

April 11, 2022

VIA ELECTRONIC SUBMISSION

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

Docket Number CFPB-2022-0003

Re: CFPB Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services

Ladies and Gentlemen:

On behalf of its members, the Risk Management Association (“RMA”) thanks the Consumer Financial Protection Bureau (“CFPB”) for the opportunity to comment in response to its Request for Information (“RFI”) regarding fees imposed by providers of consumer financial products or services.

RMA is a member-driven professional association whose sole purpose is to advance the use of sound risk management principles in the financial services industry. RMA helps its members use sound risk management principles to improve institutional performance and financial stability, and to enhance the risk competency of individuals through information, education, peer-sharing, and networking. RMA has approximately 1,900 institutional members, which include banks of all sizes as well as non-bank financial institutions.

One of the most important components of RMA’s mission is to provide independent analysis on matters pertaining to risk and capital regulation. In this regard, the comments contained herein are informed by subject matter experts from member institutions of RMA’s Operational Risk Council, Enterprise Risk Management Council, and Compliance Committee.

RMA welcomes the CFPB’s engagement with financial institutions as the agency reviews the fees that consumers are charged post-origination or post-account opening in connection with financial products and services (“Consumer Finance Fees”). Over the



last 15 years, financial institutions have had to adapt to fluid and evolving regulatory, economic, and technological conditions, all of which increase risk that these institutions must mitigate. Consumer Finance Fees—already subject to voluntary and mandatory disclosure regimes—enable financial institutions the ability to offer consumer financial products or services to a broad consumer base in a fair and competitive manner, while reflecting and incorporating these investments and risk of loss costs.

Any future actions by the CFPB with respect to Consumer Finance Fees will have significant consequences for the financial services industry and for consumers. As such, we believe this issue deserves further study and analysis by the CFPB. In conducting such further study, RMA encourages the CFPB to take into account the following important considerations, which we summarize below and then explain in greater detail throughout the letter.

In short, we recommend that the CFPB:

1. Acknowledge the extent to which Consumer Finance Fees are already disclosed to consumers and limited by law, ensuring transparency and fairness in the market and allowing consumers to make personal, informed decisions regarding the financial institutions with which they do business and the financial products that they utilize;
2. Consider that Consumer Finance Fees are reasonable in reference to the direct costs a financial institution incurs for providing the service;
3. Acknowledge that, in order to make products and services widely available and accessible, Consumer Finance Fees reflect and incorporate operational, administrative, and risk of loss costs incurred by institutions; and
4. Consider the risk of harm to consumers that may result from eliminating certain Consumer Finance Fees, in particular to the extent that incorporating Consumer Finance Fees into the upfront pricing for products could limit consumer choice, impede the availability of credit, and undermine the goal of financial inclusion.

We believe that these recommendations are consistent with the CFPB’s objectives as outlined in the RFI. We outline various considerations with respect to these fees in Sections I–IV.



I. Many Consumer Finance Fees are already disclosed to consumers and limited by law, ensuring transparency and allowing consumers to make personal, informed decisions regarding financial products.

The CFPB’s RFI provides that, “consumers 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.” It further states that many Consumer Finance Fees are “hidden.”

In fact, many Consumer Finance Fees are disclosed to consumers under federal and state laws designed to ensure transparency in fees, including disclosure regulations that the CFPB administers and enforces. For example, Regulation DD requires that uniform disclosures are made to consumers regarding fees associated with deposit accounts when an account is opened, upon request, when the terms of the account are changed, and when a periodic statement is sent.¹ Regulation Z likewise requires creditors to provide detailed disclosures when offering either open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.² Regulation E requires disclosure of fees imposed for electronic fund transfers.³

Moreover, in many instances, financial institutions provide disclosures to customers that exceed their obligations under federal or state law. Many financial institutions have post-account opening practices to alert consumers to the potential incurrence of fees and to encourage consumers to act to avoid such fees. For example, many financial institutions allow customers to set up alerts, which can be sent via email, text, or push notification, to warn when a credit card payment is due or when an account balance drops below a predetermined dollar amount, which helps consumers avoid related fees. These voluntary disclosures—to the extent they prevent imposition of a fee—belie the RFI’s assertion that these fees “tak[e] advantage of a captive relationship with the consumer to drive excess profits” for financial institutions. Indeed, a 2019 Federal Deposit Insurance Corporation (“FDIC”) Survey of Household Use of Banking and Financial Services found that “[a]lmost all banked households were satisfied with their primary bank and thought that fees were clearly communicated.”⁴ Far from being “hidden,” financial institutions’ mandated and voluntary disclosures ensure transparency in the market by allowing consumers to accurately compare financial institutions and their respective products and associated costs and make informed decisions regarding such products.

