See, for example, https://www.ntu.org/publications/detail/ntu-urges-caution-ahead-of-fhfa-hearing.

[11] See, for example, https://www.ntu.org/publications/detail/credit-score-transition-policy-should-focus-on-taxpayers-not-contrived-competition;
And, https://www.housingwire.com/articles/fhfa-bi-merge-credit-transition-challenges-are-immense-housing-orgs-say/.

[12] See, for example, https://www.ntu.org/publications/detail/risky-road-assessing-the-costs-of-alternative-credit-scoring.

[13] The concerns of taxpayers are not hypothetical. This year, after several abortive attempts at offloading title insurance to the GSEs themselves, in March of this year "FHFA announced the intention to explore a pilot that would allow lenders to forgo a lender's title insurance policy or attorney opinion letter (AOL) on a small population of refinance loans sold to Fannie Mae." See https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-issue-request-proposal-identify-potential-suppliers-participation-title-acceptance-pilot and a cautionary analysis from the American Land Title Association at https://www.housingwire.com/articles/opinion-fannie-maes-title-insurance-pilot-program-overreaches/.

[14] For further background on NFIP from the taxpayer's perspective, see https://www.smartersafer.org/; and https://www.ntu.org/foundation/detail/improving-our-flood-insurance-system.

Yet another pro-taxpayer safeguard in the homebuying and refinancing realm is Private Mortgage Insurance (PMI), in cases where equity provided by the consumer is less than 20 percent of the value of the property. Aside from helping many underserved Americans qualify for mortgages, PMI is a successful risk transfer tool that has shielded taxpayers from tens of billions in potential liabilities.[15]

Thus, it is imperative for CFPB to meticulously evaluate each fee in the closing process from a cost-benefit perspective that involves not only the immediate buyer, seller, or lender, but taxpayers and other stakeholders in the financial sector as well.

***No Serious Discussion of Closing Costs Can Ignore Taxes, Government-Imposed Fees, Regulations, and Other Burdens from Government Policy Decisions.***

In its entire 7-page RFI announcement, CFPB mentions taxes as a component in closing expenses just once, consigning the topic to a footnote on "other costs." This is a deterrent to many stakeholders who could offer comments to the RFI. CFPB's lengthier data report that provides context for the RFI also excludes taxes from its calculations—thereby further limiting the context for a wider-ranging discussion that could arrive at comprehensive answers.

Certainly, lack of statistics on the role of taxes and other government charges in closing costs is not a problem necessitating their exclusion from this discussion. Data tracking the impact of taxes on total loan costs and home ownership is readily available from a number of respected official and private sources. Among the examples we have found:

- Property taxes, levied upon homeowners annually, have a direct connection to both initial and refinanced mortgage affordability over the longer term. According to the U.S. Census Bureau, **state and local property tax collections rose 24 percent between the first quarter of 2020 and the first quarter of 2024, and nearly 16 percent between the first quarter of 2022 and the first quarter of 2024.**[16] Though they may not indicate so on a percentage basis, on a dollar amount basis these increases can translate to per-homeowner amounts (depending on jurisdiction) much larger than the ones CFPB identified for items like credit report fees.

- The government of the District of Columbia conducts a comprehensive annual survey of household tax burdens by income category for a major metropolitan area in each of the 50 states.[17] The latest survey, for the year 2021, found that a hypothetical family of three at an **income level of $50,000 faced a median property tax of $1,683, far higher than the income, sales, or automobile taxes for which they were liable.** A family at $75,000 faced a median property tax burden of $2,552—slightly less than their income tax liability, but still much heavier than their sales or automobile tax liability. These are ongoing financial challenges to homeowners that likely extend to rural areas as well.

- A bankrate.com report, citing CoreLogic's ClosingCorp, notes that the average total closing cost for a single-family home purchase in 2021 was "$6,905 including transfer

[15] According to data from the trade group U.S. Mortgage Insurers, "Private MI companies have transferred nearly $73.8 billion in risk on more than $3.4 trillion of insurance-in-force (IIF) through both reinsurance and insurance-linked notes since 2015." See the report at https://www.usmi.org/policy_priorities/taxpayer-protection/.
[16] Analysis derived from https://www.census.gov/programs-surveys/qtax/data/tables.html.
[17] Analysis derived from https://ora-cfo.dc.gov/page/tax-burden-studies.

taxes, and $3,860 without."[18] In this example, **taxes comprise 44 percent of total closing expenses.** Even acknowledging that there is a difference between averages reported here and medians reported by CFPB, it is not difficult to conclude that taxes and fees imposed by governments would dwarf any other single category of closing cost, save that of points or (in a few states with particularly low taxes) title insurance.

