"Consumer Protection: Examining Fees in Financial Services and Rental Housing"

U.S. Senate Committee on Banking, Housing, and Urban Affairs

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Testimony of Adam Rust

Consumer Federation of America

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U.S. Senate Committee on Banking, Housing, and Urban Affairs
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Honorable Chairman Sherrod Brown
503 Hart Senate Office Building
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Ranking Member Tim Scott
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Honorable Chairman Brown and Ranking Member Scott:

Thank you for the opportunity to testify today on this important issue.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors.

The White House estimates that consumers are charged $90 billion in junk fees every year.[1]
Junk fees harm consumers and undermine the financial stability of their households. While the existence of junk fees is not new, their presence is the daily lives of consumers is growing. As a result, junk fees now exist in places where they have not previously occurred. Junk fees are multiplying in number, variety, and frequency. Americans are being "nickeled and dimed" by these practices.

Junk fees undermine competition by obscuring the real price of goods and services. It is an accepted fact in economic theory that markets rely on transparency to function. When the real cost of a service is clear up front, consumers may be vulnerable to making decisions contrary to their interests. Businesses that extract junk fees may gain an unfair advantage over rivals that do not.

SUMMARY
Part One: Prevalence of Junk Fees, how they are applied, and conditions necessary.

Part Two: How junk fees are emerging across many financial and finance-adjacent markets.

I. Junk fees in rental housing
II. Credit Card Late Fees

[1] Council of Economic Advisers. "The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition." Issue Brief. The Biden Administration, March 5, 2024. https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/.

III. Overdraft and Insufficient Funds Fees
IV. Other types of junk fees

Part Three: Regulation will improve markets by enhancing competition.

I. The CARD Act improved consumer protections for credit card markets without compromising access to credit.

Part One: Prevalence of Junk Fees, how they are applied, and conditions necessary.

Junk fees flourish when consumers are at a disadvantage. They are like mold—they grow best in the dark. When consumer choice is thwarted because of complexity, it is easier for providers to insert junk fees.

In a properly functioning marketplace, junk fees would not occur. Consumers would recognize the lack of value in a junk fee and refuse to pay. However, perfect markets are an abstraction. In practice, consumers and producers transact in markets that vary greatly in their fairness.

Providers can extract junk fees when it is hard for consumers to understand the true price of a service. In classical economics, free markets require sellers and buyers to have full information and zero search costs.[2] However, when there are information asymmetries or when consumers must make decisions through a slow and labor-intensive process of price discovery, they will be vulnerable to paying more.

A key driver of their ability to gain leverage in pricing is derived from complexity. By design, junk fees make it harder to understand the true cost of a product or service. Recent CFPB research has demonstrated how complex pricing can trick consumers into paying more for goods. In the CFPB's three-part survey instrument, consumers were asked to evaluate the cost of a service offered through three different pricing structures. In the first scenario, sellers provide a single all-in price. In the second, the price was disaggregated with eight different fees. In the third, sellers described the cost in sixteen sub-prices. In the disaggregated structures, consumers struggled to compare prices from different sellers. In some cases, they believed they were paying less for offerings when they were consenting to higher prices. The study revealed that-junk fees are an effective way for sellers to derive additional profits.[3]

When consumers are held captive to the choices of third parties, they may be vulnerable to exploitative junk fees. For example, in some markets, consumers do not choose their financial services provider.

Types of Junk Fee Structures

While there is no singular definition of a junk fee. Instead, junk fees are manifested in several different categories. Junk fees may have one or more of the following characteristics:

- Intentionally complex to the point of causing confusion. They have pricing structures where significant contributors to cost come from surprise fees.
- Partitioned: fees are charged in sequence over time.

[2] Lhachimi, Stefan, and Johannes Siegrest. "Classical Economics - an Overview | ScienceDirect Topics." In *International Encyclopedia of the Social & Behavioral Sciences*, 2nd ed. Science Direct. Accessed May 1, 2024. https://www.sciencedirect.com/topics/social-sciences/classical-economics.

[3] Beckett, Dustin. "Price Complexity in Laboratory Markets." Office of Research Publication. Consumer Financial Protection Bureau, April 30, 2024. https://www.consumerfinance.gov/data-research/research-reports/price-complexity-in-laboratory-markets/.

- Are excessive in relation to cost for providers and benefits to consumers: Fees charged at rates far more than the cost experienced by providers.
- Fraudulent: fees that providers are not permitted to charge.

Junk fees are incredibly costly. In 2022, consumers paid $14.5 billion in credit card late fees and $7 billion in overdraft fees.

Part Two: How junk fees are emerging in housing and financial markets.

I. Junk fees are raising the cost of rental housing.

Junk fees make housing even more unaffordable, jeopardizing access to housing, constraining budgets, and undermining household financial stability.

Junk fees in housing can include fees at inflated prices, fees for services that a property manager should supply as a matter of providing a habitable space, and fees for services of little or no value.

Not too long ago, the terms of a lease were relatively straightforward: the tenant paid a monthly rent and put down a deposit. There were a handful of additional services that could come with a fee, but the number was far less than now. For example, as is the case now, some landlords charge pet fees or deposits. Some – but not all - charged an application fee.

Today, fees have exploded in number and amount. Examples include rental application fees, lease signing, and lease administration fees, fees for receiving utility bills, notice fees, move-in and move-out fees, inspection fees, lease renewal fees, fees to hold an apartment, fees for receiving mail, pet rent, fees for amenities, technology package fees, and others.[4] Some of these fees may be charged for services with a real cost for providers. Still, even in those cases, their partitioning across the lifecycle of renting means that consumers have a harder time understanding costs when they compare rental listings. Some are merely ways to gouge consumers.

Large investment firms' entry into single-family rental housing markets has contributed to the rise in rental junk fees. Filings to the Securities and Exchange Commission (SEC) by several large corporate landlords show they enhance returns through ancillary fees, even as they build technology to lower their operating costs.[5]

Some junk fees enable property managers to profit from reviewing and accepting tenant applications. Increasingly, property managers "gouge" applicants.

While property managers have a legitimate interest in finding applicants who can afford to pay rent, the process should not be a profit center. National credit reporting agencies offer tenant checks for $25 to

[4] Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf.

[5] Fields, Desiree, and Manon Vergerio. "Corporate Landlords and Market Power: What Does the Single-Family Rental Boom Mean for Our Housing Future?," April 13, 2022. https://escholarship.org/uc/item/07d6445s.

$50.[6] In a recent CFPB study on tenant screening, most application fees were priced at rates consistent with this level of cost. However, nine percent of applications cost more than $100.[7]

In a 2023 50-state survey, housing advocates noted that fees had increased dramatically in the last few years.[8]

Each application comes with an additional application fee.

High application fees undermine free choice. Tenants do not have unlimited budgets for application fees. To understand the search costs associated with finding an apartment, it is important to remember that application fees will be charged to each person on the lease.[9] In some cases, part of an applicant's fee can be refunded when the tenant signs a lease, but that is not always the case. Application fees can be high, and while a handful of states have set maximums on them, most states have not set any limits on them and allow them to be non-refundable.[10]

They also noted that some landlords appear to accept more applications than could reasonably be justified for a single property to create new revenue streams or take applications from tenants with criminal records even though they have a policy of not renting to these populations.[11]

Many fees are not revealed upfront, making it difficult for applicants to compare costs and increasing the likelihood that they will accept junk fees.

Many of the junk fees extracted by landlords and property managers occur through the partitioning of costs over time. When this happens, the advertised rent does not reflect the actual cost of leasing a property. This undermines transparency in the market because tenants cannot compare costs.

For example, the existence of a lease signing fee may not be revealed until after the applicant has completed (and paid for) a rental application. Lease signing or lease administration fees are routinely as high as $200.

The expectation to pay these fees is not necessarily known at the time of an application and, most likely, is not known in advance of their assessment, well after a tenant has made a commitment to the contract.