¹ 12 C.F.R. § 230.

² 12 C.F.R. § 226.

³ 12 C.F.R. § 205.7.

⁴ FDIC, How America Banks: Household Use of Banking and Financial Services, <https://www.fdic.gov/analysis/household-survey/index.html>



Furthermore, federal and state laws also set limits on fees, ensuring transparency regarding the maximum amount that an institution can charge and reducing surprise fees. For example, the Credit Card Accountability Responsibility and Disclosure Act (“CARD Act”), implemented through Regulation Z, includes a variety of limitations on fees, such as limits on account opening fees, required opt-in for over-limit fees, and a “safe harbor” rule for financial institutions so long as late payment and over-limit fees do not exceed a specified maximum.⁵ Similarly, Regulation E prohibits a financial institution from charging a fee for paying an automated teller machine (“ATM”) or one-time debit card transactions pursuant to an overdraft service unless the consumer affirmatively opts-in after receiving notice of the service in writing.⁶ With respect to home lending, the TILA-RESPA Integrated Disclosure Rule (“TRID Rule”) limits the ability of a lender to add or increase certain fees and costs after final disclosures have been provided without requiring a delay in closing, thus ensuring that consumers are not faced with surprise fees in connection with their home purchases.⁷

II. Consumer Finance Fees are reasonable in reference to the direct costs a financial institution incurs for providing the service.

RMA believes that the CFPB should ensure that it has current, complete, and accurate data regarding Consumer Finance Fees. In particular, Consumer Finance Fees are reasonable in relation to the costs that financial institutions incur to provide specific products or services.

Consumer Finance Fees charged to consumers often relate directly to the institution’s costs of providing a particular service. For example, out-of-network ATM fees are related to the costs imposed on financial institutions by out-of-network ATM providers, the costs involved in participation in larger networks, and reconciliation of funds between providers and the financial institutions. Foreign transaction fees cover the costs incurred by financial institutions to use the networks that facilitate the transaction and the cost of currency conversion. Card replacement fees are another example of Consumer Finance Fees that are reasonable in reference to the direct costs incurred by financial institutions for providing the service.

In addition, some financial institutions have *de minimis* policies in which Consumer Finance Fees are not imposed if the transaction amount related to the fee is below a threshold amount.⁸ Mechanisms such as these ensure that Consumer Finance Fees are

⁵ 15 U.S.C. § 1665d; 12 C.F.R. part 1026.

⁶ 12 C.F.R. § 1005.17.

⁷ 12 C.F.R. § 1026.19(f)(2)(ii).

⁸ See, e.g., FDIC Consumer Compliance Examination Manual, Section V-14.11, <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/5/v-14-1.pdf> (noting that a financial institution may mitigate risk through having a



only imposed when the costs to the institution are significant and that such fees, when imposed, are reasonable in relation to the cost of the service.

III. In order to make products and services widely available and accessible, Consumer Finance Fees reflect and incorporate operational, administrative, and risk of loss costs incurred by institutions.

RMA requests that the CFPB also consider the extent to which Consumer Finance Fees permit financial institutions to cover costs that are associated with providing consumer accounts and related services, including operational, administrative, overhead, risk management, compliance, and technology costs. RMA encourages the CFPB to coordinate with federal and state financial regulators that also have jurisdiction over Consumer Finance Fees to ensure that the CFPB has sufficient context for the role of these fees in the marketplace.

Since the global financial crisis, financial institutions have been operating in a low interest rate environment, which has led to low net interest margins and, in turn, affected profitability.⁹ Financial institutions invested heavily in risk and compliance functions following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁰ Heightened operational risks—including those posed by cyberattacks and financial crime—have further increased costs and required greater investment by financial institutions in their systems and security.¹¹ The COVID-19 pandemic forced financial

process in place for eliminating overdraft fees for transactions that overdraw an account by a *de minimis* amount).

