



Via Electronic Mail

Director Rohit Chopra
Office of the Executive Secretary
Consumer Financial Protection Bureau
1275 First Street, NE
Washington, DC 20002
Email: FederalRegisterComments@cfpb.gov

Re: Comments in Response to the Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services
Docket No. CFPB-2022-0003

Director Chopra,

This letter is submitted by the Consumer Bankers Association (“CBA”)¹ in response to the Consumer Financial Protection Bureau’s (“Bureau”) Request for Information (the “Request”) regarding fees imposed by providers of consumer financial products or services. CBA has several concerns with the Request’s portrayal of consumer finance markets. First, fee amounts and fee disclosures are subject to scores of federal and state laws and regulations. Second, those same heavily regulated fee disclosures foster competition, offering consumers information that permits informed choices about the financial products that consumers want to use on a daily basis, helping them to understand which products best fit the way that they live. Finally, by characterizing various, disconnected charges as “junk fees,” the Request serves to confuse consumers and undercut the purpose and utility of disclosures that regulators, including the CFPB itself, have worked so hard to police and financial institutions to implement.

The amounts and disclosure of fees for consumer financial services are subject to an extensive regulatory regime at the federal and state levels.

As the Request acknowledges, fees are in no way unique to consumer finance. Rather, they are a common feature of products and services throughout the economy. Fees are so common that even our federal government and state and local governments charge fees. In fact, the federal

¹ The Consumer Bankers Association is the trade association for today’s leaders in retail banking – banking services geared towards consumers and small businesses. The nation’s largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry’s total assets. CBA’s mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

government is heavily reliant upon fees, collecting \$331 billion in fees for fiscal year 2017.² For financial institutions, numerous existing laws set or limit fees, including those fees identified in the Request. For example, the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601, *et seq.*, and its implementing regulation, Regulation Z, 12 C.F.R. Part 1026, govern when a lender can impose fees on credit extensions to consumers, as well as the amount of those fees, and whether fees can be imposed by third parties. As part of TILA, the CARD Act, 15 U.S.C. § 1665d, sets general limits on credit card fees, including limits on late fees, and requires that any late payment fees be reasonable and proportional. State laws also limit many fees, such as late fees for certain types of credit products and insufficient funds fees.

Substantive limits on fees are also the subject of considerable regulation and thoughtful review. Many state laws restrict the amount of late fees. As noted above, the CARD Act also sets out a requirement that late fees on credit card payments be both reasonable and proportional, requiring consideration of factors such as the cost incurred by the creditor, deterrence, and cardholder conduct. The dollar amount of late fees must both be reasonable and proportional, while still discouraging consumers from acting against their best interests.

In addition to the substantive limits on fees created by law, the detailed disclosure requirements regarding fees enable consumers to review a consumer financial product’s benefits and costs upfront and select the product that best meets their financial needs. The disclosure of fees is a highly prescriptive, highly regulated area. A myriad of federal and state laws mandate fee disclosures, and these statutes have been in place, in some instances, for over half a century, yet these requirements were not mentioned in the Request. The Bureau, since its inception, has played a central role in regulating how these fees are communicated and charged to consumers. For example:

- TILA and Regulation Z, with their extensive, common-sense disclosures, have been federal law for more than 50 years.
- The Bureau oversees administration of Regulation Z, requiring disclosure of fees in account opening disclosures and in periodic statements for a number of different products, including open-end credit and closed-end credit. Regulation Z prescribes disclosures in readily-accessible, tabular format, highlighting the key terms, front and center, in an easy-to-read snapshot of the key information associated with consumer credit products, including any fees associated with those products.
- The Electronic Funds Transfer Act, 15 U.S.C. §§ 1693, *et seq.*, and its implementing regulation, Regulation E, 12 C.F.R. Part 1005, administered by the Bureau, regulate disclosures of fees associated with ATM transactions, overdraft fees, NSF fees, periodic fees for prepaid accounts, and service or dormancy fees for gift cards, to name a few.
- Regulation DD, 12 C.F.R. Part 1030, governs fee disclosures in deposit accounts and requires the conspicuous disclosure of deposit account fees.
- In the Dodd Frank Act, UDAAP principles require clear disclosures of fees to consumers to ensure fees are not hidden.