- PropertyShark recently surveyed real estate transfer taxes and noted that 14 states do not charge such levies on home purchases (though some localities in several of these states may do so). **Every single one of these 14 states had total closing costs below CoreLogic's tax-inclusive average of $6,905, while 11 of the 14 had total closing costs below the median.**[19] Here again, taxes had a dominant role in determining closing cost affordability.

- Local taxes on home closings pose considerable obstacles of their own to homebuyers. Many of these charges, on their own, are equivalent to the recent prices CFPB has highlighted for credit reports. Others are much higher.[20] Still others are simply absurd. For a single-family home sold at the median price in June of 2024 in Montgomery County, Maryland (a Washington, DC, suburb), the local "recordation tax" alone—which the County Council recently increased—would amount to $4,863.[21] A single-family median-priced home sold within the City of Los Angeles would carry a transfer tax of $4,511.[22] In either jurisdiction, even a modestly-priced residence for a working-class family would carry a transfer or recordation tax well in excess of a thousand dollars.

  General property taxes are charged to provide a variety of government services, from schools to infrastructure to public safety. What service does the government provide during a home sale transaction that would justify transfer or document recordation tax burdens of $4,000 or more? This should not be a facetious question.

- Federal tax policy has made at least one element of total loan costs and closing more expensive. Prior to Tax Year 2022, Private Mortgage Insurance (mentioned above) was deductible under itemization rules for the individual income tax. According to IRS data for the 2021 Tax Year, the average deduction for PMI across all filers with taxable returns was $2,074.[23] The actual realized tax savings from the deduction would vary according to individual situations, but because of income limitation rules most filers claiming the expense would fall in the 10 or 12 percent brackets, with some in the 22 percent bracket. Thus, a hypothetical average range of between $207 and $456 in per-filer savings was possible. Congress has not yet seen fit to extend or expand this deduction, but its lack of availability today shows vividly how the decisions of public officials can drive up costs of homeownership near or in excess of the fees that CFPB is examining in this RFI.

[18] Analysis derived from https://www.bankrate.com/real-estate/average-closing-costs-by-state/#cost-by-state.
[19] Analysis derived from https://www.propertyshark.com/info/real-estate-transfer-taxes-by-state/.
[20] See, for example, https://www.altusgroup.com/insights/us-real-estate-transfer-taxes-understanding-the-impact.
[21] Calculations made by entering the median single-family home price for June of 2024 in Montgomery County into the following online application: https://gcaar.com/government-affairs/montgomerycounty/recordation-tax-calculator.
[22] Calculations made by entering the median single-family home price for June of 2024 in the City of Los Angeles into the following online application: https://finance.lacity.gov/faq/measure-ula.
[23] See p. 148 of IRS Publication 1304 for Tax Year 2021, accessible at https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-complete-report-publication-1304.

A significant body of research exists on the economic impact of state and local taxes on total loan costs and closing, and was neatly summarized in a review of literature here and abroad conducted by the Sage Policy Group, LLC. Sage cited numerous examples of how impositions of, or increases in, taxes on real property transfers have driven down home prices, decreased mobility, imposed economic deadweight losses, and reduced affordability for first-time buyers. Other instructive studies have been conducted by NAIOP, the Commercial Real Estate Development Association.[24] CFPB should carefully evaluate this and other research and consider how it could enrich the collective knowledge with additional studies.[25]

CFPB's announcement cites Home Mortgage Disclosure Act (HMDA) data for its assertion that median total loan costs rose nearly 22 percent between 2021 and 2022, "the largest the largest annual jump of total loan costs since this data point was first collected in 2018". While this is hardly a long trend line in the first place, CFPB admits that "a higher percentage of borrowers reported paying discount points in 2022 than any other years since this data point was reported in HMDA," suggesting that points are a major driver of the 22 percent cost jump.

Not every consumer benefits from paying down interest costs via points at loan origination, but doing so is a perfectly natural reaction to sharply rising interest rates over the same period. So is the reaction of the Federal Reserve to increase the federal funds rate from 0.25 percent in early 2022 to 5.5 percent, to fulfill its mandate of controlling inflation through monetary policy.[26]

We mention this development because inflation experienced noticeable pressure from government spending increases. For example, economists across a broad spectrum attribute some inflationary effect from the American Rescue Plan Act (ARPA) that was adopted in 2021. It can be argued that interest rate hikes in response (and, in turn, rising mortgage rates and consumer gravitation toward points at closing) were impacted in some part by ARPA and other legislative responses to the pandemic-era economy.[27]