It is concerning when services that should be considered as essential to renting are charged separately. This raises the cost of rent. Advocates reported that tenants were charged shared billing and ratio utility billing system fees in multi-family units where utilities are shared among tenants. Pest control fees are

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[6] TransUnion. "SmartMove: Great Reports, Great Convenience, Great Tenants." Accessed May 5, 2024. https://www.mysmartmove.com/tenant-screening-services/tenant-credit-checks.

[7] Consumer Financial Protection Bureau. "Tenant Background Checks Tenant Screening Issues Described in Consumer Complaints and Interviews." Consumer Snapshot, November 2022. https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

[8] Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf.

[9] Apartments.com. "Cosgrove Hill - Apartments in Chapel Hill, NC." Accessed May 5, 2024. https://www.apartments.com/cosgrove-hill-chapel-hill-nc/7l61drz/.

[10] White, Stephen Michael. "Rental Application Fees: Rules & Procedures In All 50 States." RentPrep, July 12, 2023. https://rentprep.com/blog/tenant-screening-news/the-landlord-guide-to-charging-rental-application-fees/.

[11] Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf.

common, even though the landlord has a vested interest in preventing infestations and may have a legal obligation to do so, are common. Some tenants are charged fees for furnace maintenance.[12] While these fees may covered needed services, by separating them from the upfront cost of the apartment, potential applicants are less likely to understand the true cost.

Some junk fees are designed to work around protections in place against other fees.

For example, many states have rules that limit the size of a rental deposit. The limit is a factor of monthly rent. The purpose of a deposit is to protect a property owner against damage. This is reasonable, but some leases now apply fees to tenants to pay for an additional insurance policy against damage. Property owners are the beneficiaries of these policies.[13]

Property managers may apply mandatory fees to offer services that should be elective.

Property managers charge "amenity fees" to provide services that are not necessary. For example, an amenity fee may cover the cost of identity protection or rent reporting. Some property managers apply a technology package for internet or cable.[14] While the fee does compensate a provider for a real cost, tenants may be forced to buy services that they would otherwise not choose to have.

Junk fees are applied to residents of manufactured housing communities.

Junk fees in manufactured housing communities (MHCs) have become common. They are taking money from vulnerable residents.

From 2015 to 2018, eight private equity-owned real estate companies purchased 153,062 lots in manufactured housing communities.[15] Most of these are larger parks located in rural areas in the Midwest and West. To satisfy the rate of return required by their investors, new corporate owners have raised rents and applied new fees.

MHCs are workforce housing. They are also a popular choice for senior citizens who want to live in a single floor. Communities provide valuable support networks to their residents. In some rural counties in the United States, manufactured homes house more than one-third of all households.

Residents of MHCs are vulnerable to manipulative fee hikes because they are generally unable to move. Many manufactured homes cannot be moved. Some can, but at a cost of $5,000 to $10,000. If it is possible to move them, and if an owner can afford it, it can be very hard to find a community that will accept a used home. Already, the number of MHCs is dwindling, and very few municipalities are open to approving new MHCs.

For these reasons, MHC residents have little ability to fight against the imposition of a new fee. If a new owner wants to raise rents by 50 percent or more, residents face a tragic question: sell their home, abandon it (where the park owner will assume ownership), or pay the new and much higher rent. This

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[12] Gaston, Rebekah. Interview with Kansas Holistic Defenders, May 1, 2024.

[13] Gaston, Rebekah. Interview with Kansas Holistic Defenders, May 1, 2024.

[14] Nelson, Ariel, April Kuehnhoff, Chi Chi Wu, and Steve Sharpe. "Too Damn High: How Junk Fees Add to Skyrocketing Rents." National Consumer Law Center, March 2023. https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf.

[15] Baker, Jim, Liz Voigt, and Linda Jun. "Private Equity Giants Converge on Manufactured Homes: How Private Equity Is Manufacturing Homelessness & Communities Are Fighting Back." Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, February 2019. https://pestakeholder.org/wp-content/uploads/2019/02/Private-Equity-GIants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf.

leverage is a talking point for Mobile Home University, an industry group that promotes investment in MHCs.[16]

Corporate owners living hundreds or thousands of miles away from a community may not have the same relationship-based approach to management. Those differences are evident in junk fee policies. For example, some new owners have imposed limits on the number of cars permitted in a driveway and charged fees to residents when they have more than the maximum. In a park in Texas, RV Horizons raised rents, instituted fees for households with more than four residents or for extra parking, and severed common area utilities from rent. Tenants previously paying $380 per month now owed $800.[17] Some companies create new requirements for home maintenance – and impose fines for non-compliance.[18] Because these fees are, at their root, a judgment on a homeowner's private choices, they provoke moral resentment in addition to their economic harm.

Fees are furthering racial wealth gaps.

Given existing discrepancies in homeownership along the lines of race, the imposition of these fees has implications for racial equity. In January 2024, 74 percent of white households owned their home,[19] whereas 45.7 percent and 49.9 percent of Black[20] and Hispanic[21] households, respectively, owned their homes. The result is that households of color are disproportionately more likely to be impacted by these practices.

Junk fees contributed to a dynamic that will widen inequality. A high share of homeowners refinanced their mortgage loans during the pandemic, locking in their financing costs at historically low levels and providing long-term protection against inflation and correlated increases in the cost of housing. However, black households were less likely to refinance, and when they did, they were more likely to refinance at higher rates, leading to a compounding effect: white households were more likely to own homes, more

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[16] Findell, Elizabeth. "Housing Advocates Protest 'Boot Camp' to Maximize Trailer Park Profits." *Austin American-Statesman*, December 2, 2017. https://www.statesman.com/story/news/2017/12/02/housing-advocates-protest-boot-camp-to-maximize-trailer-park-profits/10143826007/. "The fact that tenants can't afford the $5,000 it takes to move a mobile home ...makes it easy to raise rent without losing any occupancy."

[17] Chakraborty, Ranjani. "In Texas, Trailer Park Fights Mobile-Home Moguls for Affordable Housing." *Al Jazeera*, October 28, 2015, America Tonight edition. http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/10/28/trailer-parks-price-gouging-texas.html.

[18] Baker, Jim, Liz Voigt, and Linda Jun. "Private Equity Giants Converge on Manufactured Homes: How Private Equity Is Manufacturing Homelessness & Communities Are Fighting Back." Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, February 2019. https://pestakeholder.org/wp-content/uploads/2019/02/Private-Equity-GIants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf.

[19] U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Non-Hispanic White Alone in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. https://fred.stlouisfed.org/series/NHWAHORUSQ156N.

[20] U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Black Alone in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. https://fred.stlouisfed.org/series/BOAAAHORUSQ156N.

[21] U.S. Census Bureau. "Homeownership Rates by Race and Ethnicity: Hispanic (of Any Race) in the United States." FRED, Federal Reserve Bank of St. Louis. FRED, Federal Reserve Bank of St. Louis, January 1, 1994. https://fred.stlouisfed.org/series/HOLHORUSQ156N

likely to take advantage of low rates during the pandemic and to emerge from the pandemic having locked in lower borrowing costs for the long-term.[22]

In a March 2023 letter, the Secretary of the Department of Housing and Urban Development called for corrective action:

- Rental housing providers should limit application fees to levels needed to cover costs.
- Platforms should create structures that permit applicants to use the same background check for multiple applications.
- When rental properties are listed on a platform, prices should reflect all costs to secure housing and costs to be paid on an ongoing basis.
- Eliminate duplicative fees, such as application fees and lease signing fees.[23]

The Consumer Federation of America supports the Secretary's call to action.

II. Credit card late fees have cost consumers billions. The CFPB's new late fee rule will close a loophole.

The CFPB is acting to restore the price of late fees to a level that is reasonable and proportionate to costs.

In 2022, consumers paid more than $130 billion in interest and fees for their credit card accounts. Credit card late fees represented the largest share of fees, amounting to $14.5 billion. The CFPB's final rule establishes a benchmark fee cap of $8.

