

Cooperative Credit Union Association

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Creating Cooperative Power

April 11, 2022

Sent via email: FederalRegisterComments@cfpb.gov

Comment Intake—Fee Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**RE: Request for Information Regarding Fees Imposed by Providers of
Consumer Financial Products or Services, Docket No.: CFPB–2022–0003**

Dear Sir/Madam,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. (“Association”) appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“Bureau’s”) Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (the “Request”). The Association is the state trade association representing approximately 200 state- and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members. The Association has developed these comments in consultation with our members.

The Association’s High-Level Comments

- Credit unions are not-for-profit cooperative financial institutions that promote thrift and access to loans and other financial services at fair rates.
- Credit unions do not charge “junk fees” as a general rule. Unlike other types of financial institutions, credit unions are cooperatives owned by their customers—i.e. the credit union’s members—and exist to serve their consumer member-owners, not to profit off them.
- For a not-for-profit credit union, member-service quality, overhead, and building regulatory capital, in addition to the marginal cost of providing the product or service, are necessary considerations for maintaining an economically sustainable credit union that can continue to provide its consumer member-owners with access to the best rates.
- Credit unions clearly disclose their fees to their members. The schedule of fees is typically posted on the credit union’s website and made publicly available.

- Our member credit unions report that their account-based fees are generally lower than the equivalent account-based fees charged by banks in the markets where they operate.

General Comments to the Bureau's Request

As a representative of financial institutions – credit unions – that have a mission to improve the financial lives of its members, the Association must rebut the tone with which the Bureau has issued its Request. The Request is pretextual, arbitrary and capricious, and overbroad.

The Bureau's Request is pretextual on multiple levels. In seven (7) pages, the Bureau asserts that fees, in general, are exploitive defining such as "junk fees". Mischaracterizing all fees as "junk fees", the Bureau could penalize financial institutions for charging fees, regardless of the validity of the fee, under the guise of consumer protection. However, the use of the term "junk fees" undercuts the Bureau's ability to promulgate a rule or enforce any penalty with any independence.

The justification for the Request itself is pretextual in nature as well. In setting forth its theory for examining "junk fees", the Bureau uses examples of "resort fees added to hotel bills and service fees added to concert tickets". Moreover, the Request relies upon the National Economic Council's *The Competition Initiative and Hidden Fees* (December 2016) (the "NEC Paper"). None of these provide any basis or correlation to the Bureau's attack on financial institutions, particularly credit unions. For example, out of 16 pages of debating the efficacy of fees in the general marketplace, only two (2) paragraphs relate to "Banking Fees". Indeed, of these two paragraphs, most of the second paragraph relates to one alleged bad actor that happens to be a bank and not a credit union.¹

Additionally, the Bureau's lumping of all financial institutions together based on the acts of a few while simultaneously casting all fees as "junk fees" is arbitrary and capricious. While the Bureau has yet to promulgate a rule resulting from the Request, any resulting rule or amendment is subject to challenge based on the Bureau's likely failure to articulate "a rational connection between the facts found and the choice made." *Nw. Bypass Grp. v. United States Army Corps of Eng'rs*, 470 F. Supp. 2d 30, 37 (D.N.H. 2007)(quoting *Dubois v. United States Dep't of Agric.*, 102 F.3d 1273, 1284 (1st Cir. 1996)). There is no correlation between the so-called "junk fees" (or rather "hidden fees" in the NEC Paper) and the fees charged by credit unions, nor will such correlation be articulated thereafter.

A significant example may be the Request's challenge of "fees" related to mortgages. The Bureau heavily regulates mortgage lending and the fees that are charged, including those costs that are merely passed on to the borrower and not set by the financial institution. Yet, the Bureau appears to equate costs with fees in the Request without any articulated basis for doing so.

¹ See The NEC Paper at Footnote 43, [CFPB Takes Action Against M&T Bank for Deceptively Advertising Free Checking](https://www.consumerfinance.gov/press-releases/2016/12/20/CFPB-Takes-Action-Against-M&T-Bank-for-Deceptively-Advertising-Free-Checking) | Consumer Financial Protection Bureau ([consumerfinance.gov](https://www.consumerfinance.gov)).