Other impacts of government policies on closing costs are related to regulations, many of them within the housing sector itself. One commenter to this RFI, the Iowa Bankers Association, remarked that:

> Another reason for the increase in credit report costs could be due to the additional compliance requirements under the Military Lending Act and Office of Foreign Assets Control. As an optional service, the lender can contract with the credit report supplier to provide information that would help the lender meet these additional requirements. These "add-ons" carry an additional cost.[28]

Finally, numerous taxes, tariffs on building materials, regulations, and other government policies well outside the financial sector can exert upward pressure on closing costs. The comments of Consumer Action for a Strong Economy fittingly frame the regulatory elements:

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[24] An excellent archive of research, including the Sage Group study, is housed on NAIOP's website at https://www.naiop.org/advocacy/state-local-issues/real-estate-transfer-taxes/.

[25] In footnote 10 of its RFI, CFPB cites a Bank of England study that purports to show "mortgage borrowers underreact to closing cost pricing." The Sage Group and NAIOP provide important counterfactuals to CFPB's conclusion, at least as far as taxes and other government-imposed charges are concerned.

[26] See https://www.federalreserve.gov/monetarypolicy/openmarket.htm.

[27] https://www.politifact.com/factchecks/2022/apr/20/jane-timken/bidens-american-rescue-plan-fueled-inflation-so-di/,https://www.vox.com/23036340/biden-american-rescue-plan-inflation, https://thehill.com/homenews/administration/3528230-how-much-does-bidens-1-9t-bill-have-to-do-with-inflation/

[28] See the comments of Julie Gliha, VP Compliance of the Iowa Bankers Association, https://www.regulations.gov/comment/CFPB-2024-0021-0053.

If the CFPB truly wants to reduce costs for prospective homeowners, we urge them to consider the breathtaking costs that government regulations on development and construction add to the cost of a home. A recent economic analysis by the National Association of Home Builders concluded that for an average home costing $394,000 in 2021, almost $94,000 of that cost was due to government regulations, or 24 percent of the purchase price. If this figure could be reduced by an entirely reasonable 10 percent, that would not only save home buyers over $9,000 on the purchase of a home, but an equal percentage in closing costs.[29]

## III. Recommendations and Conclusion

The mortgage loan closing process can be complex, involving numerous actors, products, and services. Reducing this process to the political shorthand of "junk fees" is not likely to yield thoughtful public policy. Accordingly, we humbly offer the following suggestions.

*CFPB Can Assume a Constructive Role in the Closing Cost Discussion, by More Comprehensively Researching, Cataloging and Publicizing the Financial Barriers to Homeownership that Governments Are Creating.*

One standout model here is the National Taxpayer Advocate (NTA) at the IRS, which is directly empowered to assist taxpayers who are unable to resolve tax administration issues through the conventional IRS chain of customer interaction. Outside of assisting taxpayers, a primary task of NTA is to gather empirical data and make systematic observations of taxpayers' experiences in interacting with the IRS as "customers." Another exemplary model is the Small Business Administration Office of Advocacy, which was created to serve as "the independent voice for small business within the federal government, the watchdog of the Regulatory Flexibility Act, and a source of small business statistics and research."[30]

The RFI cites a study by Fannie Mae, which suggests "a large heterogeneity across states and jurisdictions" in home buyer tax burdens.[31] The study offers as one remedy, "Federal, state, and local efforts to fund closing cost assistance programs, particularly in jurisdictions with high relative closing costs, could be expanded." But this subsidization approach merely shifts the burdens to other categories of taxpayers, all while masking the total costs that all "customers" of government must pay (an approach that would likely earn CFPB's approbation if it were observed in the private sector).

Perhaps better attuned to the concerns of taxpayers is the study's idea for action, "Local jurisdictions could explore ways to expand existing programs that waive or reduce one-time taxes and government fees borne by first-time and low-income homebuyers." CFPB could helpfully provide a survey of such programs and any analysis of those that work well or work poorly. Other topics for study could be how adoption of technologies such as blockchain[32] could streamline local government recordation functions

[29] See the comments of Gerard Scimeca, President of Consumer Action for a Strong Economy, at https://www.regulations.gov/comment/CFPB-2024-0021-0310.
[30] For further introductory information on Office of Advocacy activities, see https://advocacy.sba.gov/category/regulation/agency-roundtables/, https://advocacy.sba.gov/regulatory-reform/, and https://advocacy.sba.gov/category/research/economic-reports/.
[31] See Barriers to Entry: Closing Costs for First-Time and Low-Income Homebuyers | Fannie Mae.
[32] See, for example, https://www.ntu.org/publications/detail/blockchain-a-free-market-solution-to-government-burden; and, https://www.ntu.org/foundation/detail/blockchain-and-creative-destruction; and, https://knowledge.wharton.upenn.edu/article/blockchain-can-transform-government/.

