



January 26, 2022

CFPB SEEKS PUBLIC COMMENTS REGARDING CREDIT CARD FEES

The CFPB has announced that it will begin seeking public comments regarding “back-end fees” to help inform its future agenda. This initiative is part of the CFPB’s recently announced examination of credit card rates and fees with an eye toward ensuring “robust and fair competition” in the credit card market. See our ALERT of Jan. 25, 2022. The CFPB is targeting the so-called “fee economy” that “conceals the true price of products (including credit cards) from the competitive process,” citing internal research that found that credit card companies charged over \$14 billion in late fees and over \$15 billion in overdraft and NSF fees in 2019. In the CFPB’s view, “excessive” and “exploitative” fees charged by banks and non-bank financial institutions, whether predictable and transparent or not, have become “widespread,” “far exceeding” the marginal cost of the services they purport to cover.

The Bureau’s Request for Information sweeps broadly, seeking comment on a wide range of fees generally associated directly or indirectly with:

- Deposit accounts
- Credit cards
- Remittances and payments
- Prepaid accounts
- Mortgages
- Student loans
- Auto loans
- Installment loans
- Payday loans
- *And other types of loans*

The Request for Information prompts consumers to provide information on “inflated” or “surprise” fees that are not meaningfully avoidable or negotiable, specifically (i) fees people believed were covered by a baseline price, (ii) unexpected fees, (iii) fees that seemed too high and (iv) fees charged for unclear reasons. While the CFPB is accepting comments from all stakeholders, it indicated that it is “particularly interested in hearing from individuals (including older consumers, students, servicemembers, consumers of color,

and lower-income consumers).” The CFPB will use the information it learns from this process to assist policymakers in exercising its enforcement, supervision, regulatory and other authorities in the coming months.

The American Bankers Association and Credit Union National Association, among other trade groups, called out the CFPB’s announcement as “a misguided effort that paints a distorted and misleading picture” of the financial services market. The CFPB describes “back-end fees” as “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 provides as an example resort fees added to hotel bills and service fees added to concert ticket prices, which are fees imposed in two industries not directly regulated by the CFPB. Many of the so-called “back-end fees” the CFPB initiative seeks to address in the financial services market are actually contractual fees clearly and conspicuously disclosed and agreed to by the consumer upon application for the service. The disclosure of these fees is already regulated by various laws.

The RFI suggest that the pricing structures of products from across the financial services industry will be subject to scrutiny, regardless of historical norms or justifications. “All-in” pricing may have unforeseen consequences for many consumers and businesses, however.

Comments must be received by the CFPB on or before March 31, 2022 and can be submitted online, by email, or in person. If you would like additional information or assistance in drafting a comment, please do not hesitate to contact us.

✧ *Mike Tomkies and Mercedes Ramsey*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Nathan D. Copeland
ncopeland@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Benjamin J. Hurford
bhurford@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com