



April 11, 2022

Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Fees Imposed by Providers of Consumer Financial Products or Services Docket No. CFPB-2022-0003

Dear Director Chopra:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), whose combined strength makes up one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 230 credit unions and their more than 11.6 million members.

On January 26, 2022, the Consumer Financial Protection Bureau (CFPB) issued a Request for Information (RFI) seeking public feedback regarding fees charged by providers of financial goods and services that are not subject to competitive processes, sometimes referred to as back-end or “junk fees.” The RFI focuses on “[m]andatory or quasi-mandatory fees that are added at some point in the transaction after a consumer has chosen the product or services based on a front-end price,” such as resort fees added to hotel bills or service fees added to concert ticket prices. In the RFI, the CFPB expressed concern that consumer finance has likewise become part of this “fee economy” and identified an exhaustive list of consumer finance fees as being “junk fees,” asserting that, “Many Americans have experienced inflated or surprise fees that, however nominally voluntary, are not meaningfully avoidable or negotiable in the moment.”

The Leagues have significant concerns regarding the RFI and respectfully offer the following comments.

I. Credit Union Fees are Subject to Rigorous Disclosure Requirements

The CFPB identified the following fees as examples:

- (1) Deposit accounts - account maintenance fees, minimum balance fees, savings transfer fees, NSF fees, overdraft fees, and ATM fees
- (2) Credit cards - late fees

(3) Remittance and payments - "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

(4) Prepaid accounts - transaction fees, cash reload fees, balance-inquiry fees, inactivity fees, monthly service fees, and card cancellation fees

(5) Mortgages - application fees and closing costs, property inspection fees, new title fees, legal fees, appraisals and valuations, broker price opinions, force-placed insurance, foreclosure fees, and miscellaneous, unspecified "corporate advances"

(6) Loans – application fees, loan origination and loan servicing fees

The Leagues disagree with the CFPB's characterization that such fees are not transparent and come as a "surprise" to consumers. Credit unions are strong proponents of robust consumer protections, including clear and conspicuous consumer disclosures as required by the CFPB's own regulations. The broad scope of laws and regulations that currently apply to the above examples include:

- Truth in Savings Act (TISA) and Part 707 of National Credit Union Administration's (NCUA) Rules and Regulations
- Truth in Lending Act (TILA) and Regulation Z
- Electronic Funds Transfer Act and Regulation E
- Real Estate Settlement Procedures Act (RESPA) and Regulation X
- Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibitions on unfair, deceptive, or abusive acts or practices
- State laws, such as California's Unfair Competition Law

a. Advance Disclosure Requirements

Consumers are primarily made aware of their rights of consumer finance fees at account opening or prior to the service being accepted by the consumer. As noted above, the disclosure of such fees is required by the applicable regulation. For example, in the case of overdraft and non-sufficient funds (NSFs) fees, Regulation E at 12 CFR §1005.17 prohibits a financial institution from assessing a fee for an overdraft related to an ATM or one-time debit transaction unless a series of specific disclosures have been made and the consumer has affirmatively opted-in for the service.

The RFI states that consumers are confronted with "hidden back-end fees," which are added at some point after a consumer has chosen the product or services based on a front-end price. The Leagues strongly disagrees and points again to the applicable regulation. In credit cards and deposit accounts, for example, credit unions must provide a necessary change in terms notice prior to

changing or adding new fees to allow the consumer an opportunity to either accept the fees and continue using the product or service, or select another appropriate product or service.

In addition, certain regulations, including many of the CFPB's own regulations, provide safe harbor disclosures and language. These safe harbor forms are created to ensure that credit unions are transparent with consumers about upfront costs and related terms and conditions.¹

b. Limitations Within State and Federal Laws

Credit unions are subject to certain state or federal fee limitations to help protect consumers against unscrupulous practices. For example, California Financial Code §4001 limits the late fees and over-the-limit fees a California state-chartered credit union may charge a member on credit cards and unsecured open-end credit. Moreover, the CFPB's Regulation Z at 12 C.F.R. §1026.52(b) sets forth appropriate credit card fee limitations, including fee safe harbors. Again, these fees are already subject to advance disclosure requirements.

These limits are not only outside the control of a credit union but are designed to control excessive and burdensome consumer costs in a consumer friendly matter.

c. Applicable Regulations Require Specific Disclosures Detailing the Costs

With respect to mortgages, the RFI characterizes any fees that get rolled into the cost of a home loan as acting as a “[b]arrier to homeownership, stripping wealth from homeowners accessing their equity through refinancing or home sales, and deterring some homeowners from refinancing when doing so would lower total housing costs and be financially advantageous.”

The Leagues strongly disagrees with the above characterization and believes the RFI portrays a narrative that is simply untrue.

The truth is, mortgage lending is heavily regulated through the Truth in Lending Act, Real Estate Settlement Procedures Act, Equal Credit Opportunity Act (Regulation B), and the CFPB's Ability to Pay/Qualified Mortgage Rule, to name just a few.