In a 2023 survey of 2,089 adults, 82 percent of respondents said they supported a rule that would lower the maximum amount of a credit card late fee.[24] In comments filed to the CFPB on the rule, over 98 percent of commenters said they supported the rule.

Credit card late fees are penalty fees. In the CARD Act, Congress said that penalty fees should be reasonable and proportional to costs.

In the CARD Act, Congress placed a limit on the amount card issuers can charge for "back-end" penalty fees,[25] including when a consumer exceeds their credit limit or makes a late payment. Regulation Z has been clear well before the new rule on this fact:

"...A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan, such as a late payment, exceeding

[22] Demaria, Kyle. "Home Mortgage Refinancing Disparities During the COVID-19 Pandemic: Insights for Delaware, New Jersey, and Pennsylvania." Research Brief. Federal Reserve Bank of Philadelphia, March 2022. https://www.philadelphiafed.org/-/media/frbp/assets/community-development/briefs/cdro_22-02-home-mortgage-refinancing-disparities-during-the-covid-final.pdf.

[23] Fudge, Marcia. Open Letter to Housing Industry. "Secretary Fudge Pens Open Letter on Addressing Junk Fees That Renters Face." Open Letter to Housing Industry, March 8, 2023. https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_048.

[24] Consumer Reports. "September 2023 Omnibus Results." American Experiences Survey. University of Chicago NORC, September 2023. https://article.images.consumerreports.org/image/upload/v1696262259/prod/content/dam/surveys/Consumer_Reports_AES_Toplines_September_2023.pdf.

[25] Reg. Z, § 1026.52(b)(1).

the credit limit, or a returned payment, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation…"[26]

After conducting research to verify that prevailing market rates for credit card late fees were priced consistently with cost, the CFPB found that a dramatic divergence between cost and fees had developed. It determined that prevailing late fees could be as much as five times greater than costs. The credit card late fees rule corrects this discrepancy.

The CFPB's rule is flexible. Going forward, issuers can receive a safe harbor if they apply a late fee that is under the determined benchmark fee. Or, if an issuer can demonstrate that its observed costs are higher, it can receive permission to charge a higher rate up to the point of cost recovery.

A cap on credit card late fees will not cause credit card issuers to withdraw from the market.

Credit cards are among the most profitable lines of business in commercial banking. In 2022, credit card issuers received $130 billion in interest and fees, including $14.5 billion in late fees.[27]

The Federal Reserve's review of the credit card market found that returns on assets (ROAs) for monoline credit card banks were three to four times higher than the ROAs of other commercial banks. From 2001 to 2022, ROAs for credit card banks were profitable every year except 2009. Monoline credit card banks enjoyed an average ROA of 4.71 percent during those 22 years. ROAs of the credit card portfolios of very large financial institutions were nearly the same. By contrast, the ROAs of all commercial banks were 1.41 percent during the time frame.[28] Because banks are highly leveraged,[29] an ROA of 4.7 could mean these activities delivered returns of greater than thirty-five percent to equity investors. Other measures of profit, such as net interest income on assets, were also higher.

In essence, issuing credit cards is a great opportunity. The fact that these outsized returns have been sustained for so long suggests that the market favors existing entrants. Otherwise, new issuers would arrive and bid down returns. But that does not occur, leading to the conclusion that something anti-competitive is occurring in this sector. One factor could be the exclusive agreements between issuers and airlines, hotels, and other commercial firms. But regardless, even if ROAs fall because of foregone late fees, credit card lines of business will still be more profitable than other types of banking by a factor of two to threefold.

Because there are many ways to earn money from their accounts, the late payer will still be a desirable customer. Intuitively and in practice, consumers most likely to pay late fees are also the account holders most likely to pay interest on revolving debt. Even though they make up about one-fifth of all account holders, "heavy revolvers" pay 47.6 percent of late fees, 72 percent of interest, and 19.8 percent of annual fees.[30]

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[26] ibid

[27] Consumer Financial Protection Bureau. "The Consumer Credit Card Market." Consumer Financial Protection Bureau, October 25, 2023. https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market/.

[28] Bord, Vitaly M., Robert Adams, and Bradley Katcher. "Credit Card Profitability." *FEDS Notes* 2022, no. 3100 (September 2022). https://doi.org/10.17016/2380-7172.3100.

[29] BankRegData.com. "Tier 1 Leverage All Banks." Accessed May 4, 2024. https://www.bankregdata.com/allHMmet.asp?met=LEV.

[30] Bord, Vitaly M., Robert Adams, and Bradley Katcher. "Credit Card Profitability." *FEDS Notes* 2022, no. 3100 (September 2022). https://doi.org/10.17016/2380-7172.3100.

However, the dynamic of "creaming" accounts, while observable in mortgage or small business lending, is not as strictly adhered to in credit cards. If, as the credit card industry suggests, late fees make credit card portfolios less profitable, the outcome of constricting credit from late payers would be to reduce access to the most profitable accounts. But further, because lower-margin transactor accounts are still far more profitable than most other banking activities, those accounts will remain open, too.

The industry has suggested that without late fees, riskier customer segments will lose credit access. A similar argument was made before the introduction of the CARD Act. As discussed in greater detail later, these cries of alarm proved to be without basis.

If credit card late fees fall by $9 billion, as estimated by the CFPB, then reduced profits for credit card issuing from "incredibly profitable" to "almost as incredibly profitable" will not force banks to raise other fees. Credit card issuers will pay lower lead generation fees to marketing websites.

Lead generators participate in the ebbs and flows of their network partners' profitability. If the credit card late fee rule curbs some issuers' profits, banks will respond by lowering the commissions they pay to lead generators. This will be a far easier way for banks to remain profitable without passing on lost profits to consumers in the form of higher fees.

These sites are very profitable because they deliver applicants to banks. Banks pay fees to lead generators, which can range between $80 and $150.[31] In addition, card issuers often pay even more through sign-up bonuses. In 2022, one publicly traded lead generation company earned $100.2 million by referring site visitors to credit card issuers.[32]

If the credit card late fee reduces the scale of lead generation marketing, it will address a separate problem that has increased costs for consumers and put smaller financial institutions at a competitive disadvantage. Because large banks are their network partners, lead generation sites point shoppers to cards from the largest issuers. It has an anti-competitive effect. Well-intentioned consumers who are diligently shopping for the best card to fit their needs are being directed to sites whose biases have been compromised by commissions. When they search for "best credit card," a lead generation site will interpret the question to ask instead, "What is the best credit card for this consumer among those that pay our company a commission?"

While the practice helps banks to receive higher interest on revolving balances, it disadvantages consumers and small bank credit card issuers. In a 2024 guidance, the CFPB noted how lead generation sites help drive consumers to pick higher-rate cards from large issuers.[33] Evidence of anti-competitive

[31] Parvathy, P. "What Is the Average Customer Acquisition Cost That a Bank Pays to Acquire a Credit Card Customer? I'm Looking at Potentially Investing in a Startup That Will Offer a New Credit Card Product -- and Trying to Get a Sense of the Industry Average Cos..." *Wonder* (blog). Accessed May 5, 2024. https://askwonder.com/research/average-customer-acquisition-cost-bank-pays-acquire-credit-card-customer-i-m-fy512dtei.

[32] Lending Tree. "Lending Tree Annual Report for the Fiscal Year Ending December 31, 2023." Annual Report. Securities and Exchange Commission, February 2024. https://investors.lendingtree.com/static-files/6091a1b9-f0c2-4d4e-b6c0-990085edb7a5.

[33] Consumer Financial Protection Bureau. "CFPB Issues Guidance to Rein in Rigged Comparison-Shopping Results for Credit Cards and Other Financial Products," February 29, 2024. https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-rein-in-rigged-comparison-shopping-results-for-credit-cards-and-other-financial-products/.

effects is evident because even though smaller banks and credit unions issue cards with lower rates, they have a very low share of the market. The distinction holds after controlling for borrower credit score.[34]

Despite what defenders of credit card banks believe, lower late fees will not encourage more consumers not to pay their bills.

