CFPB's Focus on Junk Fees

California Bankers Association
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Carl Pry
Senior Advisor
Asurity Advisors
440-320-4662
prycompliance@hotmail.com

James Jefferson
SVP/Chief Risk Officer
Montecito Bank & Trust
805-560-3469
jjefferson@montecito.bank

President's Initiative on Junk Fees

- The White House (Oct. 26, 2022) issued, "The President's Initiative on Junk Fees and Related Pricing Practices"
  - Discussed a meeting on Sept. 26, 2022, where the President "called on all agencies to reduce or eliminate hidden fees, charges, and add-ons for everything from banking services to cable and internet bills to airline and concert tickets."
  - Defining "junk fees":
    - Mandatory fees that often *hide the full price: "publish a low price and then add mandatory fees later"*
    - *Surprise fees that consumers learn about after purchase*: "Surprise hospital bills from out-of-network doctors at in-network hospitals and airline "family seating fees" are prominent examples."
    - *Exploitative or predatory fees: "Excessive fees that target consumers who have limited alternative options"*
      - *"Bank overdraft fees, which greatly exceed the bank's cost of credit, and surprise "termination fees" are leading examples."*
    - Fraudulent fees: "An example is advertising a *"no fee" bank account that in practice carries significant fees*."
  - "A sampling of some fee categories where *junk fees appear to make up significant fee revenue* include:
    - Credit card late payment fees: $12 billion in 2020 (CFPB estimate)
    - Bank overdraft and non-sufficient funds (NSF) fees: $15.5 billion in 2019 (CFPB estimate)"

Administration: Junk Fees Crackdown

- Biden administration (Mar. 8, 2023) convened a gathering of state legislative leaders to hold discussions about so-called "junk fees" ("*unnecessary, unavoidable, or surprise charges*") that *obscure true prices* and are often *not disclosed upfront*
  - Acknowledged actions taken by federal agencies to crack down, but recognized role states play in advancing the effort
  - The Guide for States: Cracking Down on Junk Fees to Lower Costs for Consumers lists actions states can take to address these fees, and provided several examples of alleged junk fees, including hotel resort fees, debt settlement fees, event ticketing fees, rental car and car purchase fees, and cable and internet fees
  - Highlighted "the banking industry's excessive and unfair reliance on banking junk fees."
    - A number of businesses have changed their policies in response to the increased scrutiny of junk fees and said several banks have ended fees for overdraft protection

CFPB: "Junk Fees"

- CFPB (Jan. 26, 2022) launched an initiative requesting comments from the public (as well as small businesses, non-profits, legal aid attorneys, academics and researchers, state and local government officials, and financial institutions) on fees that are associated with consumers' bank accounts, prepaid or credit card accounts, mortgages, loans, payment transfers, and other financial products
  - That are allegedly not subject to competitive processes that ensure fair pricing
- Bureau research found that back-end fees often *hide a product's true cost* and can undermine a competitive market
  - Cited statistics showing that in 2019, major credit card companies charged more than $14 billion annually in punitive late fees, and that banks' revenue from overdraft and non-sufficient funds fees exceeded $15 billion during this same time period
- To reduce these "junk fees," RFI seeks input on:
  - Fees charged to consumers that *they believed were covered by a product or service's baseline price*
  - *Unexpected* fees charged for a product or service
  - Fees that *seemed high for the purported service*
  - Fees that were *unclear*
- Also requests examples of companies or markets that obtain significant revenue from these types of fees, seeks to explore *whether consumers understand fee disclosures* and what "oversight and/or policy tools should be used to address the escalation of excessive fees or fees that shift revenue away from the front-end price"

CFPB Junk Fees Report

- CFPB (Mar. 8, 2023) published a special edition of its Supervisory Highlights focusing on junk fees in deposit accounts and the auto, mortgage, student, and payday loan servicing markets (covers exams between July 1, 2022 and February 1, 2023)
- Deposit accounts
  - Institutions charged unanticipated overdraft fees where *consumers could not reasonably avoid* these fees, "irrespective of account-opening disclosures."
  - While some institutions unfairly assessed multiple non-sufficient (NSF) fees for a single item, institutions have agreed to refund consumers appropriately, with many planning to stop charging NSF fees entirely
  - *Related*: CFPB Deputy Director Martinez (Mar. 3, 2023) spoke at the Consumer Law Scholars Conference, focusing on goal of reigning in junk fees
    - Highlighted October 2022 guidance on overdraft fee practices and commented that, in addition to enforcement actions taken against 2 banks related to their overdraft practices, they intend to continue to monitor how overdrafts are used and enforce against certain practices
    - CFPB noted that currently 20 of the largest banks in the country no longer charge surprise overdraft fees