² See “Economics of Federal User Fees,” Congressional Research Service, Jan. 22, 2019. <https://sgp.fas.org/crs/misc/R45463.pdf>.

Federal and state agencies routinely monitor the imposition of fees and the adequacy of disclosures made to consumers about those fees. The Bureau has the authority to bring enforcement actions where it believes entities, including banks and financial institutions, have failed to disclose properly the fees associated with their consumer product. Indeed, not six months ago the Bureau engaged in such an enforcement action, finding that a financial services company “provided consumers with inaccurate or incomplete information about the fees it assessed.”³ The Bureau has been swift to act where it perceives problems, with the agency’s most important and effective enforcement actions coming in directed, targeted efforts to address the practices of individual bad actors, rather than overbroad generalizations that sweep the entire industry into its crosshairs.

Financial institutions also help consumers mitigate fees. Banks and lenders provide loss mitigation programs designed to prevent delinquency and avert fees. To address overdraft fees or late fees, financial institutions regularly use monthly statements, text messages, and other notification services to warn consumers before fees are triggered. For example, measures such as one-click interventions send notifications to consumers the day before their payments are due and provide a link for them to easily make payments before a late fee is assessed. Proactive reminders help consumers avoid incurring fees, specifically when they have low balances or when payments are due. Communications like these have been even more important – and, indeed, even more effective – during the COVID-19 pandemic, as financial institutions have adopted programs to help consumers address financial instability or recover from unexpected losses of income.

Fee disclosures and information foster consumer choice in a highly-competitive market.

The financial services industry is highly competitive. In addition to the over 4,500 banking institutions and over 5,000 credit unions nationwide, there has been a rise in competitors offering alternatives to traditional bank products, including: online mortgage companies and other online lending services; money-market funds; farm credit systems institutions; and fintechs and other nonbank firms. Recent data indicates that nonbank financial intermediaries control 63 percent of U.S. financial assets,⁴ nonbank mortgage companies currently originate 68 percent of mortgage loans,⁵ and nonbank commercial lenders provide 59 percent of small business lending.⁶ Consumers are more likely to open new accounts or increase checking account activity with

³ See *In the Matter of JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021); <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

⁴ Financial Stability Board (FSB), “Interactive Data,” *Global Monitoring Report on Non-Bank Financial Intermediation 2021*, Dec. 16, 2021, <https://data.fsb.org/dashboard/Time%20Series%20View>.

⁵ Orla McCaffrey, “Nonbank Lenders Are Dominating the Mortgage Market,” *Wall Street Journal*, June 22, 2021, <https://www.wsj.com/articles/nonbank-lenders-are-dominating-the-mortgage-market-11624367460>.

⁶ Manasa Gopal and Phillip Schnabl, “The Rise of Finance Companies and FinTech Lenders in Small Business Lending,” *NYU Stern School of Business*, 2 (Aug. 2021), <https://www.fdic.gov/analysis/cfr/bank-research-conference/annual-20th/papers/gopal-paper.pdf>.

banks that offer overdraft innovations, with traditional banks and fintechs who offer consumer-friendly overdraft and overdraft alternatives experiencing a 40% improvement in account acquisition since 2017, compared to a decline of almost 30% for non-innovators.⁷ Market competition – a force that the Bureau has consistently referred to for its critical importance – drives financial institutions to address gaps in their product suite and continues to create market pressure to compete on consumer-friendly terms for a range of services such as overdraft protection.