Some critics of the rule have suggested that if late fees are lower, then consumers will see it as advantageous to be late on their payments more frequently. This "deterrence" theory goes so far as to say consumers will wittingly harm their credit because of the lower fee.

However, deterrence exists without late fees from credit card companies. First, revolving debt incurs interest. By definition, account holders who miss a payment will be charged interest on their revolving balances. According to Federal Reserve data, "heavy revolvers" owed an average of $4,418. At 22.9 percent interest, they will pay $84.31 per month in interest. Second, credit card issuers are permitted to raise interest on new balances for accounts open for at least 12 months. Third, the credit scores of late payers will be reduced. They may also have their credit line reduced.

The "deterrence" theory is short-sighted. People miss payments because they lack the resources to cover their debt obligations or because they made an honest mistake. Financial distress – and not intentional avoidance of debt – drives credit card delinquency. On a macroeconomic level, increases in regional unemployment will lead to higher rates of credit card delinquency.[35] An unexpected medical bill or other financial emergency is also likely to lead to a missed payment. The deterrence theory ignores these real-world truths and instead relies on the abstract assumption that consumers intentionally skip payments that they can afford to make.

Moreover, the principal harm – that a consumer's credit score will be harmed – only occurs in a fraction of late payment incidents. While an issuer can charge a late payment if the payment is late by even a few hours, notifications to bureaus are sent only once accounts are 30 or more days past due.[36]

Given the ability, consumers will repay. The pandemic revealed that consumers prioritize paying down their debts. In fact, the pandemic created a real-world experiment to test the idea that consumers require a late fee deterrent to repay debt.

During the pandemic, consumers received cash without instructions on how to spend it. Simultaneously, banking regulators encouraged banks to suspend charging late payment fees, including for credit card accounts.[37] Many banks did so, either across all accounts or as a means of accommodating distressed

[34] Consumer Financial Protection Bureau. "CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions," February 16, 2024. https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-large-banks-charge-higher-credit-card-interest-rates-than-small-banks-and-credit-unions/.

[35] Agarwal, Sumit, and Chunlin Liu. "Determinants of Credit Card Delinquency and Bankruptcy: Macroeconomic Factors." *Journal of Economics and Finance* 27 (March 1, 2003): 75–84. https://doi.org/10.1007/BF02751591.

[36] Akin, Jim. "Does a One Day Late Payment Affect Your Credit Score? - Experian." *Experian Blog* (blog), February 19, 2020. https://www.experian.com/blogs/ask-experian/does-a-one-day-late-payment-affect-your-credit-score/.

[37] Federal Deposit Insurance Corporation. "Frequently Asked Questions for Bank Customers Affected by Coronavirus Disease 2019 (Referred to as COVID-19)," January 12, 2021. https://www.fdic.gov/coronavirus/faq-customer.pdf. See credit topic 20. "The FDIC is encouraging banks to allow customers to skip loan payments with no adverse consequences for the borrower, extend loan terms, and restructure loans."

borrowers.[38] What did credit card debtors do? They paid down their revolving credit card debt. According to the Federal Reserve, "paydowns and prepayments rose to historically high levels by April 2021." Revolving balances fell from $460 billion in January 2020 to $348 billion in April 2021.[39] These results occurred without a deterrent.

Credit card interest rates are risk-adjusted.

Interest rates on credit cards are designed to reflect the specific risks associated with providing unsecured revolving credit. Interest rates are further factored by the individual credit profiles of cardholders. For most consumers, the interest they pay on their revolving credit card debt exceeds any other credit source on their household balance sheet. The chance of delinquency should be accounted for in the cost of credit. In its rule, the CFPB was cognizant of this aspect. It recognized that the specific costs that arise from a late payment are associated with communicating with late payers.

Moreover, credit card issuers have ways to shield themselves from interest rate risk. When the Federal Reserve raised interest rates, issuers shifted the increase to consumers through upward repricing. Banks are free to lower interest rates when the Federal funds rate falls, but it is not clear that downward repricing happens as frequently as upward repricing.

Moreover, the late fees rule permits lenders to charge a fee even if they do not attempt to contact a late borrower. Many, if not most, credit card companies do not begin to contact borrowers as soon as the first payment has been missed. Most wait until a borrower has been delinquent for 30 days.

The rule only targets the largest issuers. The CFPB's rule is an example of tailored regulation.

The CFPB's credit card late fee rule will cover the thirty to thirty-five largest credit card issuers who collectively provide 95 percent of the active credit accounts in the country. However, it will not apply to more than 4,000 small issuers who issue smaller card portfolios. Over ninety percent of credit card-issuing banks and credit unions will be unaffected by the rule, which is narrowly focused on mega-bank profit centers.

The CFPB's approach recognizes the differences in credit card programs at large issuers versus small ones.

Tailored regulation will still permit the CFPB to protect consumers in this market. In its review of terms of credit plans, the CFPB found that the 25 largest issuers charged consumers rates that were 8 to 10 percentage points higher than comparable customers would have paid at small- and medium-sized banks and credit unions. Interest rates were higher after controlling for credit tier. Large issuers were also more likely to charge annual fees. [40]

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[38] DePietro, Andrew. "Banks That Are Waiving Fees During Coronavirus." *Forbes*, March 31, 2020. https://www.forbes.com/sites/andrewdepietro/2020/03/31/banks-waiving-fees-covid-19/?sh=4750befa1655.

[39] Adams, Robert M., Vitaly M. Bord, and Bradley Katcher. "Why Did Credit Card Balances Decline So Much during the COVID-19 Pandemic," December 3, 2021. https://www.federalreserve.gov/econres/notes/feds-notes/why-did-credit-card-balances-decline-so-much-during-the-covid-19-pandemic-20211203.html.

[40] Consumer Financial Protection Bureau. "CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions," February 16, 2024. https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-large-banks-charge-higher-credit-card-interest-rates-than-small-banks-and-credit-unions/.

Competitive pressure is stronger between large issuers and other large issuers as opposed to between large issuers and small issuers.

Because of differences in how large issuers market cards compared to smaller issuers, there may be less direct competition between the two groups than might be expected. There are clear distinctions in the operating practices of the largest issuers compared to small and medium-sized institutions.

Large issuers compete against each other through paid advertising. Large issuers pay commissions to lead generation websites to identify new applicants. They pay data aggregators to give them lists of potential customers and then send unsolicited offers of credit. On top of those costs, they pay sign-up bonuses. Large issuers may spend hundreds of dollars for each new account. For ultra-prime customers, the total customer acquisition costs may exceed $1,000.

For many smaller institutions, credit cards are offered in the context of a deeper financial relationship alongside a "bundle" of other services and products. Credit unions serve customers within their field of membership. For these smaller issuers, customer acquisition cost is virtually nil.

III. The CFPB's proposed overdraft and non-sufficient funds (NSF) fees rule will enhance consumer protections and save consumers money.

In 2022, banks and credit unions with more than $1 billion in assets charged $7.7 billion in overdraft and NSF fees.[41] In 2023, the sum fell to $5.8 billion.[42] While these are still very large amounts, they mark a significant reduction in overdraft fees. Over the five years before the pandemic, total overdraft fee charges ranged from $11.8 billion to $12.6 billion per year.[43]

The CFPB's overdraft proposal accomplishes the dual goals of reducing high-cost overdraft fees while still permitting ways for banks options to offer overdraft services to their customers.

The CFPB has offered a sensible proposal to reform overdraft credit. Under the proposed rule, covered financial institutions (depositories with more than $10 billion in assets) can offer overdraft services under three potential structures. First, covered FIs may offer a standard "non-covered" courtesy overdraft product with a fee at or below a to-be-determined amount that is the "breakeven" level. The CFPB has proposed a rate of either $3, $6, $7, or $14 and will use input from commenters when completing the final rulemaking.[44] If a covered financial institution can show that its costs are higher, it may charge an amount as high as its demonstrated break-even cost.