CFPB Junk Fees Report

- Auto loan servicing
  - Charging of unfair and abusive payment fees, including out-of-bounds and fake late fees, *inflated estimated repossession fees, and pay-to-pay payment fees, and kickback payments*
  - Some auto loan servicers charged "*payment processing fees* that far exceeded the servicers' costs for processing payments" after borrower was locked into a dealer-selected servicer
    - Third-party payment processors collected inflated fees and servicers then profited through kickbacks
- Mortgage loan servicing
  - Servicers *overcharged late fees*
  - Repeated fees for *unnecessary property inspections*
  - Some servicers included monthly PMI premiums in homeowners' monthly statements
  - Failure to waive fees or other changes for homeowners entering into certain loss mitigation options

CFPB Junk Fees Report

- Payday and title lending
  - Lenders, in connection with payday, installment, title, and line-of-credit loans, would split and re-present missed payments without authorization, thus causing consumers to incur multiple overdraft fees and loss of funds
  - Charged borrowers *repossession-related fees and property retrieval fees* that were not authorized in a borrower's title loan contract
  - Failed to timely stop repossessions and charged fees and forced consumers to refinance their debts despite prior payment arrangements
- Student loan servicing
  - Servicers sometimes charged borrowers *late fees* and interest despite payments being made on time
    - If a servicer's policy did not allow loan payments to be made by credit card and a customer representative accidentally accepted a credit card payment, servicer, in certain instances, would manually reverse the payment, not provide the borrower another opportunity for paying, and charge late fees and additional interest

FTC: Junk Fees Proposal

- FTC (Oct. 20, 2022) voted 3-1 at an open meeting to publish a rule for comments:
  - Advance Notice of Proposed Rulemaking (ANPRM) on Junk Fees
    - Junk fees are those charged for goods or services that have *little or no added value to the consumer*
    - Seeks comments on the prevalence of junk fees and the consumer harms arising from junk fee practices, among other topics
    - Members of the public expressed concerns about how junk fees are harming consumers and businesses
    - Frustration with hidden fees that are *added to bills that were not advertised up front*

FTC: "Junk Fees" Second Proposal

- FTC (Oct. 11, 2023) issued a Proposed Rule meant to prohibit unfair and deceptive, costly "junk fees"
  - Follows a similar effort in October 2022, where FTC considered more than 12,000 public comments and determined some businesses *misrepresent overall costs by omitting mandatory fees from advertised prices* until consumers are "well into completing the transaction," and *fail to adequately explain the nature and amount of fees*
- For any entity that "offers goods or services" to consumers, rule would prohibit:
  - Offering, displaying, or advertising an amount a consumer may pay without "clearly and conspicuously" disclosing the "*total price*," must be displayed "more prominently than any other pricing information."
  - *Misrepresenting "the nature and purpose* of any amount a consumer may pay."
  - Disclosing "any other pricing information" besides the total price "more prominently" than disclosures of the total price in an "offer, display, or advertisement."
- Requires businesses to include any *mandatory costs for ancillary goods or services* in price disclosures

Credit Card Late Fees Final Rule

- CFPB (March 5, 2024) issued a Final Rule that amends Reg. Z and lowers credit card late fees from $30 to no more than $8
  - CFPB determined that the Reg. Z §1026.52(b) $30 discretionary safe harbor for fees (for card issuers that together with their affiliates have at least one million open credit card accounts, i.e., "larger card issuers") is *too high, and therefore "are not consistent with TILA's statutory requirement that such fees be reasonable [for a] violation*."
- For larger card issuers, Final Rule will repeal current safe harbor threshold amount and adopt a late fee safe harbor dollar amount of $8
  - Will eliminate late fees for a higher safe harbor dollar amount for repeat violations that occur during the same billing cycle or in one of the next 6 billing cycles
  - Larger card issuers will still be able to charge fees above the safe harbor threshold for late fees if they can *prove the higher fee is necessary to cover their actual collection costs*
- Provision on annual adjustments for the safe harbor dollar amounts (to reflect changes in CPI) will *not* apply to the $8 safe harbor amount for those late fees

