



April 11, 2022

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

Submitted via <https://www.regulations.gov>

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, Docket ID CFPB-2022-0003 (February 2, 2022)

Dear Sir/Madam:

The undersigned Attorneys General submit this comment in response to the Consumer Financial Protection Bureau’s (“CFPB”)’s Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (“RFI”).¹

The undersigned are ready to cooperate and coordinate with the CFPB to advance its statutory purpose of “ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”² We believe that the interests of consumers and consumer financial services markets are best served when government agencies and authorities, both state and federal, work together. Based on our review of the RFI, however, we fear the CFPB may hold a different view, one which is predicated on the primacy of the CFPB.

This approach is especially troubling in the context of this RFI, which pointedly fails to acknowledge the significant role state law plays in many aspects of the fees implicated by the RFI. Unfortunately, the only role the CFPB contemplates for states is to provide comments to the RFI, along with consumers, consumer advocates, and industry.

The undersigned will continue to advocate for a different approach guided by respect for and understanding of the states’ important role in the regulation of fees in consumer financial services markets as well as a recognition of the CFPB’s limited authority to regulate these fees.

¹ 87 Fed. Reg. 5801 (Feb. 2, 2022).

² 12 U.S.C. § 5511(a).

I. The RFI fails to acknowledge that in many cases, state law appropriately regulates fees and expenses in consumer financial products or services, potentially rendering additional federal oversight duplicative.

The CFPB requests further information about “junk fees—exploitative, back-end, hidden, or excessive fees.”³ The RFI, however, is drafted so broadly as to cover almost any fee charged to a consumer in connection with a consumer financial service transaction. The RFI, for example, identifies objectionable fees as “...inflated or surprise fees that, however nominally voluntary, are not meaningfully avoidable or negotiable in the moment.”⁴ This language suggests the CFPB is predisposed to create a subjective standard for the identification of problematic fees, and appropriate to itself the sole authority to determine which fees are acceptable and which are not.

Most significantly to the undersigned, the broad and subjective language of the RFI potentially covers any number of fees, including those specifically authorized or regulated by state law. Further, the broad language used in the RFI suggests that the CFPB may intend to exercise its authority to impose substantive limits on fees charged in consumer financial service markets, including, potentially, fees authorized or otherwise regulated by state law.

State contract law provides the foundation for the relationship between a consumer and a consumer financial services provider. For more than one hundred years, states have imposed substantive limitations on consumer financial services contracts, including but not limited to usury and rate limits, disclosure requirements, default requirements and remedies, and have imposed licensing requirements on consumer financial services providers. States have also specifically authorized the imposition of many types of fees.

In imposing these substantive limits on consumer financial services, and in authorizing and regulating fees, state legislatures and regulators have carefully weighed consumer protection interests and the open and transparent operation of markets in a manner intended to deliver the maximum benefit to the interests of their states. State legislatures and regulators are much better positioned to understand and assess the diverse interests of their states. This is particularly true with respect to the authorization and regulation of fees, as state authorities have a deep understanding of and interest in the particular economic circumstances of their state and the impact of fees on their state’s consumers and markets.⁵

Some of the fees specifically authorized by state law include the imposition of late fees in some consumer financial services transactions,⁶ the imposition of NSF fees,⁷ the imposition of

³ 87 Fed. Reg. 5801, 5802 (Feb. 2, 2022).

⁴ *Id.*

⁵ See Howard Beales & Todd Zyckicki, *Junk fees or junk policy?*, TheHill.com (March 21, 2022), <https://thehill.com/blogs/congress-blog/politics/599085-junk-fees-or-junk-policy?fbclid=IwAR0HeLrnsc5GrGjHpHy74rz5PYLzVXx29dgOSnqi66mMhsdq1kOjkiU1qWc>.

⁶ Utah Code § 70C-2-102(1); Ala. Code § 5-19-4(a), Idaho Code § 28-42-301(1) & (3).

⁷ Utah Code § 7-15-1(2)(b); Mont. Code Ann. § 27-1-717, Tenn. Code Ann. § 47-29-102.

application fees,⁸ the imposition of administrative fees,⁹ as well as modification and deferral fees.¹⁰

Additionally, state law often specifically permits consumer financial services providers to recover or pass through “official” fees incurred, for example, in connection with the recordation of liens, titling or similar expenses.¹¹ Presumably, the CFPB does not intend to limit the ability of states and local governments to charge these fees or of consumer financial services providers to recover expenses arising from these fees.

State laws also provide specific disclosure requirements for some of the fees described above. For example, late fees authorized by state law are often subject to clear disclosure requirements which mandate disclosure of the amount of the fees, as well as the specific circumstances in which they may be charged.¹²

State regulators conduct regular, comprehensive examinations of regulated financial services providers to ensure that the amount of fees being charged is correct, the circumstances in which the fees are being charged are permissible and the fees are adequately disclosed.