⁹ Board of Governors of the Federal Reserve System, “Low-for-long” interest rates and net interest margins of banks in Advanced Foreign Economies (Apr. 11, 2016), <https://www.federalreserve.gov/econresdata/notes/ifdp-notes/2016/low-for-long-interest-rates-and-net-interest-margins-of-banks-in-advanced-foreign-economies-20160411.html> (stating that “persistently low interest rates may also erode the profitability of banks as low rates are typically associated with lower net interest margins.”); see also FDIC Quarterly, Quarterly Banking Profile: Third Quarter 2021, p. I <https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2021-vol15-4/fdic-v15n4-3q2021.pdf> (stating that during the pandemic the shift in asset composition and a prolonged period of low interest rates caused the net interest margin to decline to its lowest level on record).

¹⁰ Baker Institute for Public Policy, Costs of Compliance with the Dodd-Frank Act (Sept. 6, 2019), <https://www.bakerinstitute.org/media/files/files/0febf883/bi-brief-090619-cpf-doddfrank.pdf> (finding that banks’ total noninterest expenses increased by an average of more than \$50 billion per year after the passage of Dodd-Frank); Deloitte, Regulatory Productivity (2017), <https://www2.deloitte.com/us/en/pages/regulatory/articles/cost-of-compliance-regulatory-productivity.html> (finding that, compared to pre-financial crisis spending levels, operating costs spent on compliance have increased by over 60 percent for retail and corporate banks).

¹¹ McKinsey & Company, The Future of Operational-Risk Management in Financial Services (Apr. 13, 2020), <https://www.mckinsey.com/business-functions/risk-and-resilience/our-insights/the-future-of-operational-risk-management-in-financial-services#:~:text=The%20standard%20Basel%20Committee%20on,systems%20or%20from%20extern>



institutions into an even lower net interest income environment and elevated their operational and compliance risks.¹² In addition, the pandemic accelerated consumer demand for digitization as financial institutions moved the majority of their services online, requiring significant and rapid levels of investment in technology and infrastructure.

The provision of certain products or services may lead to heightened risks for a financial institution. For example, in the case of wire transfers, financial institutions typically incur risks in each transaction by making funds immediately accessible to consumers through releasing money from a financial institutions' reserve fund and later settling payments after the receiver has received funds. Similarly, a financial institution incurs significant costs and losses—including collections costs and liquidity risks—in relation to credit card lending and in particular as a result of late payment.¹³ As noted above, fraud is a risk with respect to most consumer financial products and may pose significant remedial costs on financial institutions. Incorporating these and other risk mitigation costs into fees that are assessed to a broader population of an institution's customers ensures both that individual consumers do not bear the financial consequences when they fall victim to fraud, and that the financial institution maintains a buffer to absorb losses.

Moreover, the imposition of Consumer Finance Fees can allow a financial institution to provide various products or services in a manner that covers the costs associated with such risks. These costs, in turn, ensure the safety and soundness of the financial institution. In fact, the Office of the Comptroller of the Currency ("OCC") has long entrusted Consumer Finance Fees to the discretion of banks so long as they are in accordance with "sound banking judgment and safe and sound banking principles." OCC regulatory guidance instructs banks to consider the "deterrence of misuse by customers of banking services" and the "maintenance of the safety and soundness of the institution," among other factors, in setting an appropriate fee.¹⁴

Situating the fees imposed on late credit card payments in this context helps illustrate why CFPB action to regulate these fees may result in increased costs that would then be transferred to consumers. Fees for late payments on credit cards are considered in

al%20events. (finding that operational-risk losses increased rapidly after the global financial crisis and have remained elevated since).

¹² Office of the Comptroller of the Currency, OCC Highlights Key Risks for Federal Banking System (Jun. 29, 2020), <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-86.html#:~:text=Operational%20risk%20is%20heightened%20as,operations%20under%20elevated%20operational%20volumes>.