[41] Offices of Consumer Populations and Markets. "Overdraft/NSF Revenue down Nearly 50% versus Pre-Pandemic Levels." Consumer Financial Protection Bureau, May 24, 2023. https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/.

[42] Offices of Markets and Consumer Populations. "Overdraft/NSF Revenue in 2023 Down More than 50% versus Pre-Pandemic Levels, Saving Consumers over $6 Billion Annually." Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/.

[43] Nagypál, Éva. "Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports." Data Point. Consumer Financial Protection Bureau, December 2021.

[44] Offices of Markets and Consumer Populations. "Overdraft/NSF Revenue in 2023 down More than 50% versus Pre-Pandemic Levels, Saving Consumers over $6 Billion Annually." Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/.

The second option is for banks to offer overdrafts at prices above "breakeven," with the condition that those services are regulated as credit and the costs are defined as finance charges. This will provide important protections, including APR disclosures, periodic statements, clearly identified payment due dates, and underwriting that is held accountable for considering a borrower's ability to repay the debts.

Lastly, they can provide a form of overdraft coverage that is linked to savings accounts or credit cards, including in a hybrid credit-debit card format.

If the structure outlined in the CFPB's proposed rule is finalized, covered overdraft services will become a source of well-regulated pro-consumer short-term credit. Consumers who have an overdraft line of credit or a hybrid credit-debit card will sign up for these services proactively. They will receive disclosures that clearly indicate the cost of credit in the form of an APR. Additional protections will apply to hybrid credit-debit cards that extend CARD Act provisions.

Contrast this with the nature of overdraft today, where it is often used by accident. Many consumers who pay overdraft fees have a credit card or another alternative source of credit.[45] This finding underscores how for many consumers, overdraft fee charges are "surprise" fees.

Many major banks have introduced new account policies that reduce or eliminate overdraft fees.

Several banks offer checking accounts without overdraft fees that do not have monthly maintenance, minimum balance, or other fees.[46] [47] Many other banks offer accounts without overdraft fees and other fees, provided the account receives a direct deposit every month.[48] These banks show that deposit accounts without overdraft fees can be offered without resorting to charging other fees.

While industry talking points that the loss of overdraft revenue would lead to raises in other types of fees, the evidence does not confirm this argument. In fact, revenues from maintenance and ATM fees have fallen at five of the nine largest banks. On average, revenues from similar sources fell.[49] The evidence that financial institutions can remain profitable without relying heavily on overdraft fee revenue – or to forego it entirely - demonstrates that fee caps will not make banking unsustainable.

A payment system that shifts the burden of cost to those least able to afford it is unjust.

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[45] "Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel." Office of Research Publication. Consumer Financial Protection Bureau, December 19, 2023. https://www.consumerfinance.gov/data-research/research-reports/overdraft-and-nonsufficient-fund-fees-insights-from-the-making-ends-meet-survey-and-consumer-credit-panel/.

[46] Capital One. "Online Checking Account | No-Fee 360 Checking." Accessed May 4, 2024. https://www.capitalone.com/bank/checking-accounts/online-checking-account/.

[47] Discover Bank. "Free Checking Account - No Fee Cashback Debit | Discover." Accessed May 4, 2024. https://www.discover.com/online-banking/checking-account/.

[48] "Checking Account | Open a Checking Account Online | Citi.Com." Accessed May 4, 2024. https://www.citi.com/banking/checking-account.

[49] Offices of Markets and Consumer Populations. "Overdraft/NSF Revenue in 2023 down More than 50% versus Pre-Pandemic Levels, Saving Consumers over $6 Billion Annually." Data Spotlight: Consumer Financial Protection Bureau, April 24, 2024. https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/.

It is a problem that too large a share of the fees consumers pay for using a checking account come from penalty overdraft fees and NSFs.[50] However, the problem is made worse because of how the costs are distributed. The burden is not shared equally. Only nine percent of account holders pay over 80 percent of overdraft fees. These accounts are, perhaps not surprisingly, held by low-wealth consumers. On average, the balances carried by those customers averaged $350.[51] A 2020 study estimated that "frequent overdrafters" (individuals who pay 10 or more per year) paid an average of $720 per year in overdraft and other fees, while occasional overdrafters paid $136 and non-overdrafters just $57.[52]

Broadly speaking, banks, regulators, and virtually all stakeholders in the payments system support financial inclusion through enhanced access to bank and credit union transaction accounts. However, as long as so much of the revenue comes from low-balance accounts, financial inclusion will be elusive. Late fees have a damaging effect on financial inclusion. One of the most common reasons given by unbanked and underbanked consumers for using alternative financial services and not having a bank account is the fear of incurring a surprise fee.[53]

Notably, the number of unbanked and underbanked have fallen in recent years. This has occurred during a time when many financial institutions have eliminated NSF fees, reduced or eliminated overdraft fees, and implemented overage cushions.

Nonetheless, there is still more to do. Not all financial institutions have changed. If financial institutions insist on walking away from less-profitable customers if they cannot charge high surprise late fees, it will perpetuate financial exclusion. It is a dangerous rationalization. Nonetheless, if financial institutions will not act, then the proposed rule can be the changemaker. As such, the proposal is not just a step to improve consumer protections. It is also a financial inclusion solution.

Chartered financial institutions must be held accountable. As a condition of receiving a charter, banks must meet the community reinvestment needs of the communities where they do business. Providing safe transaction accounts has always qualified for CRA credit. Providing covered overdraft credit could be another qualifying activity for CRA credit.

Some banks and credit unions have established policies to maximize overdraft and NSF fees. The CFPB's intervention was necessary to compel them to improve their practices.

Some financial institutions have applied rules for overdraft and NSF that increased the number of times a consumer paid a fee. For example, some have charged overdraft fees on closed accounts[54] and may have,

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[5050] Transaction accounts generate revenue from sources not derived through fees to consumers. Depositories receive interchange from debit card swipes. While not a source of revenue, taking deposits creates value because they are a low-cost source of capital for banks. According to FFIEC Call Reports, other significant sources include maintenance fees, ATM fees, and other service fees.

[51] Walsh, Mary Williams. "Banks Took $11 Billion in Overdraft Fees in 2019, Group Says." *The New York Times*, June 3, 2020, sec. Business. https://www.nytimes.com/2020/06/03/business/banks-overdraft-fees.html.

[52] Stone, Corey, Dennis Chira, and Aaron Fine. "Beyond Overdraft: A Path to Replacing Unsustainable Revenue." Oliver Wyman, 2020. https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2020/jul/Beyond-Overdraft-Report-Finalpdf.pdf.

[53] Federal Deposit Insurance Corporation. "How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey." Washington, D.C.: Federal Deposit Insurance Corporation, December 17, 2021. https://www.fdic.gov/analysis/household-survey/index.html.

[54] Flitter, Emily. "Wells Fargo Closed Their Accounts, but the Fees Continued to Mount." The New York Times, August 16, 2019, sec. Business. https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html.

in some cases, re-opened accounts to accommodate new payment requests that led to new charges.[55] Although less common now, high-to-low check ordering was a common policy at many banks and credit unions for many years. This practice maximized the number of overdraft fees from a series of debits.[56] Some institutions would represent a payment request within a short period of time – perhaps on the same business day – to trigger a second overdraft or NSF fee.

Overly complicated fee structures undermine consumers.

The complexity of when and how overdraft fees are applied contributes to the confusion. Terms and conditions of accounts are far from uniform across different banks. In a market scan of checking account overdraft policies completed in 2015, terms and conditions were shown to vary substantially. Some banks placed a ceiling of one overdraft charge per day, but others permitted as many as ten charges in a single day. Some had overage cushions. Twenty-six of 39 scanned institutions charged an extended overdraft fee, with variations in the number of days between the initial charge and the new one.[57] It is rare to find an indication of these fees published on a website outside of the fine print disclosures.

