BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No.: CFPB-2022-0003]

Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is seeking comments from the public related to fees that are not subject to competitive processes that ensure fair pricing. The submissions to this request for information will serve to assist the CFPB and policymakers in exercising its enforcement, supervision, regulatory, and other authorities to create fairer, more transparent, and competitive consumer financial markets.

DATES: Comments must be received on or before March 31, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2022-0003, by any of the following methods:

- *Electronic: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email*: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2022-00 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake —Fee Assessment, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the CFPB discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The CFPB encourages the early submission of comments. All submissions should include document title and docket number. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to https://www.regulations.gov. In addition, once the CFPB's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Brian Shearer, Senior Advisor; Grace Bouwer, Advisor, Public Engagement, Director's Front Office, Office of the Director at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Consumers can only realize the benefits of competition if companies transparently advertise the true price of their products or services, and the full price is subject to the competitive process. Both empirical studies and theoretical models suggest that when companies use hidden back-end fees – which are mandatory or quasi-mandatory fees added at some point in the transaction after a consumer has chosen the product or service based on a front-end price – it can lure consumers into making purchasing decisions based on a perceived lower price.[1] In addition, when a company

[1] https://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf; https://pages.stern.nyu.edu/~xgabaix/papers/shrouded.pdf.

charges for individual activities that are typical attributes of a product or service, it can give the company the power to substantially overcharge for those activities because consumers are not choosing a provider at the time they choose to engage in the activity. Well-known examples of such "junk fees" include resort fees added to hotel bills and service fees added to concert ticket prices. Government agencies and economists have raised concerns about the ways in which America's growing "fee economy" undermines competition.[2]

The Consumer Financial Protection Act (CFPA) directs the CFPB to enforce Federal consumer law for the purpose of ensuring consumer financial markets are fair, transparent, and competitive.[3] The CFPB has grown increasingly concerned that consumer finance has become part of this "fee economy." Exploitative junk fees charged by banks and non-bank financial institutions have become widespread, with the potential effect of shielding substantial portions of the true price of consumer financial products and services from competition. The CFPB is concerned about fees that far exceed the marginal cost of the service they purport to cover, implying that companies are not just shifting costs to consumers, but rather, taking advantage of a captive relationship with the consumer to drive excess profits. Excessive and exploitative fees, whether predictable and transparent to the customer or not, can add up and pose significant costs to people, especially those with low wealth and income.

Many Americans have experienced inflated or surprise fees that, however nominally voluntary, are not meaningfully avoidable or negotiable in the moment. These fees in consumer finance can take many forms: penalty fees such as late fees, overdraft fees, non-sufficient funds (NSF) fees, convenience fees for processing payments, minimum balance fees, return item fees, stop payment fees, check image fees, fees for paper statements, fees to replace a card, fees for

[2] https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.
[3] 12 U.S.C. 5511(a).

out-of-network ATMs, foreign transaction fees, ACH transfer fees, wire transfer fees, account closure fees, inactivity fees, fees to investigate fraudulent activity, ancillary fees in the mortgage closing process, and more. These fees have become the norm among financial services that Americans rely on every day, and a substantial amount of the revenue earned by financial services companies comes from these fees. The following are a few examples from select products and markets:

Deposit Accounts. The price of a deposit account is made up of, among other fees, account maintenance fees, minimum balance fees, savings transfer fees, NSF fees, overdraft fees, and ATM fees. Overdraft and NSF fees are back-end fees that make up the majority of total revenue banks derive from deposit accounts. Overdraft and NSF fees exceeded $15.4 billion in 2019.[4] By comparison, banks make only about $1 billion annually in account maintenance fees. Since the back-end fees are the bulk of the price, there is effectively no price competition amongst the major banks for deposit accounts. Only recently have companies started to substantially vary their overdraft practices. This is of course a positive development, but these changes will not reverse the trend of pricing deposit accounts primarily through back-end fees.

Credit Cards. Fees represent about 20% of the total cost of credit cards. Card issuers charged $23.6 billion in fees in 2019 alone and nearly $14 billion of those fees were late fees not subject to competitive pricing pressure.[5] Nearly every bank charges the same for late fees – the maximum allowed by law of $30 for the first late payment and $41 for subsequent late payments – and the average late fee has increased to $31, nearing the average of $33 before the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009.[6]

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[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/.

[5] https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf, at 46.

[6] https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf, at 54-57.