¹³ See Office of the Comptroller of the Currency, Comptroller's Handbook, Safety and Soundness: Credit Card Lending p. 8-13 (Apr. 2021), <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/credit-card-lending/pub-ch-credit-card.pdf>

¹⁴ 12 C.F.R. § 7.4002(b)(2).



underwriting and overall credit decisions. Often such fees act to deter cardholders from failing to meet their obligations in a timely manner. Income from late payment fees offsets liquidity risk that arises across credit card portfolios when payments are not made on time, which helps to mitigate risks posed to institutional investors of these portfolios. A robust secondary market for these products in turn assures availability of credit in the consumer market.

Financial institutions incur significant compliance costs to maintain safety and soundness and adhere to requirements imposed by other regulators to avoid adverse effects on a financial institution's financial condition. For example, compliance costs related to wire transfers include the Financial Crimes Enforcement Network ("FinCEN") requirements of filing and subsequent keeping of Suspicious Activity Reports ("SARs"), Currency Transaction Reports ("CTRs") for transactions over \$10,000, and running searches required by the U.S. Treasury Office of Foreign Assets Control ("OFAC").¹⁵ Similarly, anti-money laundering compliance obligations, such as SARs and CTRs, must also be filed for activity at ATMs, contributing to the costs associated with out-of-network ATM fees.¹⁶ Actions by the CFPB to regulate the circumstances under which these fees may be charged could lead financial institutions to eliminate certain products or limit their accessibility to consumers who can afford the greater upfront prices that offset these compliance costs.

Beyond costs associated with risk management, financial institutions must also incur costs such as administrative, overhead, and technology costs in the provision of any particular product or service. Consumers increasingly demand greater technological availability for their banking products and services.¹⁷ As a result, financial institutions must prioritize innovation and rapid technology adoption to remain competitive and satisfy consumer demands.

RMA therefore recommends that the CFPB conduct a balanced, detailed analysis of the costs associated with the provision of any particular financial product or service as well as the broad array of costs for which institutions must account to provide products and services. In particular, this includes costs to administer regulatory regimes to mitigate

¹⁵ See 31 C.F.R. § 1010.311; 31 C.F.R. § 1020.320. Other regulations that banks must comply with in order to execute a wire transaction include Regulation J, 12 C.F.R. § 210.25, and Regulation E, 12 C.F.R. § 1005.

¹⁶ See Wall Street Journal, Gas-Station ATMs are a Banking Battleground (Feb. 19, 2022), https://www.wsj.com/articles/gas-station-atms-are-a-banking-battleground-11645266781?mod=Searchresults_pos4&page=1.

¹⁷ Accenture, Banking Consumer Study: Making Digital More Human (Dec. 8, 2020), <https://www.accenture.com/us-en/insights/banking/consumer-study-making-digital-banking-more-human> (finding that the pandemic increased digital adoption of financial services and that 50 percent of consumers now interact with their bank through mobile apps or websites at least once a week, compared to 32 percent in 2018).



risks inherent in providing particular products or services. Further, Consumer Finance Fees have long been understood by prudential regulators to be determined within the scope of an institution’s discretion and informed by a number of factors that help ensure the institution’s safety and soundness. Consumer Finance Fees allow financial institutions to provide desired products or services to consumers while maintaining the institution’s safety and soundness.

IV. There is a risk of harm to consumers that may result from eliminating certain Consumer Finance Fees, in particular to the extent that incorporating Consumer Finance Fees into the upfront pricing for products could limit consumer choice, impede the availability of credit, and undermine the goal of financial inclusion.

RMA encourages the CFPB to evaluate the potential impact of any changes to Consumer Finance Fees on consumers and competition. The CFPB should specifically ensure that it studies the increased cost of credit to consumers that currently avoid fees and whose total cost of credit may increase as a result of policy changes that force the higher risk behavior of some consumers to be borne by all consumers on account of a broad-based shift to upfront pricing.