Not surprisingly, the chances of receiving an overdraft will vary considerably among similarly situated low-balance households depending on where they bank. FFIEC data shows that while low-balance customers paid, on average, just $5.64 in fees at Citibank and $9.07 at Capital One in 2019, respectively, low-balance households were charged $56.98 and $43.71, respectively, at Regions Bank and Citizens Bank.[58]

By shifting away from "gotcha" fees, confidence in the banking system will grow among traditionally distrustful consumer segments.

Once overdraft credit is priced at rates that are reasonable and proportional to costs, banks will no longer have incentives to encourage consumers to experience overdrafts. Consumers who may have avoided banks before because of surprise fees or because they do not trust banks[59] may re-consider their view.

Banks rely on providing competitive deposit account services to attract deposits. Banks will find a way to offer overdraft services – even it is not profitable – to attract depositors.

Contrary to the alarms raised by industry voices, financial institutions will not eliminate offering overdraft products. The CFPB notes that 23 million households paid an overdraft fee in 2022. If consumers want to use an overdraft, then banks will offer some form of it to ensure they maintain access to deposits.

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[55] New, Catherine. "How Closed Is Your Bank Account?" *HuffPost*, February 10, 2012, sec. Business. https://www.huffpost.com/entry/zombie-checking-accounts-_n_1245065.

[56] Douglas-Gabriel, Danielle. "Big Banks Have Been Gaming Your Overdraft Fees to Charge You More Money." *Washington Post*, November 25, 2021. https://www.washingtonpost.com/news/wonk/wp/2014/07/17/wells-fargo-to-make-changes-to-protect-customers-from-overdraft-fees/.

[57] Rust, Adam. "How Banks Are Making Billions on Our Small-Dollar Mistakes." Reinvestment Partners, September 3, 2015. https://reinvestmentpartners.org/file_download/inline/271c3fd5-7ae9-42c0-bbbc-831f1693ec64.

[58] Klein, Aaron. "Getting Over Overdraft." *Milken Institute Review*, October 31, 2022. https://www.milkenreview.org/articles/getting-over-overdraft.

[59] Federal Deposit Insurance Corporation. "How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey." Washington, D.C.: Federal Deposit Insurance Corporation, December 17, 2021. https://www.fdic.gov/analysis/household-survey/index.html.

Because deposits are one of the lowest-cost sources of capital for banks, they are committed to developing attractive deposit account products. Deposits enhance the stability of financial institutions, both in terms of their soundness against runs and as the basis for long-term organic growth. A recent study found that US adults have, on average, used the same checking account for more than 17 years.[60] If the claims made by banks that consumers value overdraft services are correct,[61] then the industry will find a way to work within the structure of covered and non-covered overdraft products.

Retail deposits are safer than large-dollar uninsured deposit balances. With few exceptions, consumers do not store more than $250,000 in deposits in their checking accounts. As a result, almost all consumer deposits are fully insured. The closure of several banks in the spring of 2023 due to overly high concentrations of uninsured deposits affirmed the importance of retail deposits to banking franchises.

How overdraft fees destabilized the financial stability of a vulnerable consumer

The following account comes from an attorney representing a client who ultimately lost her home due to a cascading series of crises. The client's difficulties started when a scammer convinced her to send funds as a condition of receiving a sweepstakes payout. She lost her life savings of approximately $10,000 to the scammer. At the time, she had arranged to pay a monthly bill and life insurance premium through recurring ACH debits.

Joann Marie Given was 85 at the time and living on a monthly Social Security payment of less than $1,200 per month. For the last eight years of her career, she worked as a cashier at a grocery store in Lawrence, Kansas.

When her recurring ACH debits failed because of a lack of good funds, her account was debited for ACH return charges and daily overdraft fees.

Her attorney commented:

"Joann Marie Given resided in Lawrence, Kansas, for 25 years before she lost her home following a predatory telephone scam which drained her savings and saw multiple overdraft and other bank fees tacked onto her [account]. Her inability to pay rent caused her to leave [voluntarily, to avoid eviction] her subsidized housing and become homeless for a time. She was eventually able to find an apartment in another town in a nearby county (Tonganoxie, in Leavenworth County), but she misses Lawrence and is still trying to move back."[62]

As is frequently the case, several of the challenges faced by lower-wealth households combined to create a crisis. Ms. Given lives in a state where landlords can begin eviction proceedings against tenants who have not paid rent in three days.[63]

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[60] Wisniewski, Mary. "Survey: Consumers Stick With Same Checking Account For 17 Years." *Bankrate*, January 4, 2022. https://www.bankrate.com/banking/how-long-people-keep-their-checking-savings-accounts/.

[61] By Rob Nichols, President and CEO. "CFPB Proposed Rule to Limit Overdraft Protection." *American Bankers Association Press Release* (blog). Accessed May 4, 2024. https://www.aba.com/about-us/press-room/press-releases/cfpb-proposed-rule-to-limit-overdraft-protection.

[62] Gaston, Rebekah. Email Interview, May 7, 2024.

[63] "Kansas Eviction Laws: The Process & Timeline In 2024," August 1, 2021. https://www.doorloop.com/laws/kansas-eviction-process. Note: she was not evicted, but with the pressure the landlord had due to the law, she agreed to leave before being evicted.

If one of the covered overdraft structures listed in the proposed rule had been embedded in her account, Ms. Given may have been able to stay in her home.

The overdraft proposal will support pro-consumer competition in the marketplace.

At its core, the proposed rule establishes structures that will support competition. Rather than using business models that depend on deriving high shares of revenue from traditional "courtesy" overdraft fees, banks will have to compete on upfront prices and service quality. Consumers will benefit from the upfront pricing of overdraft credit. In the end, it will increase consumer trust in banking.

IV. Junk fees exist in many contexts. Consumers are paying to pay and paying to access their cash. Regulation and enforcement by the CFPB have addressed some harmful practices, including by repeat offenders, but junk fees continue to proliferate.

Credit card late fees, rental housing, and overdraft fees are only part of a broader problem. Junk fees are being charged for many types of financial services. Consumers are being "nickel and dimed."

Fees to receive an immediate payment.

Some companies are charging fees to disburse proceeds from short-term loans on the same business day as the loan approval. One area where this is occurring is earned wage advance (EWA) loans. By nature, EWA loans are supposed to meet short-term credit needs. They are issued against an employee's next wage disbursement, either directly through an employer-facilitated program or indirectly through a third-party app that captures an employee's banking details as a condition of the contract.

These are junk fees because they are charging a fee for a service that is essentially free to the provider. Same-day automated clearing house payment requests cost less than ten cents to the sending bank. Participating financial institutions can process an immediate real-time payment through the Clearing House Real-Time Payments Network or Fed Now for 4.5 cents.[64] In spite of that, several EWA providers charge between $1.99 and $3.99 to provide funds to consumers on the same day.[65]

Convenience fees to pay a bill online or by phone.

For debt collections: Under the Fair Debt Collection Practices Act, debt collectors are not permitted to charge "any amount, including any interest fee, or expense incidental to the principal obligation.[66] The CFPB has provided guidance and an advisory opinion[67] to resolve any lack of clarity on the subject. Some debt collectors had been charging fees to receive payments.

For student meal accounts: The CFPB found that some online payment platforms were adding a per-transaction fee for parents of students in kindergarten through 12th grade but did not disclose the existence

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[64] Board of Governors of the Federal Reserve. "FedNow Service 2024 Fee Schedule." Accessed September 13, 2023. https://www.frbservices.org/resources/fees/fednow-2024.

[65] Millerbernd, Annie. "What Is Earned Wage Access? Earned Wage Access Is a Company Benefit That Lets Employees Request Part of Their Paycheck before Payday." *NerdWallet* (blog), November 9, 2023. https://www.nerdwallet.com/article/loans/personal-loans/what-is-earned-wage-access.