(thereby reducing taxes) and whether "tax arbitrage" due to exorbitant government controls on fees is a widespread phenomenon.[33]

*No Findings from the RFI Should be Contemplated for Regulatory Policy without an Administrative Procedure Act-Compliant Rulemaking that Provides Ample Public Comment Opportunities.*

Several commenters either implied or expressed concern that the RFI is little more than a pretext to additional regulatory action to outlaw certain cost-recovery fees or impose price controls on the closing process. One commenter, the National Council of Insurance Legislators (NCOIL), appropriately warned:

> To begin with, NCOIL acknowledges the CFPB's authority to issue this RFI. However, in reviewing the RFI, there do appear to be some undertones that the CFPB is planning to use the information it receives to develop some type of policy and/or initiative. If the CFPB were to do that and the policy and/or initiative sought to impose requirements on the title insurance marketplace, such action would constitute unnecessary and unauthorized federal encroachment on the States' authority to regulate the business of insurance pursuant to the McCarran-Ferguson Doctrine (15 U.S.C.A. § 1011 et seq.).[34]

Jurisdictional issues aside, the *Loper Bright* and *Corner Post* decisions of the U.S. Supreme Court mean that federal entities' regulatory acts will come under greater scrutiny for exercise of care.[35] CFPB would be well-served to rely on the letter and the spirit of the Administrative Procedure Act in order to craft workable, evidence-based regulatory policy of all kinds going forward.

*CFPB Could Adapt the "Job Aid" Concept for Tax Guidance to CFPB Guidance at the Subregulatory Level.* Although they can vary in their composition and operation, Job Aids are generally initiated by the IRS for either members of their own staff or the practitioner community as "how-to" guides for ensuring best practices in carrying out the intent of tax administration. As one expert we cited in testimony to the IRS put it, Job Aids "provide clarity and understanding of the Service's stance without creating significant disputes between taxpayers, their advisers, and the Service's agents, saving the Service time and taxpayer money in attempting to pass and then properly enforce its regulations."[36] This kind of synergy could benefit CFPB too.

*In General, CFPB Could Better Utilize "Regulatory Sandboxes."* This concept, in widespread practice abroad, was originally proven in the tech policy sphere. As Ryan Nabil, the Director of Technology Policy and Senior Fellow for NTU's research arm (NTU Foundation) wrote prior to coming to our organization:

> '[R]regulatory sandbox' programs allow companies to test innovative products and services under a modified and frequently lightened regulatory framework for a limited period. These programs allow companies to test new financial products and enable regulators to become more familiar with technological innovation and its impact on businesses. By allowing regulators to evaluate how different rules impact businesses,

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[33] This concept was explored briefly by the Cato Institute here: https://www.cato.org/briefing-paper/junk-fees-or-junk-economics#endnotes.
[34] See comments at https://www.regulations.gov/comment/CFPB-2024-0021-0054.
[35] See, for example, NTU Foundation's statement on the impact of *Loper Bright* in the area of tax: https://www.ntu.org/foundation/detail/ntuf-applauds-the-loper-bright-decision-and-end-of-chevron-deference.
[36] See a further explanation at https://www.ntu.org/publications/detail/irs-considering-backdoor-death-tax-hike.

> sandbox programs can provide crucial information to help regulators craft business- and innovation-friendly rules.[37]

Recently, NTU Foundation proposed this framework to the Internal Revenue Service for developing tax regulations governing cryptocurrency. As NTU Foundation Attorney Lindsey Carpenter explained in comments to the IRS:

> Under this sandbox method, the IRS would recruit cryptocurrency experts from outside the IRS. These experts should represent all areas of cryptocurrency: Regulatory, taxation, trading platforms, cybersecurity, investors, brokers, sellers, etc. Then, in a controlled environment, the IRS should foster allowing for the free flow of ideas about cryptocurrency and how to properly tax such.[38]

CFPB would be an ideal candidate for adapting the regulatory sandbox method to its own proceedings, beyond the RFI immediately at issue here.

NTU is grateful for your consideration, and I am hopeful that the fiscally-based framing we have provided in these comments is useful to you. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Pete Sepp
President

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[37] See https://cei.org/studies/how-regulatory-sandbox-programs-can-promote-technological-innovation-and-consumer-welfare/ and NTUF Comments to OMB on AI Governance - Foundation - National Taxpayers Union.
[38] See NTUF's Comments On IRS Cryptocurrency Regulations - Foundation - National Taxpayers Union.