The Credit Union Difference

By grouping credit unions in with all other financial institutions, the Bureau performs a disservice to the credit union movement, those devoted to improving the financial lives of its members, and the members themselves. America's credit unions stand as a unique example of consumer protection in practice in the financial services sector. In contrast to for-profit banks and non-depository providers, credit unions are structured as not-for-profit cooperatives. As part of this structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation. This fairness extends to the fees charged in exchange for services or because of non-payment.

For example, in the overdraft context, many credit unions have established programs linking accounts, overdraft lines of credit, courtesy pay programs, and others. In addition, credit unions often couple these programs with other initiatives intended to assist members using overdraft services with the intent of helping the member avoid future or frequent overdraft use. These initiatives include direct member outreach, low-balance alerts, caps on the number of fees per day, financial management and coaching resources, low-interest or share secured credit cards, and small-dollar loans.

Irrespective of innovations in overdraft, credit unions have a track-record of establishing policies and procedures aimed at assisting members that frequently use overdraft protection. When a credit union becomes aware of a member's frequent overdraft usage, they often attempt to contact the member to address the member's financial situation and offer financial education support or alternative credit products. In these communications, credit unions inform members about other options that may be available, including financial and budgetary counseling and/or traditional loan products. These efforts support the best interest of the member and exemplify the pro-consumer nature of the credit union-member relationship.

The Association's Comments in Response to the Bureau's Questions

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.

Credit unions are not the problem when it comes to "junk fees" charged to consumers. At its core, the connotation of a "junk fee" as described by the Bureau is that it is a fee that inappropriately enriches the fee charger at the exploitation of a consumer. By definition then, a credit union cannot charge a "junk fee" because an owner of the institution charging the fee is, in fact, a member paying the fee. The very idea of a credit union charging a "junk fee" is undercut by the nature of a credit union as a member-owned institution.

Credit unions are democratically controlled, not-for-profit financial cooperatives that clearly disclose their fees to their members as well as, in general, to the public at large. Credit unions and their members also have detailed membership account agreements that further clarify the relationship between the credit union and its member-owners, including specifying the circumstances where the member's usage of the cooperative can result in fees being charged.

Credit union members also have the opportunity to influence the fees that their credit unions charge through the democratic corporate governance of their credit union. Our member credit unions are owned by consumers and these member-owners elect the credit unions' boards of directors and also vote on other important credit union corporate governance matters.

Credit union members are unique among consumers in having a right to influence the fees that the credit union charges through the democratic process. Each credit union member receives one vote in corporate governance matters, regardless of how much he or she may have saved with the credit union. The credit union's democratically elected board chooses the general strategic direction of the credit union and oversees its operations, including the ability to hire and fire the credit union's senior management.

The credit union's members, therefore, have ultimate control over how the credit union does business with them because the members own the credit union and get to vote on who runs it under a democratic one-member-one-vote system. Credit union board elections are typically held annually. Members also can voice any concerns at the credit union's annual general meeting and in other forums, and often have a right of appeal to a committee of volunteers if they are denied a loan initially.

Credit unions are not the problem when it comes to "junk fees." There is no exploitative nature in the relationship between consumer and credit union. Indeed, it is quite the opposite – credit unions exist for, by and through its membership, the very consumers paying the fees 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?

The type of hypothetical product or service described by this question runs counter to the operational philosophy of credit unions. Credit unions provide not-for-profit financial services to their members at fair rates and typically analyze their lines of business on a program-based level, plus overhead and the capacity to promote earnings retention to build regulatory capital, with such retained earnings being collectively owned by the credit union's member-owners.

Often, delinquent loans or frequently overdrawn low-balance accounts result in costs that make a particular account or loan much more expensive to administer or service than would otherwise be the case. In such situations, charging the member clearly disclosed fees is rational and appropriate, especially in the context of a not-for-profit cooperative that exists to serve its members instead of maximizing profits at their expense.