Credit Card Late Fees Final Rule

- For smaller card issuers (card issuers that together with their affiliates have fewer than one million open credit card accounts for the entire preceding calendar year), the safe harbors revised pursuant to the annual adjustments will continue to apply to the late fees imposed by them
- Annual adjustments for safe harbor threshold amounts: will adjust safe harbor threshold amounts in §§1026.52(b)(1)(ii)(A) and (B) to $32, and $43 for repeat violations that will occur during the same billing cycle or in one of the next 6 billing cycles
- Also amended comments and sample forms in Appendix G to revise current examples of late fee amounts to be consistent with the $8 safe harbor amount
- These 2 revised threshold amounts will apply to penalty fees other than late fees for all card issuers, as well as late fees imposed by smaller card issuers

Credit Card Late Fee Final Rule Stayed?

- U.S. District Court for the Northern District of Texas (May 10, 2024) entered an opinion and order granting plaintiffs' (several trade organization) motion for preliminary injunction and placed a stay on the CFPB's credit card late fee rule
  - Suit was filed against the CFPB by multiple trade organizations to challenge CFPB's final rule to amend Reg. Z and limit most credit card late fees to $8
- Court decided not to address plaintiffs' arguments regarding the CARD Act, TILA, and APA violations due to the Court of Appeals for the Fifth Circuit opinion that the CFPB's funding structure was unconstitutional; therefore, any regulations promulgated by the CFPB would be unconstitutional
  - Due to the CFPB's unconstitutional structure found by the 5th Circuit, District Court decided that all factors weighed in favor of issuing a preliminary injunction and thus staying the final rule
  - ***Note that this argument is now moot; final rule is expected to proceed***

CFPB: Avoiding Junk Fees on Deposit Accounts

- CFPB (Oct. 26, 2022) issued guidance to help banks avoid charging illegal “junk fees” on deposit accounts
  - Part of CFPB’s Junk Fee Initiative
    - CFPB has taken action to constrain “*pay-to-pay*” fees on collections
    - Also announced an Advance Notice of Proposed Rulemaking that solicits information from credit card issuers, consumer groups, and the public regarding late payments, credit card late fees, and card issuers’ revenue and expenses
- Circular 2022-06: overdraft fees can be considered an “unfair” practice and violate the Consumer Financial Protection Act (CFPA) *even if such fees are in compliance with other laws and regulations*
  - “overdraft fees assessed by financial institutions on transactions that a *consumer would not reasonably anticipate* are likely unfair.”
  - Unfair (UDAAP) standard: unanticipated overdraft fees are likely to impose substantial injury on consumers that they *cannot reasonably avoid* and that are *not outweighed by countervailing benefits* to consumers or competition

CFPB: Avoiding Junk Fees on Deposit Accounts

- CFPB (Oct. 26, 2022) issued guidance to help banks avoid charging illegal "junk fees" on deposit accounts

- Bulletin 2022-06 on surprise depositor fees states that a returned deposited item is a check a consumer deposits into their checking account that is returned to the consumer because the check could not be processed against the check originator's account
  - "blanket policies of charging returned deposited item fees to consumers for all returned transactions *irrespective of the circumstances or patterns of behavior on the account* are likely unfair under the [CFPA]."
  - *Indiscriminately charging depositor fees regardless of circumstances* are likely illegal

- Bulletin is intended to put regulated entities on notice regarding how CFPB plans to exercise enforcement and supervisory authorities in the context of deposit fees
  - Urges institutions to charge depositor fees *only in situations where a depositor could have avoided the fee* (such as when a depositor repeatedly deposits bad checks from the same originator)