The 2019 FDIC Survey of Household Use of Banking and Financial Services found that 94.6 percent of U.S. households were “banked” in 2019, meaning that at least one member of the household had a checking or savings account. The Survey also reported that the unbanked rate of 5.4 percent was the lowest since 2009.¹⁸ However, broad changes without substantial research and study could yield unintended consequences as to the ultimate cost to consumers. A 2022 U.S. Government Accountability Office report found that laws and regulatory factors may have significantly affected the cost and availability of basic banking services over the past 10 years. Specifically, the report cited a study conducted by Federal Reserve economists, which showed that certain banks subject to debit card interchange fee caps transferred those costs to consumers by increasing monthly service fees on checking accounts. The banks surveyed were about 35 percent less likely to offer noninterest checking accounts for no monthly fee.¹⁹

¹⁸ FDIC, How America Banks: Household Use of Banking and Financial Services, <https://www.fdic.gov/analysis/household-survey/index.html>.

¹⁹ See U.S. Government Accountability Office, Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions’ Effectiveness Could be Improved (Feb. 2022), p.20-23, <https://www.gao.gov/assets/gao-22-104468.pdf> (finding that debit card interchange fee limits imposed by the Durbin Amendment and Regulation II are associated with increases in the costs of checking accounts and that Federal Reserve economists estimated that if the regulation had not been implemented, 65 percent of noninterest checking accounts offered by surveyed banks would have been free.)



An alternative consequence is that financial institutions may be required to reduce the supply of services or features associated with products for certain consumers.²⁰ Current fee structures are undoubtedly included in the overall credit decisions and underwriting associated with accounts. Fees are tailored towards those customers who use the service associated with the fee, or who fail to pay on time. Significant changes to existing fee policies could change the viability of those underwriting decisions, creating safety and soundness concerns, which could result in an elimination of offerings or necessitate other changes which could create unintended negative consequences for customers. As a result, consumers—and in particular those experiencing financial difficulties and those with no or low credit scores—may be forced to turn to alternatives outside of the mainstream banking system that charge higher fees and interest rates to meet their financial needs, such as check cashers, bill pay stores, or less-regulated non-bank services. The CFPB itself recently reported that the decline in banks in rural areas has forced consumers to rely on non-bank alternatives that charge higher fees and interest rates, resulting in more money leaving rural communities.²¹

The CFPB could assess the extent to which consumers prefer payment of fees as the need for particular products or services arises rather than payment of higher upfront prices imposed on all consumers to account for products or services that only a subset of them may use. For example, a consumer who does not travel abroad frequently may prefer foreign transaction fees to be linked directly to the use of a card abroad rather than incorporated into the upfront price for an account regardless of a cardholder's foreign travel. Similarly, consumers may prefer that accountholders whose behaviors trigger specific fees be responsible for the associated costs. For example, consumers may not wish to pay a higher upfront price for a credit card that factors in the costs to replace lost or stolen cards for a smaller subset of consumers who actually require new cards.

In addition, the CFPB should assess the extent to which consumers are willing to pay Consumer Finance Fees in order to retain certain services or features. For example, a study might assess whether consumers would prefer to incur out-of-network ATM fees for greater access to cash in remote locations rather than the costs incurred in driving to the nearest bank location, or whether consumers would prefer to be subject to foreign transaction fees rather than lose the ability to use their credit or debit card when traveling abroad.

²⁰ A United States Government Accountability Office report found that, of the banks surveyed, most did not charge Bank Secrecy Act or Anti-Money Laundering-related fees to manage associated compliance costs but instead limited access to higher risk products and services to certain customers and locations. United States Government Accountability Office, *Anti-Money Laundering*, p. 59 (Sept. 2020), <https://www.gao.gov/assets/gao-20-574.pdf>.

²¹ Shawn Sebastian, *New effort focused on financial issues facing rural communities* (Mar. 10, 2022), <https://www.consumerfinance.gov/about-us/blog/new-effort-focused-on-financial-issues-facing-rural-communities/>.



Therefore, RMA strongly recommends that the CFPB: (1) conduct analysis on the extent to which changes to Consumer Finance Fees may result in unintended consequences, such as increases to upfront pricing or reduction in the supply of services; and (2) study consumer preferences regarding Consumer Finance Fees in light of these potential consequences.

V. Conclusion

RMA appreciates the opportunity to provide these comments and thanks the CFPB for its engagement with financial institutions in studying Consumer Finance Fees. RMA looks forward to continuing its engagement with the CFPB on these issues.

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Sincerely,

Edward J. DeMarco, Jr.
Chief Administrative Officer & General Counsel