[66] FDCPA section 808(1)

[67] Consumer Financial Protection Bureau. "Advisory Opinion: Debt Collection Practices (Regulation F); Pay-to-Pay Fees," June 2022. https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.

of a free alternative. This contradicted a rule that says all districts receiving federal school meal programs must provide a fee-free option.[68]

Fees to send money to incarcerated individuals.

Friends and relatives of incarcerated individuals cannot choose the provider through whom they send money to fund a commissary account. Instead, these providers sign exclusive contracts with prisons, penitentiaries, and jails.

Not surprisingly, a system without choice has permitted junk fees to flourish.

Release cards, also chosen through exclusive contracts with correctional institutions, would further drain funds. Upon release, prisoners would receive their "gate money" and outstanding commissary balances on prepaid "release" cards. These cards may have had high fees as well, including fees to withdraw cash and inactivity fees.

In 2021, the CFPB took action against one company to prevent these practices. As a result of the CFPB's order, the company will not be able to charge fees to release card accounts, with the exception of applying an inactivity fee after 90 days.[69]

Nonetheless, the same company still charges very high fees to send money. Exact amounts vary according to the contract negotiated by the money transmitter and the correctional institution. For example, it costs $9.95 to send $200 to an inmate's account at a federal prison. [70] As the funds are sent by ACH, the cost to the provider is less than ten cents. In our view, it is unlikely the fees could be so high if it were not for the fact that a third party determines the prices paid by consumers. Even worse, in some cases, a portion of the fee goes back to the state correctional institution.

Junk fees charged by student loan servicers

The CFPB found that some student loan servicers were holding students accountable when they failed to honor their policies for accepting payments by credit cards. Customer service representatives accepted credit card payments over the phone. When a subsequent check by the company rejected those payments, the servicers reversed the payments and charged a special fee for doing so. These practices meet the unfairness standard, as consumers could not have avoided the harm and there was not a benefit to the consumer or to competition.

Fees to Access Basic Information about Bank Accounts

Some financial institutions charge consumers when they ask for basic but essential account information. This information may be needed to dispute unauthorized transactions on their accounts, understand why their accounts have been frozen, or see records of who fraudulently cashed checks and money orders from

[68] "Junk Fees Update Special Edition." Supervisory Highlights, Fall 2023. https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf.

[69] Consumer Financial Protection Bureau. "CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-Enter Society After Incarceration," October 19, 2021. https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/.

[70] LLC, JPay, and JPay LLC Support@JPay.com. "Available JPay Services Send Money Rates." JPay LLC. Accessed May 5, 2024. https://www.jpay.com.

their accounts. Relatedly, some consumers indicate they have been charged fees to verify that disputed transactions were credited back to their accounts.[71]

The CFPB discovered that some financial institutions would charge an account a fee if paper statements were returned undelivered. Because this practice did not benefit the consumer or competition and because the consumer could not have known these fees were being charged because statements were not being delivered, the CFPB clarified that it was unfair.

Captive arrangements in health savings accounts

In environments where consumers do not have control over the choice of their financial provider, they often end up having to pay junk fees. Health savings accounts are one example. In some arrangements, employers pick health savings accounts for their employees. These accounts work with employer payroll systems. They receive funds through transfers of pre-tax wages from employers to affiliated debit card accounts. Some health savings accounts charge unusual fees. Such fees can include monthly maintenance fees, paper statement fees, outbound transfer fees, and fees to close an account. If a consumer does switch accounts, there may be “exit” fees.[72]

Junk Fees Associated with Loan Servicing: Auto loan servicing

CFPB examiners have found cases where auto loan servicers applied unfair junk fees to deposit accounts. Unlawful practices stemmed from procedural failures to keep correct records to illegal seizure of cards and ransoming of personal property found in repossessed cars.

For example, some services debit accounts for over $1,000 when they repossessed cars but then returned them after the consumer became current. They charged these high penalty fees even though the actual cost to the servicers was closer to $350.

As has occurred elsewhere, it was also a business practice to extract profits from processing payments. Sometimes payment processors paid kickbacks to the servicers.

Junk Fees Associated with Loan Servicing: Payday Lending

Many states have laws requiring payday lenders to offer free repayment plans.[73] Payday lenders have used junk fees to extract profits from borrowers who have entered repayment plans. These harms occurred in states where payday lenders are required to offer no-cost extended repayment plans. They also found cases where ACE attempted to debit accounts more times than permitted by their agreements with borrowers.

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[71] For an ex ample: Mobilization for Justice. “RE: [Docket No. CFPB–2022–0040] Request for Information Regarding Relationship Banking and Customer Service,” July 21, 2022. file:///C:/Users/AdamRust/Downloads/CFPB-2022-0040-0051_attachment_2.pdf.

[72] “CFPB Highlights the Hidden Costs of Health Savings Accounts.” Issue Spotlight. Consumer Financial Protection Bureau, May 1, 2024. https://www.consumerfinance.gov/about-us/newsroom/cfpb-highlights-the-hidden-costs-of-health-savings-accounts/.

[73] Consumer Financial Protection Bureau. “CFPB Finds Payday Borrowers Continue to Pay Significant Rollover Fees Despite State-Level Protections and Payment Plans.” Market Snapshot, April 6, 2022. https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-payday-borrowers-continue-to-pay-significant-rollover-fees-despite-state-level-protections-and-payment-plans/.

In July 2022, the CFPB took action against ACE Cash Express, a notable repeat offender, for concealing the right of borrowers to participate in a free extended repayment plan. The CFPB sued ACE Cash Express.[74]

Fees to withdraw cash at the point of sale

Many financial institutions have opted to reduce the number of branches they operate. Closures have been felt most acutely in rural and inner-city areas. Areas where branch closures have occurred are more likely to be poorer, to be composed of residents with fewer years of education, to be rural, and to have a greater proportion of Black households.[75] The loss of bank branches has had a dramatic effect in limiting access to banking services in communities of color.[76]

One result of the loss of branches has been to create "cash deserts." Without access to a bank ATM, have had few options to get cash. In rural areas, this has meant that consumers must drive longer distances to find an ATM. As an alternative, many have turned to local grocery and "dollar" stores. Historically, these outlets have offered cashback at the point of sale for free. However, in recent years, junk fees have gained a foothold here. Stores now charge 50 cents to one dollar to customers who ask for cash back at the point of sale.[77] The lack of access to branches and ATMs has created consumers who are vulnerable to price hikes. This vulnerability is ultimately a reflection of the lack of commitment by some financial institutions to meet the needs of low-wealth communities.

Part Three: The CARD Act shows how consumer financial protection can benefit consumers and competition.

The Credit Card Accountability Responsibility and Disclosure Act ("CARD Act") reformed credit card markets. It improved consumer protections for credit card markets without compromising access to credit.

The law sought to "establish fair and transparent practices related to the extension of credit under an open-end consumer credit plan." Its provisions removed several deceptive practices from the market that had been prevalent until then. It required that companies give consumers at least 21 days to pay their bills, prohibited retroactive interest rate increases, placed restrictions on the amount of fees that can be charged in an account's first year, required issuers to credit payments to debt with the highest rates of interest, and prevented sudden interest rate increases. It added an ability-to-repay standard and imposed opt-in requirements for over-limit fees.

[74] Consumer Financial Protection Bureau. "CFPB Sues ACE Cash Express for Concealing No-Cost Repayment Plans and Improperly Withdrawing Consumers' Funds," July 12, 2022. https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-ace-cash-express-for-concealing-no-cost-repayment-plans-and-improperly-withdrawing-consumers-funds/.

[75] Board of Governors of the Federal Reserve. "Perspectives from Main Street: Bank Branch Access in Rural Communities." Washington, D.C., November 2019. https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf.

[76] Kristen E. Broady, Mac McComas, and Amine Ouazad. "An Analysis of Financial Institutions in Black-Majority Communities: Black Borrowers and Depositors Face Considerable Challenges in Accessing Banking Services." *Brookings* (blog), November 2, 2021. https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/.