CFPB: "Pay-to-Pay" Fees Warning

- CFPB (June 29, 2022) issued an advisory opinion with its interpretation that Section 808 of the FDCPA and Reg. F generally prohibit debt collectors from charging consumers "pay-to-pay" fees for making payments online or by phone
  - "These types of fees are often illegal," and this "advisory opinion and accompanying analysis seek to stop these violations of law and assist consumers who are seeking to hold debt collectors accountable for illegal practices."
- Commonly known as *convenience fees*, they are prohibited in many circumstances under the FDCPA
  - Allowable fees are those authorized in the original underlying agreements that consumers have with their creditors, such as with credit card companies, or those that are affirmatively permitted by law
  - Fact that a law does not *expressly prohibit* assessment of a fee does not mean a debt collector is authorized to charge it
- Interprets FDCPA Section 808(1) to permit collection of fee only if:
  - "the agreement creating the debt expressly permits the charge and some law does not prohibit it"; or
  - "some law expressly permits the charge, even if the agreement creating the debt is silent."
    - "interpretation of the phrase 'permitted by law' applies to any 'amount' covered under section 808(1), including pay-to-pay fees."
- While some courts have adopted a "separate agreement" interpretation of the law to allow collectors to assess certain pay-to-pay fees, the agency "declines to do so."
- Also opined that a debt collector is in violation of the FDCPA if it uses a *third-party payment processor for which any of that fee is remitted back to the collector in the form of a kickback or commission*

FTC: Auto Lending Junk Fees and Bait-and-Switch

- FTC (June 23, 2022) issued a Proposed Rule to ban "junk fees" and "bait-and-switch" advertising tactics related to the sale, financing, and leasing of motor vehicles by dealers
  - Would prohibit dealers from making deceptive advertising claims to entice prospective car buyers, including claims that could "include the cost of a vehicle or the terms of financing, the cost of any add-on products or services, whether financing terms are for a lease, the availability of any discounts or rebates, the actual availability of the vehicles being advertised, and whether a financing deal has been finalized, among other areas."
- Automobile-related consumer complaints are among the top ten complaint types submitted to the FTC
- Would:
  - Prohibit dealers from charging *junk fees for "fraudulent add-on products" and services that do not benefit the consumer*
  - Require *clear, written, and informed consent* (including the price of the car without any optional add-ons)
  - Require dealers to provide *full, upfront disclosure of costs and conditions, including the true "offering price"* (the full price for a vehicle minus only taxes and government fees), as well as any optional add-on fees and key financing terms
- Dealers would be required to maintain records of advertisements and customer transactions

CFPB: Certain NSF Fees are Abusive

- CFPB (Jan. 24, 2024) issued a Proposed Rule that would identify the charging of NSF fees on transactions that institutions *decline instantaneously or near-instantaneously* as an abusive act or practice
  - Would prohibit charging such fees
- Defines a “covered transaction” as a consumer’s attempt to withdraw, debit, pay, or transfer funds from their account that is declined instantaneously or near-instantaneously by a “covered financial institution” due to insufficient funds
  - *Processed in real-time with “no significant perceptible delay to the consumer when attempting the transaction.”*
- *Would* cover:
  - One-time debit card transactions that are not preauthorized, ATM transactions, and certain person-to-person transactions *would be* covered
- Would *not* cover:
  - Checks and ACH transactions (they are not able to be instantaneously declined)
  - Transactions declined or rejected due to insufficient funds hours or days after a consumer’s attempt
  - Transactions authorized at first, even if they are later rejected or fail to settle due to insufficient funds

CFPB: Certain NSF Fees are Abusive

- CFPB: currently, institutions do not typically charge NSF fees on the proposed covered transactions and acknowledged that it was proposing the “rule primarily as a preventive measure”
  - Concerns that institutions who do not currently charge NSF fees for “covered transactions” may have an incentive to do so as other regulatory interventions reduce other sources of fee income
- Clarifies CFPB’s current interpretation of abusive acts or practices and distinguishes prior views
  - These were originally set forth in preamble of CFPB’s 2020 rule rescinding certain provisions of the 2017 Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans’ (2020 Rescission Rule)
  - *Abusive standard: CFPB proposes to “clarify” its prior interpretation of this prohibition by articulating view that a “lack of understanding” need not be “reasonable” to form the predicate of an abusive act or practice*
  - *Distinguishes abusiveness from prohibition on “unfair” practices, which requires showing that consumers could not “reasonably avoid” consumer injury by, for example, reading disclosures or understanding that a particular transaction would overdraw the balance in their account and result in fees*
  - CFPB’s current view: 2020 Rescission Rule conflated “reasonable avoidability” and “lack of understanding,” contrary to the text and purpose of the abusive conduct prohibition