Disclosures foster competition, and Congress has charged the Bureau with enforcing federal consumer law consistently, “in order to promote fair competition.”⁸ With individual financial institutions disclosing, fully and completely, their fee practices, consumers are able to make informed choices. The broad array of consumer financial products and services available to consumers, and the increasing number of market participants, both bank and non-bank, has resulted in a robust, competitive market featuring ever-expanding options. Competition for financial services has never been greater, to the benefit of consumers.

In addition to disclosures, the Bureau provides information designed to help consumers understand the different fees they might encounter. One of the Bureau’s main functions is consumer education, with Congress describing the primary functions of the Bureau, first and foremost, as “conducting financial education programs.”⁹ The Bureau has consistently provided these programs and offered to consumers numerous ways to educate themselves about fees, with informative and easy-to-understand charts and graphics detailing the fees that consumers could incur. With regard to overdraft fees, the Bureau recently released a broad study that permits consumers to comparison shop between different financial institutions.¹⁰ Intense competition for consumers’ business is a fact of life for financial institutions and drives the growing number of market participants to offer a broad array of product choices in numerous categories.

The Request’s blanket reference to “junk fees” is confusing and undermines the work of both regulators and financial institutions that has led to clear and prominent fee disclosures.

Connecting fully-disclosed fees that are sometimes imposed by financial institutions and those across-the-board, hidden fees that are imposed in other industries is a false equivalency. For example, resort fees and ticket surcharges mentioned in the Request are not subject to the extensive disclosure regime described above. As a result of this disclosure regime, consumers have the opportunity to review the fees at the time of selecting a product or service and can later anticipate and, in most circumstances, avoid activities that would cause them to incur a fee, such as an overdraft or late fee. If the Bureau wants to understand the landscape of fees imposed by

⁷ See “Competition Drives Overdraft Disruption,” 2021 Study. https://curinos.com/wp-content/uploads/2021/11/Curinos_2021-Competition-Drives-Overdraft-Disruption-web.pdf.

⁸ 12 U.S.C. § 5511(b)(4).

⁹ 12 U.S.C. § 5511(c)(1).

¹⁰ See “Comparing overdraft fees and policies across banks,” by Rebecca Borné and Amy Zirkle (Feb. 10, 2022); <https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/>.

banks and financial institutions, numerous studies are available, including one released by Curinos,¹¹ that go beyond anecdotal evidence and address how consumers understand and use products that are occasionally subject to fees.

Moreover, by suggesting that a vast amount of fees in the consumer finance market are “hidden” or part of a bait-and-switch tactic, the Request suggests that the Bureau itself has fallen short on an important part of its statutory mission, which is to provide consumers with clear and understandable disclosures. We do not believe that to be the case. Financial institutions have implemented detailed disclosures to their consumer financial services offerings to provide accurate, concise, and useful information to consumers, as required by the CFPB. Not only were these disclosures subject to extensive public input prior to being finalized, but many were subject to consumer testing as an additional means to further ensure that these disclosures would be useful.

Finally, the Request seems to invite only negative anecdotal evidence from consumers about fees. This letter provides just some of the context missing in the Request that is essential before undertaking a serious review of fees charged by financial services providers.

CBA and its industry partners remain open to a constructive dialogue with the Bureau, including the role for banks and financial institutions in continuing to implement consumer-friendly disclosures related to fees. We thank the Bureau for its consideration of this letter.

Sincerely,



David Pommerehn
SVP, General Counsel
Consumer Bankers Association

¹¹ See “Competition Drives Overdraft Disruption,” 2021 Study. https://curinos.com/wp-content/uploads/2021/11/Curinos_2021-Competition-Drives-Overdraft-Disruption-web.pdf. The study showed that consumers surveyed see benefit in overdraft protection products, with nearly two-thirds of respondents indicating that triggering an overdraft payment was a conscious choice. Further, because of greater competition in the market, including competition from fintech institutions, the Curinos study showed that the rate of overdraft fees per U.S. adult has declined by 77% since 2008 and overdraft transactions now cover larger, and potentially more important, transactions.