In the event a consumer financial services provider fails to comply with substantive requirements relating to fees, state regulators and state attorneys general stand ready to enforce applicable state law. Also, in the event a consumer financial services provider misleads consumers about the existence, amount, or conditions under which a fee will be charged, state regulators and state attorneys general may take action under state laws, including state laws prohibiting unfair or deceptive acts or practices.¹³

II. The CFPB’s authority to regulate fees in consumer financial services markets is limited.

The purpose, objectives and functions of the CFPB¹⁴ and the specific authorities¹⁵ of the CFPB as set forth in federal law do not provide a clear basis for the CFPB to set the amounts of fees charged in the consumer financial services market. Further, Congress explicitly prohibited the CFPB from setting a usury limit,¹⁶ thus suggesting the CFPB should have no role in setting prices in consumer financial services markets.

The CFPB has some authority to use its rulemaking authority to impose substantive disclosure requirements in connection with consumer financial services and products.¹⁷ However, in the RFI, the CFPB ignored numerous instances of existing federal disclosure

⁸ 14A Okla. Stat. § 2-202(1)(d).

⁹ Tx. Fin. Code §342.308(a)(9).

¹⁰ Conn. Gen. Stat. § 36a-784.

¹¹ Alaska Stat. § 45.10.220(5), Fla. Stat. Ann. § 520.07(3), Fla. Stat. Ann. § 520.02(13).

¹² Colo. Rev. Stat. § 5-2-203(4)(a).

¹³ See, e.g., Kan. Stat. § 50-626(a), -627.

¹⁴ 12 U.S.C. § 5511.

¹⁵ 12 U.S.C. § 5531, et seq.

¹⁶ 12 U.S.C. § 5517(o).

¹⁷ 12 U.S.C. § 5511(b)(1), 12 U.S.C. § 5532(a).

requirements relating to fees charged in consumer financial service transactions. For example, Regulation Z requires disclosure of late fees in connection with an application for a credit card account;¹⁸ Regulation DD requires disclosure, upon request, of overdraft and NSF fees in connection with the opening of a deposit account;¹⁹ and Regulation E requires disclosure of certain fees in connection with prepaid accounts.²⁰

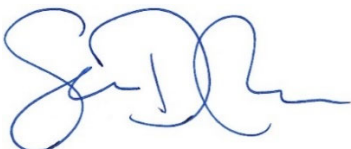
The CFPB in the RFI also specifically expressed concern with the cost of title insurance in mortgage transactions. Like many other insurance products, title insurance is regulated by many states and the CFPB is specifically prohibited from regulating the business of insurance.²¹

The CFPB may seek to use its authority to prohibit unfair, deceptive or abusive acts or practices²² to regulate fees. It is unclear, however, that fees disclosed in accordance with state or federal law, in some cases authorized by state law, and agreed to by a consumer in writing constitute “unfair, deceptive or abusive” fees, notwithstanding the CFPB’s characterization of some fees as “not meaningfully avoidable or negotiable” at the time they are assessed.

We strongly encourage the CFPB to abandon its apparent determination to adopt an uncooperative posture on this topic. Instead, the CFPB should coordinate and cooperate with state authorities to understand the scope and significance of existing state laws and regulations and to determine where federal action is duplicative or unwarranted. Also, the CFPB should adopt an approach which recognizes the limits on its statutory authority as well as existing federal disclosure requirements. Otherwise, the CFPB risks acting in a manner which may require an unfounded expansion of its authority and may result in the adoption of a top-down approach which may infringe on state law and may fail to respect the diverse needs of the citizens of many states.

Thank you for the opportunity to provide comments. If you have any questions, please contact the Office of the Utah Attorney General.

Respectfully submitted,



Sean D. Reyes
Utah Attorney General



Ken Paxton
Texas Attorney General

¹⁸ 12 C.F.R. § 1026.6.

¹⁹ 12 C.F.R. § 1030.11.

²⁰ 12 C.F.R. § 1005.18 (CFPB’s authority to adopt this rule is currently under review in the D.C. Circuit. *See PayPal Inc. v. CFPB*, Case No. 21-5057.)

²¹ 12 U.S.C. § 5517(m).

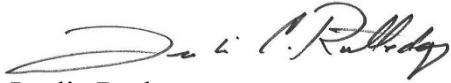
²² 12 U.S.C. § 5531.



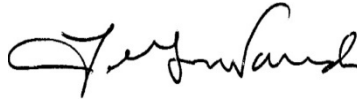
Steve Marshall
Alabama Attorney General



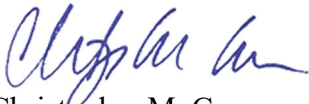
Mark Brnovich
Arizona Attorney General



Leslie Rutlege
Arkansas Attorney General



Lawrence Wasden
Idaho Attorney General



Christopher M. Carr
Georgia Attorney General



Todd Rokita
Indiana Attorney General



Daniel Cameron
Kentucky Attorney General



Jeff Landry
Louisiana Attorney General



Lynn Fitch
Mississippi Attorney General



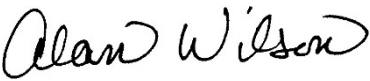
Austin Knudsen
Montana Attorney General



Dave Yost
Ohio Attorney General



John M. O'Connor
Oklahoma Attorney General



Alan Wilson
South Carolina Attorney General



Jason R. Ravensborg
South Dakota Attorney General



Patrick Morrissey
West Virginia Attorney General