CFPB: Certain NSF Fees are Abusive

- CFPB also proposes clarifying that the "materiality" requirement pertains to understanding "risks," not necessarily "costs" or "conditions"
  - *Consumer's lack of understanding of costs does not always align with the analysis of harm likelihood and magnitude*
    - *For example, it suffices to demonstrate a company exploits consumer ignorance about a fee ("cost") in a specific situation, even if consumers generally understand the "risk" of fees*
  - Consumers charged NSF fees on covered transactions "lack understanding of the material risks, costs, or conditions of their account at the time they are initiating covered transactions"
- Institutions are taking "unreasonable advantage" of consumers when they impose NSF fees on covered transactions because the financial institution:
  - *Profits from a transaction but provides no service in return*
  - Chooses to impose NSF fees when *instantaneously declining a transaction at no cost or negligible cost is an option*
  - Benefits from negative consumer outcomes caused by their *lack of understanding*
  - *Profits from economically "vulnerable" consumers' lack of understanding or hardship*, instead of providing services to alleviate it

OCC, FDIC: Overdraft Fee Guidance

- OCC and FDIC (April 26, 2023) issued supervisory guidance addressing consumer compliance risks (UDAP/UDAAP) associated with overdraft practices
  - Highlighted practices that may result in increased risk exposure, including (1) assessing overdraft fees on "authorize positive, settle negative" (APSN) transactions; and (2) assessing representment fees each time a third party resubmits the same item for payment after being returned by a bank for non-sufficient funds
  - Disclosures may be deceptive under FTC Act Section 5 if they *fail to clearly explain* that multiple or additional fees may result from multiple presentments of the same transaction
  - Encourages banks to *explore other options*, such as offering low-cost accounts and low-cost alternatives for covering overdrafts, such as overdraft lines of credit and linked accounts
  - FDIC's guidance expands on their 2019 Consumer Compliance Supervisory Highlights, warns that *APSN overdraft fees present risks of unfairness* under both statutes as consumers "cannot reasonably avoid" receiving these fees because they lack "the ability to effectively control payment systems and overdraft processing systems practices."
  - Encourages banks to "*ensure customers are not charged overdraft fees for transactions consumers may not anticipate or avoid*," and should take measures to ensure overdraft programs provided by third parties comply with all applicable laws and regulations, as such arrangements may present additional risks if not properly managed

OCC, FDIC: Overdraft Guidance

- OCC:
  - Disclosures may be deceptive under FTC Act Section 5 (UDAP) if they *fail to clearly explain* that multiple or additional fees may result from multiple presentments of the same transaction
  - Encourages banks to *explore other options*, such as offering low-cost accounts and low-cost alternatives for covering overdrafts, such as overdraft lines of credit and linked accounts
- FDIC:
  - Their guidance expands on their 2019 Consumer Compliance Supervisory Highlights and warns that APSN overdraft fees present risks of unfairness under both statutes as consumers "*cannot reasonably avoid*" receiving these fees because they *lack "the ability to effectively control payment systems and overdraft processing systems practices."*
    - Referred to the "*complicated nature of overdraft processing systems*" as another impediment to a consumer's ability to avoid injury
    - Risks of unfairness exist both in "available balance" or "ledger balance" methods of assessing overdraft fees, but cautioned that risks may be "more pronounced" when a bank uses an available balance method
  - Disclosures describing how transactions are processed may not mitigate UDAAP and UDAP risk
  - Encourages banks to "ensure customers are not charged overdraft fees for transactions consumers may not anticipate or avoid," and should take measures to ensure overdraft programs provided by third parties comply with all applicable laws and regulations, as such arrangements may present additional risks if not properly managed

CFPB: "Excessive" Account Information Fees

- CFPB (Oct. 11, 2023) published an Advisory Opinion on consumers' requests for information regarding their accounts with large banks and credit unions
  - Prohibits large banks (more than $10 billion) from imposing unreasonable obstacles on customers, such as *charging excessive fees for basic information about their accounts*
- Applies to consumer requests for information that appears on periodic statements or in online portals, including:
  - Amount of the balance in a deposit account
  - Interest rate on a loan or credit card
  - Individual transactions or payments
  - Bill payments
  - Recurring transactions
  - Terms and conditions
  - Fee schedules