Remittances and Payments. Financial institutions charge "convenience" fees on payment transfers, return item fees, stop payment fees, check image fees, online or telephone bill pay fees, ACH transfer fees, and wire transfer fees. International transfers are subject to a significant number of fees as well. In 2017, after observing many abuses, the CFPB issued a Compliance Bulletin on unfair, deceptive, and abusive acts or practices relating to fees for making payments over the telephone, and potential violations of the Fair Debt Collection Practices Act (FDCPA).[7] These kinds of convenience fees are still common.

Prepaid Accounts. Prepaid cards represent a way for many unbanked consumers and individuals with limited resources to have access to basic financial services—yet many accounts carry fee structures that make it challenging for consumers to pick the right product based on their needs. Consumers frequently select a product based on a monthly rate only to find out that the "add-on" fees for regular activities such as transaction fees, cash reload fees, balance-inquiry fees, inactivity fees, monthly service fees, and card cancellation fees, among others, overshadow the quoted monthly charge.

Mortgages. Mortgages facilitate homeownership for millions of people, and, through homeownership, allow millions of families to build and maintain intergenerational wealth. But priced into most mortgages are thousands of dollars in application fees and closing costs, which few people are well-positioned to shop on. These fees can act as a barrier to homeownership, strip wealth from homeowners accessing their equity through refinancing or home sales, and deter some homeowners from refinancing when doing so would lower total housing costs and be financially advantageous. Advocates and reporters have noted that many closing costs, like title

[7] CFPB Compliance Bulletin 2017-01, Phone Pay Fees (July 31, 2017), *available at* https://files.consumerfinance.gov/f/documents/201707_cfpb_compliance-bulletin-phone-pay-fee.pdf.

insurance,[8] may not always be subject to standard or appropriate competitive forces. Even aside from inflated and padded fees rolled into the mortgage at closing, homeowners can find themselves forced to pay fees for making payments over the phone or online or even for the servicer's bill pay service. Borrowers who face financial hardship and struggle to make mortgage payments can find themselves unable to catch up due to the snowballing of a plethora of fees related to the mortgage delinquency. Monthly property inspection fees, new title fees, legal fees, appraisals and valuations, broker price opinions, force-placed insurance, foreclosure fees, and miscellaneous, unspecified "corporate advances" can all price a homeowner out of a home.

Other Loans. The CFPB is interested in other loan origination and loan servicing fees, including for student loans, auto loans, installment loans, payday loans, and other types of loans. For example, some servicers charge fees to reschedule payment dates or make online or phone payments. Loan originators often charge application fees and some even charge to receive loan proceeds in an expedited manner.

II. Request for Comment

This request for information seeks information from the public on how junk fees—exploitative, back-end, hidden, or excessive fees—have impacted peoples' lives. The CFPB is particularly interested in hearing from individuals (including older consumers, students, servicemembers, consumers of color, and lower-income consumers), social services organizations, consumer rights and advocacy organizations, legal aid attorneys, academics and researchers, small businesses, financial institutions, and state and local government officials.

The CFPB welcomes stakeholders to submit stories, data, and information about fees. To assist commenters in developing responses, the CFPB has crafted the below questions that

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[8] https://www.nclc.org/images/pdf/foreclosure_mortgage/archive/title_insurance_testimony042606.pdf; https://www.texasobserver.org/entitled-to-profit-in-texas-title-insurance-is-a-total-scam/.

commenters may answer. However, the CFPB is interested in receiving any comments relating to fees in consumer finance.

1. If you are a consumer, please tell us about your experiences with fees associated with your bank, credit union, prepaid or credit card account, credit card, mortgage, loan, or payment transfers, including:
    a. Fees for things you believed were covered by the baseline price of a product or service.
    b. Unexpected fees for a product or service.
    c. Fees that seemed too high for the purported service.
    d. Fees where it was unclear why they were charged.
2. What types of fees for financial products or services obscure the true cost of the product or service by not being built into the upfront price?
3. What fees exceed the cost to the entity that the fee purports to cover? For example, is the amount charged for NSF fees necessary to cover the cost of processing a returned check and associated losses to the depository institution?
4. What companies or markets are obtaining significant revenue from back-end fees, or consumer costs that are not incorporated into the sticker price?
5. What obstacles, if any, are there to building fees into up-front prices consumers shop for? How might this vary based on the type of fee?
6. What data and evidence exist with respect to how consumers consider back-end fees, both inside and outside of financial services?
7. What data and evidence exist that suggest that consumers do, or do not, understand fee structures disclosed in fine-print or boilerplate contracts?
8. What data and evidence exist that suggest that consumers do or do not make decisions

based on fees, even if well disclosed and understood?

9. What oversight and/or policy tools should the CFPB use to address the escalation of excessive fees or fees that shift revenue away from the front-end price?

Rohit Chopra

Director, Consumer Financial Protection Bureau.