[77] Rubino, Joe. "King Soopers, Kroger to Charge 50-Cent Fee for Cash Back." *Denver Post*, December 11, 2019. https://www.denverpost.com/2019/12/10/king-soopers-and-krogers-new-50-cent-fee-for-cash-back-is-a-small-charge-that-could-really-add-up/.

The CARD Act also curtailed harmful practices for deep subprime accounts. The fee harvester provision addressed some of the most abusive subprime credit card issuing practices. In the runup to the financial crisis, a small segment of banks and non-bank technology providers marketed cards with small lines of credit and high fees. For example, the typical initial credit limit of an "Imagine Gold MasterCard" was $250. However, as a condition of opening the account, the consumer spent almost that much in fees. The bank charged a $50 annual fee, a $119 acceptance fee, and a $6 monthly participation fee. As a result, new accounts only had $75 in remaining credit. If the account holder spent more than the remainder of the line, they incurred a $29 over-limit fee.[78]

The CARD Act included two new protections related to late payments. First, it prevented "universal default" clauses, where an issuer could raise the interest rate of an open account, including on existing balances if the account holder missed a payment with a different creditor. Second, it placed a cap on the amount of late fees and created a standard that all late fees or over-limit fees should be "reasonable and proportional" to the relevant violation.

The CARD Act reduced the cost of credit
By 2012, the industry had largely stopped charging over-limit fees and repricing actions. The average over-limit charge had been $34.80.[79] Interestingly, banks responded to the restrictions on over-limit fees by largely abolishing them or ceasing to charge them when consumers spent beyond their limit. Whereas in 2008, 16.4 percent of accounts had an incidence of going over the credit limit, and slightly less than half of those incidences led to a fee, in 2012, only 12.8 percent of accounts went over the limit, and just 3.4 percent of those instances led to a fee. As a result, the share of accounts charged with an over-limit fee fell almost twenty-fold.[80] The CFPB estimated that the CARD Act saved consumers $9 billion in foregone fees between 2011 and 2014.[81]

By 2013, it was apparent that the CARD Act would have the effect of lowering the cost of credit, and the trend continued in the years to come. Interest rates charged on cards had fallen by two percentage points.[82]

As is the case now, trade groups protested against the rule. They insisted that new consumer protections would have negative impacts and emphasized that consumers would bear the costs. The industry emphasized how the CARD Act would lead to fewer rewards on cards.[83] Trade associations said that current existing regulations were fine, consumers understood disclosures as structured, pricing was

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[78] Jurgens, Rick, and Chi Chi Wu. "Fee-Harvesters: Low-Credit, High Cost Cards Bleed Consumers." National Consumer Law Center, November 2007. https://www.nclc.org/wp-content/uploads/2022/09/fee-harvesters-report.pdf.

[79] Consumer Financial Protection Bureau. "CARD Act Report: A Review of the Impact of the CARD Act on the Consumer Credit Card Market," September 2013. https://www.consumerfinance.gov/data-research/research-reports/card-act-report/.

[80] ibid

[81] ibid

[82] ibid

[83] White, Martha. "Wall Street Still Wants You to Think the CARD Act Is Bad." AOL Business, May 7, 2024. https://www.aol.com/news/2010-02-18-wall-street-still-wants-you-to-think-the-card-act-is-bad.html.

appropriate to risk, and new protections would reduce access to credit.[84] The industry claimed that the loss of fee revenue would reduce credit availability and lead to fee increases. The same claims are being made today about the credit card late fee rule. They are not defensible.

Credit card credit remained available after the implementation of the CARD Act.

The CARD Act did not compromise access to credit.

Credit card companies continued to seek to offer credit to new customers. The number of credit card solicitations sent in the mail (a metric of real-time supply of credit) surged. Whereas approximately 210 million solicitations were sent in q1 2010, almost twice as many were sent out in each of the second and third quarters of 2011. One uncertainty about these findings is the extent to which solicitations became less representative of demand over time due to increased marketing through online channels. However, if this is true, it only strengthens the conclusion about the market's vitality post-CARD Act.

Credit card companies continued to approve applicants. New openings of general-purpose credit cards (not private label) rebounded. Most of the gains occurred early on. In 2011 and 2012, new originations were almost the same.

Approval rates for all credit tiers came back after falling off during the financial crisis. Reflecting newfound conservatism, approval rates for all credit tiers were still not as high as during the period of freely-available credit before the financial crisis.

The total amount of available credit grew from $3.25 trillion in early 2012 to $3.5 trillion in early 2015. This represented a ten percent increase in available credit card credit lines.[85]

Curbing "back-end" fees led to a market with greater pricing transparency.

The market became more transparent, as well. Credit card agreements became shorter. Because back-end fees declined, it was easier for consumers to understand the true cost of credit. Interest rates and annual fees increased slightly, reflecting a shift toward upfront pricing and away from surprise back-end fees. Combined, the cost of credit (interest and fees as a percentage of outstanding balances) declined by almost 200 basis points.

When CARD Act protections made it harder for banks to apply high-cost back-end fees, the market shifted in favor of greater transparency.

Applying limits to back-end fees did not raise the cost of credit or result in real increases in annual fees.
While the number and amount of late and over-limit fees fell, card issuers did increase the average annual fee. However, the rate of the increase was less than two dollars, representing a price gain that fell below the rate of inflation. Moreover, as the CFPB points out, a market where fees are charged upfront through

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[84] Feddis, Nessa. Interviews - Nessa Feddis - The Card Game. PBS Frontline, September 15, 2009. https://www.pbs.org/wgbh/pages/frontline/creditcards/interviews/feddis.html.

[85] Consumer Financial Protection Bureau. "CFPB Finds CARD Act Helped Consumers Avoid More Than $16 Billion in Gotcha Credit Card Fees," December 3, 2015. https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-card-act-helped-consumers-avoid-more-than-16-billion-in-gotcha-credit-card-fees/.

annual fees is inherently more transparent compared to one where a higher share of fees are derived from "back-end" fees.[86]

Despite the loss of over-limit fees, issuers did not increase other penalty fees. After the rule was implemented, the average credit card late fee fell from $33.08 in 2008 to $23.13 in 2010.[87]

The CARD Act shows how the introduction of consumer protections will foster healthy markets.

Conclusion

Thank you for the opportunity to call attention to the issue of junk fees. Today, consumers transact in a marketplace where they are "nickeled and dimed" repeatedly. It is a financial crisis of thousands of nicks and cuts. In financial services, consumers are paying to use their money or to access their money. When they make a mistake, they are punished by fees that are priced well beyond the cost to companies. The system is harmful to everyone but more harmful to vulnerable low-wealth consumers and consumers of color.

The CFPB's campaign against junk fees will help consumers save money. The Consumer Federation of America is strongly supportive of the credit card late fees rule. Similarly, the CFPB should go ahead with its strong overdraft proposed rule because it prioritizes consumers above large financial institutions. It is also important to restate how the CFPB has tailored these rules carefully. The credit card late fees rule will only cover the largest issuers. As proposed, its overdraft rules will cover institutions with more than $10 billion in assets.

The Consumer Federation of America believes that a whole-of-government approach to junk fees can right the balance of power between consumers and sellers. When consumers shop for financial services or seek to rent a home, they will benefit from these initiatives. When making decisions to use a financial service or rent a home, consumers will be better able to comparison shop. The end goal of policymakers should be to encourage markets where price signals work because prices are all-in and disclosed upfront. Consumers deserve to keep their money. Moreover, for businesses that have been transparent and fair, these changes will put them on equal footing with their competitors.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Adam Rust
Director of Financial Services
Consumer Federation of America

[86] Consumer Financial Protection Bureau. "Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees," January 26, 2022. https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/.

[87] Consumer Financial Protection Bureau. "CARD Act Report: A Review of the Impact of the CARD Act on the Consumer Credit Card Market," September 2013. https://www.consumerfinance.gov/data-research/research-reports/card-act-report/.