CFPB: Complex Pricing Leads to Higher Costs

- CFPB (April 30, 2024) published a report titled, Price Complexity in Laboratory Markets, indicating consumers may pay *higher prices for products with complex pricing structures*
  - From experiments conducted in “simple markets,” where participants engaged in transactions as buyers and sellers, which revealed that when product prices were divided into several sub-parts, making them more complicated, participants generally paid more compared to products with a single, comprehensive price
- Involved participants acting in the roles of buyers and sellers, with transactions involving products priced either as a lump sum or split into 8 or 16 separate charges
  - Results showed that in *situations with more fragmented pricing, the average selling price increased and buyers found it more challenging to compare prices* between sellers
  - For products with 16 separate charges, CFPB reported that sellers’ total asking price was typically 60% higher than products with one price
- Also investigated effects of increased competition on market outcomes, finding that increased competition “generally improved, but did not eliminate, the negative effects of price complexity”
- CFPB noted that findings align with existing studies and evidence suggesting that alleged "junk fees" can lead to higher overall prices than those typically found in a fair and competitive market

CFPB: “Excessive” Fees by Large Institutions

- CFPB Director Chopra remarks, emphasizing Bureau’s investigations have uncovered many examples of junk fee-related misconduct by large financial institutions
  - Reminded consumers that institutions should not charge them excessive fees when trying to manage their finances: “Congress passed a law a decade ago requiring heightened customer service standards”; "To date, this law has not been enforced. We are changing that.”
- CFPB also issued results of recent oversight inspections of major financial institutions, which resulted in refunding $140 million in junk fees, $120 million of which were for “surprise overdraft fees and double-dipping on non-sufficient funds fees”

FDIC: Revised NSF Guidance

- FDIC (June 16, 2023) updated its Supervisory Guidance on Multiple Re-Presentment NSF Fees
  - Updates FIL-40-2022 (August 18, 2022), which warned supervised institutions that charging customers *multiple non-sufficient funds (NSF) fees on re-presented unpaid transactions* may increase regulatory scrutiny and litigation risk
- FDIC made changes to the guidance to specify that it "does not intended to request an institution to conduct a lookback review absent a likelihood of substantial consumer harm."

CFPB Data Spotlight on Overdraft Experiences

- CFPB (May 18, 2023) issued a data spotlight on consumers' experiences with overdraft programs
  - From interviews and focus groups with LMI consumers in summer 2022 where participants were asked about their use of deposit accounts and debit cards, their understanding of overdraft fees and non-sufficient funds (NSF) fees, and their perceptions of ways to avoid these fees
- Findings:
  - Many consumers *were not aware of their institution's overdraft policies* and thought protection automatically came with their account, while others were unaware that they could end overdraft protection
  - Some consumers said the typical $35 overdraft fee was "excessive" and "*not necessarily proportional* to the covered transaction."
- Concerns:
  - Financial hardships and fee waivers due to cascading overdraft fees
  - Negative balances due to delayed merchant holds or delayed deposits
  - Account closures because of overdraft fees, leading to difficulties when opening new accounts for some consumers
  - Limited awareness of various account options, including deposit accounts without overdraft fees and second-chance accounts

Overdraft Fee Impact on Seniors

- CFPB (Oct. 19, 2022) published an issue brief, Overdraft Fees and Economically Insecure Older Adults
  - Examines economic effects of overdraft fees on economically insecure older adults
- Older adults of color, older women, LGBTQ+ older adults, and retirees are *more likely to be economically insecure and may face greater challenges* with overdraft fees
  - Older adults pay fees for overdraft services less frequently than other age groups but stated that the economically insecure could be “particularly impacted” because “they are often unable to adjust their carefully managed budgets” when they incur fees
- Recommendations to financial institutions to implement *age-friendly banking practices*:
  - Offer view-only account access and/or convenience accounts for financial caregivers
  - Provide *customer service to respond to consumers’ concerns about bank fees in person, by phone, and online*
- CFPB will “track the impact of overdraft fees on older adults” through analysis of consumer complaints