Most of the fees on home loans are third-party fees, including state and local government property taxes, recording fees, home inspection fees, and homeowners' insurance premiums, and therefore a credit union lender has no control over the pricing points. Moreover, due to the extended time involved in processing mortgage transactions and variations among housing markets, the exact amount of these fees are often unknown to either the lender or the borrower until further into the home purchase process.

¹ See NCUA Appendix B to 12 C.F.R. §707, Appendix A to 12 C.F.R. §1005, Appendices G and H to 12 C.F.R. §1026
2855 E. Guasti Road, Suite 202 • Ontario, CA 91761-1250 • 909.212.6000
www.ccul.org • league@ccul.org

The Leagues would like to point out that our credit unions invested extensive time, funds, analysis, and training to implement and comply with the CFPB's integration in 2015 of Truth in Lending Act with the Real Estate Settlement Procedures Act, known as the TILA-RESPA Integrated Disclosures Rule or "TRID." Many of our members struggled with the Rule's significant operational and compliance challenges but worked to ensure compliance. The Leagues would also like to remind the CFPB that the TRID disclosures were specifically designed to help consumers more clearly compare one lender's fee structure to another's by showing the amount of each fee, what the fee was for, and identify which fees are charged by lenders versus third parties.

II. There is Competition in the Financial Marketplace

The RFI asserts that, "[c]onsumers 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."

The Leagues disagree with the RFI's implication that current fee disclosure structures interfere with competition, as the financial services market is extremely competitive. In fact, credit unions must compete not only with banks, but also with non-banking entities as financial technologies (fintechs), payday lenders, and government-based entities such as public banks.

There is little evidence that indicates that consumers lack the benefit of strong competition within the financial marketplace. This is supported by the CFPB's own reporting. According to the CFPB's January 2021 Taskforce on Federal Consumer Financial Law Report, it states that in relation to consumer credit markets, there were "[n]ew entrants, innovative products, aggregate growth, reinvention of incumbents, and decline or departure of companies that could not keep pace with the others. These are the hallmarks of competitive markets."

As the only consumer-owned cooperatives in the financial marketplace, credit unions have a tradition of protecting consumer interests, and the Leagues have consistently been a strong proponent of appropriate and sufficient safeguards.

III. Fees Are Often Driven by Consumer Behavior

Fees related to consumer financial services, such as late fees, account maintenance fees, overdraft fees, and NSF fees, are often directly driven by consumer behavior, as opposed to being a mandatory or quasi-mandatory cost of opening or utilizing the account. In fact, these fees are often designed to impose the cost burden on the specific consumers who generate the expense, rather than forcing other consumers to collectively subsidize their behavior.

In addition, these fees also serve as a deterrent against poor financial account management practices, such as late payments and overdrafts. These behaviors create financial risk to a credit

union that must be managed like any other risk. In addition to providing a number of financial education opportunities, credit unions often work with their members by offering free services as online banking and mobile banking, allowing members to easily check their account balances daily and receive account alerts for low balances or overdraft notifications. Technology provides convenience and ease for members to better manage their finances with the goal of avoiding the practices that trigger the risk and the resulting fees.

IV. Limits on Credit Union Fees Can Hurt Consumers

Limitations on credit union fees could have an unintended effect on consumers which could be quite significant. For example, if the CFPB should move forward to limit access to overdraft protection, credit unions could be forced to choose between accepting the increased risk that comes with unchecked consumer overdraft behaviors or, more realistically, eliminate these services altogether, or at least scale back on consumer-friendly products such as free checking accounts. This could have serious consequences for a consumer who may experience a cash shortfall, requiring the consumer to look to payday lenders to obtain money for essential purchases.

We encourage the CFPB to fully and carefully consider the potential for unintended consequences.

V. The Credit Union Difference

In the RFI, the CFPB states that “[e]xcessive 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.”

The Leagues strongly disagree with this generalization. Because credit unions are owned by their members, they have traditionally worked hard to minimize fees on products and services, particularly for those of modest means, and offer opportunities for financial education and empowerment. Credit unions exist for the financial benefit of their member-owners, but they are ultimately driven by the philosophy of people-helping-people.

VI. Outreach and Financial Education

In the interest of protecting members, credit unions often adopt policies and procedures to assist members struggling with financial issues and frequently provide support or alternative products and services. In member communications, credit unions often inform members about other options that may be available and better suited to their unique needs, including financial and budgetary counseling. Looking out for the best interests of the members exemplifies the pro-consumer nature of the credit union-member relationship, which is unique in the financial services space.

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The Leagues believe the CFPB should invest in assisting financial institutions, such as credit unions, with efforts to empower consumers to make informed choices. To the contrary, the RFI takes an approach that appears more likely to force credit unions to limit choices for their members and stifle innovation to support financial education efforts to guide consumer behavior.

Conclusion

The Leagues remind the CFPB that credit unions are the original consumer financial protection advocates. While the Leagues support the need for transparency, we urge the CFPB to be cognizant of the fact that transparency is not the core problem, and that excessive requirements have the potential to divert credit unions' resources and attention away from their primary mission – to meet their members' financial needs.

We thank you for the opportunity to comment on the RFI and for considering our views. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues