

## Insights

### CFPB Targets “Junk Fees” – What Does This Mean for Your Financial Institution?

February 3, 2022

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The Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) recently issued a series of press releases and blog posts focused on the issue of so called “junk fees” consumers pay their banks, credit unions, and other financial institutions. Several of the largest banks in the country have recently announced that they will be either significantly reducing the overdraft and non-sufficient funds (“NSF”) fees they assess consumers, or eliminating them all together. However, the vast majority of financial institutions have understandably expressed concern over these developments given their inability to absorb the loss of important fee revenue with the same ease some of the “mega-banks” may be able to. To understand what this means for your financial institution, it’s important to know what the Bureau is doing in this area first.

On December 1st, 2021 the Bureau issued a press release titled, “CFPB Research Shows Banks’ Deep Dependence on Overdraft Fees. Overdraft and Non-Sufficient Fund Penalties Made up Two-Third of Reported Fee Revenue.”<sup>1</sup> Director Chopra commented in the release, *“Rather than competing on quality service and attractive interest rates, many banks have become hooked on overdraft fees to feed their profit model. . . . We will be taking action to restore meaningful competition to this market.”* The press release also noted, *“The CFPB will be enhancing its supervisory and enforcement scrutiny of banks that are heavily dependent on overdraft fees. . . . Consumers seeking help dealing with overdraft and NSF fees can submit a complaint to the CFPB. Advice on managing bank accounts and avoiding fees is available on the CFPB’s website.”*

Then last month, the Bureau significantly expanded the scope of their focus on financial institutions fees with a press release announcing a request for information (“RFI”) about so-called “junk-fees” titled, “Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees. Agency Seeks Public Input on Fees on Bank Accounts, Credit Cards, and Other Financial Products.”<sup>2</sup> In this press release, Director Chopra noted, *“Many financial institutions obscure the true price of their services by luring customers with enticing offers and then charging excessive junk fees. . . . By promoting competition and ridding the market of illegal practices, we hope to save Americans billions.”* The RFI solicits feedback from the public about people’s experiences with fees associated with their bank, credit union, prepaid or credit card account, mortgage, loan, or payment transfers, including:

- Fees for things people believed were covered by the baseline price of a product or service;
- Unexpected fees for a product or service;
- Fees that seemed too high for the purported service; and
- Fees where it was unclear why they were charged

Then on February 2, 2022 the CFPB issued a blog post titled, “The Hidden Cost of Junk Fees.”<sup>3</sup> The blog post begins by targeting fees not even subject to the Bureau's oversight, including hotel resort fees, ticket service charges, and cable-tv fees, but then focuses on financial services fees. The author notes, *“Many Americans have also encountered junk fees in the consumer finance sector the CFPB regulates, and it’s easy to grow accustomed to fees as part of our everyday experience with financial products and services. They take many different forms, including fees for late penalties, overdrafts, returns, using an out-of-network ATM, money transfers, inactivity, and more. In many cases the fees are mysterious and can leave an individual unsure of the purpose. With overdraft fees, a cup of coffee can go from \$3 to \$35. When an individual needs help, they may even be charged a fee for speaking to a real person. And some companies charge you to pay your bill by phone or other methods.”*

This series of press releases, blogs, and the RFI leave little doubt that the Bureau intends to move aggressively to develop a regulatory framework intended to limit, and potentially even eliminate, many of the fees financial institutions have spent years incorporating into their business models. However, in spite of the apparent eagerness of a handful of larger financial institutions to eliminate what are legitimate fees, an overwhelming majority of the financial services industry appears to be opposed to this initiative. While the Bureau's actions in this area have been limited to press releases and blog posts to date, it would seem shortsighted to not consider what the loss of fee income from several of the fees identified in the RFI could mean for your institution.

The extent to which financial institutions will be forced to make changes to their business models will in large part be dependent on the response to the RFI, and feedback provided by the industry to elected officials. One thing remains certain, fee income of all kinds will remain under regulatory scrutiny for the foreseeable future, and financial institutions will need to evaluate what the loss of these fees could mean for their net income projections in the years to come.

Krieg DeVault's Financial Institutions lawyers are closely monitoring developments at the CFPB on this issue, and several other issues of importance to your financial institution. If you would like further information regarding the information covered in this Client Alert, please contact any attorney in the **Krieg DeVault Financial Institutions Practice Group**.

<sup>1</sup>CFPB Research Shows Banks' Deep Dependence on Overdraft Fees | Consumer Financial Protection Bureau (consumerfinance.gov)

<sup>2</sup>Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees | Consumer Financial Protection Bureau (consumerfinance.gov)

<sup>3</sup>The hidden cost of junk fees | Consumer Financial Protection Bureau (consumerfinance.gov)

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