CFPB Overdraft Practices Report Update

- CFPB (July 20, 2022) published a blog post examining banks' overdraft and non-sufficient fund fees (NSF) fees practices since the Dec. 2021 publication of their report, Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports
  - Bureau relied on additional data from last 3 available quarterly call report data (3Q2021 through 1Q2022)
- Updates from blog post:
  - Recent *increase in overdraft revenue* is greatest among small and midsize banks
  - Overall overdraft revenue stopped its decline and reversed somewhat, and ended up 20.1% below corresponding 2019 levels
  - Revenues from other fees (like account maintenance and ATM fees) has increased since 2020, especially at banks that experienced largest declines in overdraft/NSF fee revenues

The Next Frontier: Mortgage Costs

- CFPB Director Chopra (May 20, 2024) speech at a trade association event addressed rising costs in the mortgage lending industry, which may be due to limited competition in credit reporting
  - Mortgage industry is dominated by 3 major conglomerates, and *credit scores* were provided by a single corporation
    - These entities have significantly increased the price for credit reports and credit scores in recent years, with increases reaching as high as 400% since 2022
      - Price increases are no longer tied to volume discounts and instead now based on a flat fee pricing model, exacerbating costs for lenders
    - Lenders require credit reports and credit scores for loan origination and adhere to secondary market requirements, which necessitate purchasing these reports multiple times, like for joint applications
    - These increase origination fees or interest rates and have impacted both lenders (especially small lenders) and homebuyers disproportionately
  - Questioned accuracy of credit reports, with reporting industry profiting from *expedited correction services known as a "rapid rescore"*
  - Emphasized need for regulatory intervention to address these issues within the mortgage industry – "limiting chokepoints" is critical
  - CFPB is examining these rising costs and considering regulatory measures to enhance competition and affordability

White House: Higher Education "Junk Fees"

- White House (March 15, 2024) issued a Fact Sheet on proposed measures aimed at curbing or eliminating alleged "junk fees" in higher education
  - Claims that it found college students incurred "billions in fees" when having to pay for services they may not want
- Discusses a FY 2025 budget proposal that would eliminate *student loan origination fees*
  - White House found that 7 million student loan borrowers pay origination fees somewhere between 1 and 4% of their student loans
- Administration seeks to end *college banking "junk fees,"* citing a recent report by the CFPB
  - Dept. of Education has proposed a rule on college banking products that cannot include harmful fees

California Focus on NSF Fees

- California SB 1415 /Financial Code Section 521 requires State-chartered banks and credit unions to annually report revenue earned from overdraft fees and NSF fees to the Department of Financial Protection and Innovation (DFPI).
  - DFPI posts this information publicly, including the fee income as a percent of income (net and total)
- In February 2024, California Attorney General Rob Bonta sent a letter to all State-chartered banks and credit unions in reference to “surprise” overdraft fees and returned deposited item fees.
  - The letter encourages all financial institutions to *review their policies and practices* regarding overdraft fees that are charged when a consumer cannot reasonably anticipate an overdraft fee being charged and returned deposit item fees.
  - The letter stated that these fees may violate the Unfair Competition Law and the Consumer Financial Protection Act.

Advice on Dealing with Fees

- Understand there will be continued regulatory issues with fees
- What to pay attention to:
  - Disclosures – clarity and transparency
    - Do customers know when a fee will be assessed?
    - Do customers know the amount of the fee?
    - Are disclosures consistent across all channels?
  - Avoidance – can customers avoid the fee?
    - Are there alternatives available to customers?
    - Do customers know how to avoid the fee?
  - Value Proposition – is the amount of the fee reasonably proportional to the service provided?
    - Are you charging more than your competitors/peers?
  - Do you know who is being charged the most fees (and of what type)?
  - How much is your institution dependent on fee income?

Advice on Dealing with Fees

- What to pay attention to (continued):
  - How much is your institution dependent on fee income?
    - Compared to peers, are you seeing a larger percent of income from fees?
  - Advertising – are fees fairly disclosed?
  - Waivers – when and for whom do you waive fees?
    - Are you monitoring fee waivers more granularly than just a total?
    - If your employees have discretion in fee waivers, are they being consistent?
    - Are you tracking manual waivers and systemic waivers?