Many credit unions try to help members who frequently incur such fees to take advantage of the credit union's products and services that intended to help them get out of poverty and build wealth, such as credit-builder loan products and savings accounts.

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?

Credit unions covering a check or other transaction drawn on a share draft account that has non-sufficient funds (“NSF”) is an accommodation for the member that does not have to be extended. Put simply, the credit union discloses the fees in question up front and, if the member chooses to spend money that he or she does not have in her account, without applying for credit, the credit union will cover the transaction and charge the previously disclosed fee for this service.

The credit union is taking an operational risk by covering these transactions that frequently result in significant operational losses including fraud losses. The alternative is to have the credit union deny the transaction. This would disadvantage the member by not allowing the member’s transaction, such as the member paying his or her rent on a primary residence, to go through.

Many credit unions offer their members reserve lines of credit tied to their share draft accounts as an alternative to an overdraft when they experience an NSF. If a credit union cannot sustain an overdraft program economically by charging fees sufficient to cover all of the program’s true costs, including fraud and other operational losses as well as administrative expenses and marginal costs, the credit union will lose money on the program and could be forced by economic reality to discontinue it. While the extreme circumstance exists, the Bureau’s stance on NSF and overdraft fees may cause unintended consequences more harmful to consumers than the fee itself. As alluded to above, so long as the fees are disclosed appropriately, the consumer is empowered to act accordingly.

4. What companies or markets are obtaining significant revenue from backend fees, or consumer costs that are not incorporated into the sticker price?

The Association lacks the knowledge to specify all of the companies and markets that exploit consumers in this way. The Association is certain, however, that not-for-profit credit unions are not part of this group. Credit unions clearly disclose their fees to their consumer member-owners.

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?

Not-for-profit credit unions disclose possible fees to their consumer member-owners up-front even if those fees are not charged up-front per se, such as in the case of an account product or a multi-year loan. If the fees are incurred, the member knew or should have known that they would incur a fee for doing the activity in question.

All cooperatives operate that way, including producer cooperatives such as dairy cooperatives and non-financial consumer cooperatives such as purchasing cooperatives, in order to apportion fairly the expenses of the cooperative’s operation to its users who are using its services. Otherwise, the credit union or other cooperative would not be economically sustainable and would eventually no longer be able to serve its members adequately.

6. What data and evidence exist with respect to how consumers consider back-end fees, both inside and outside of financial services?

The Association's member credit unions report that consumers typically only consider back-end fees in financial services if they have undergone financial education classes with the credit union, or have a university degree in finance, economics, business, or accounting. Most of the Association's members offer financial education classes to their members free of charge.

7. What data and evidence exist that suggest that consumers do, or do not, understand fee structures disclosed in fine-print or boilerplate contracts?

The Association's member credit unions report that they frequently hold financial education classes specifically geared to helping their members better understand the financial services products that they choose. Our member credit unions view financial education as an integral part of their mission to serve their members on a not-for-profit basis.

Our members have found that financial education frequently helps their members learn how to build wealth, but also helps them understand exactly the type of fine-print or boilerplate that financial institutions offer. Armed with this financial education, we have found that most credit unions members soon understand how much fairer a deal their credit union is offering compared to competing banks and non-bank institutions.

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?


The Association believes that slick marketing by banks and non-bank financial institutions frequently plays more of a role in the consumer's mind than does the nitty-gritty of comparing rates and terms and conditions. Those consumers who do shop around based on rates and terms and conditions, however, typically choose a credit union instead because those individuals realize that credit unions are offering a better deal.

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?

This is an issue of disclosure and credit unions are already disclosing fees to their members. Most credit unions use the Bureau's model disclosures and also post their fee schedules publicly. If the Bureau believes that its own model disclosures are not sufficiently clear to consumers with respect to fees, the Association believes that the best course of action would be for the Bureau to publish a request for information on that issue specifically.

The Association appreciates the opportunity to comment on the Bureau's Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services. If you have any questions about our comments or require further information, please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald McLean". The signature is fluid and cursive, with a large initial "R" and "M".

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.
rmclean@ccua.org