CFPB Issues Report on Unlawful "Junk Fees "

March 13, 2023

The Consumer Financial Protection Bureau (CFPB) has released a special version of its Supervisory Highlights report (Report) addressing what the agency considers to be unlawful "junk fees" charged by financial institutions to consumers. The Report summarizes CFPB examination results that found "junk fees" associated with deposit accounts, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing. The Report describes "junk fees" as "unnecessary charges that inflate costs while adding little to no value to the consumer. Theses unavoidable or surprise charges are often hidden or disclosed only at a later stage in the consumer's purchasing process or sometimes not at all."

A summary of the CFPB's specific findings is set forth below.

I. The Report

Deposit Accounts

CFPB examiners identified instances of depository institutions charging unlawful "junk fees" on consumer deposit accounts. Specifically, CFPB examiners found some financial institutions charged:

- **Surprise overdraft fees**: Institutions assessed unfair overdraft fees by authorizing a debit that was made with a positive balance, but later charging an overdraft fee because of intervening transactions that were processed before the debit settled (i.e., APSN overdraft fees).
- **Multiple non-sufficient funds (NSF) fees**: Institutions charged customers multiple NSF fees for a single item that was presented for payment multiple times, potentially as soon as the next day. The institutions are making appropriate restitution to consumers. CFPB examiners have reviewed NSF fee assessment at numerous institutions, and majority of those institutions have decided to forego NSF fees altogether.

The CFPB anticipates engaging in further follow-up work on both multiple NSF fee and APSN overdraft fee issues. The CFPB encourages institutions to self-assess their compliance with federal consumer financial law, self-report to the CFPB when they identify likely violations, remediate the harm resulting from these likely violations, and cooperate above and beyond what is required by law with these efforts.

Auto Loan Servicing

CFPB examiners discovered improper servicing activities over the past six months on auto loans, particularly those involving the collection of unauthorized late fees and estimated repossession fees, which included charging car owners:

- **Out-of-bounds and fake late fees**: Servicers charged late fees that exceeded the permissible amounts stated in borrowers' contracts. Servicers also charged late fees to consumers whose cars had been repossessed and their loans accelerated, which means that no payment was due that could have been subject to a late fee.
- **Inflated estimated repossession fees**: Servicers, before returning vehicles to some consumers, charged inflated estimated repossession fees of $1,000. The average cost to repossess a vehicle is $350.
- **Pay-to-pay payment fees and kickback payments**: After borrowers were locked into servicer relationships, some auto loan servicers charged payment processing fees for the most common payment methods that far exceeded servicers' costs for processing payments. Payment processors collected the inflated fees, and the servicers then profited through kickbacks from the processors.

Mortgage Loan Servicing

In conducting mortgage servicing examinations, CFPB examiners identified several violations related to "junk fees," including the following:

- **Excessive late fee amounts**: Mortgage servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts allowed by their loan agreements. They charged the top late fee amount allowed by relevant state laws, even when homeowners' mortgage contracts capped late fee amounts below state maximums. Mortgage servicers also violated Regulation Z[1] by issuing periodic statements that included inaccurate late payment fee amounts, since they exceeded the amounts allowed by the loan agreements.
- **Fees for unnecessary property inspections**: Mortgage servicers charged consumers $10 to $50 fees for every property inspection visit to addresses that were known to be incorrect. Servicers continued to pay inspectors to go to the known incorrect addresses and continued to charge consumers for those visits.
- **Fake Private Mortgage Insurance (PMI) premium charges**: Servicers included monthly PMI premiums that homeowners did not owe in their monthly periodic statements and escrow disclosures. These consumers did not have borrower-paid PMI on their accounts; instead, the loans were originated with lender-paid PMI, which should not be billed directly to consumers. After receiving these statements and disclosures some consumers made overpayments that included these amounts.
- **Failure to waive fees for homeowners entering some loss mitigation options**: Mortgage forbearance under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) prevented servicers from imposing late fees while it was in effect, in addition to covering the principal and interest on a mortgage. For homeowners that exited forbearance and entered permanent COVID-19 loss mitigation alternatives, the Department of Housing and Urban Development (HUD) placed additional safeguards in place. These include waiving specific fees or other costs that accumulated outside of forbearance periods. However, CFPB examiners found that some servicers failed to adhere to HUD's additional protections, and charged homeowners late charges, fees, and penalties that should have been waived.
- **PMI overpayments**: The Homeowners Protection Act (HPA) requires that servicers automatically terminate PMI when the principal balance of the mortgage loan is first scheduled to reach 78 percent of the original value of the property based on the applicable amortization schedule. Examiners found that servicers violated the HPA when they failed to terminate PMI on the date the principal balance of the mortgage was first scheduled to reach 78 percent loan-to-value on a mortgage loan that was current. As a result, consumers made overpayments for PMI that the servicers should have cancelled.
- **Late fees after sending periodic statements listing a $0 late fee**: Servicers sent periodic statements to consumers in their last month of forbearance that incorrectly listed a $0 late fee amount for the subsequent payment, when a late fee was in fact charged if a payment was late.

Payday and Title Lending

The CFPB identified ways that short-term, high-cost payday and title loan lenders have been profiting off unlawful fees. Specifically, CFPB examiners found that payday and title lenders charged:

- **Represented split payments**: Lenders, in connection with payday, installment, title, and line-of-credit loans, after unsuccessful debit attempts, split missed payments into as many as four subpayments and simultaneously or near-simultaneously represented them to consumers' banks for payment via debit card.
- **Vehicle repossession and property retrieval fees**: Some borrowers were charged repossession fees as well as fees to retrieve personal property found in repossessed vehicles, which sometimes included lifesaving medical equipment. The borrowers' loan agreements did not allow the lenders to charge these fees.
- **Vehicles being repossessed with fees tacked on despite prior payment arrangements**: Lenders repossessed vehicles despite having entered into payment agreements with borrowers to allow them to avoid repossession. When borrowers went to reclaim their vehicles, they were forced to pay repossession fees as well as forced to refinance their debts - a practice which generally adds new costs to the initial title loan principal.

Student Loan Servicing

CFPB examiners found that student loan servicers engaged in unfair acts or practices by initially processing payments but then later reversing those payments, leading to additional late fees and interest for consumers. Although the servicers' policies did not allow student loan payments to be made with a credit card, customer service representatives erroneously accepted credit card payment information from some consumers over the phone and then processed those credit card payments. Subsequently, the servicers manually reversed the payments because they violated their policies. As a result, consumers became delinquent on their accounts and suffered substantial injury in the form of late fees, negative credit reporting, and additional accrued interest.

II. Conclusion

Given the CFPB's focus on unlawful "junk fees," it is important that financial institutions understand and comply with applicable laws and regulations, as well as regulatory guidance such as the Report. Fee income of all kinds will remain under regulatory scrutiny for the foreseeable future, and financial institutions will need to evaluate how to update their current policies to prevent the charging of unlawful "junk fees."

This advisory is a general overview of the Report and is not intended as legal advice. The Report is very detailed and must be reviewed in its totality.

If you have any questions about unlawful "junk fees," please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Gabriela Morales at (516) 357-3850 or via email at gmorales@cullenllp.com.

Footnotes

[1] 12 C.F.R. § 1026.41(d)(1)(ii).

Practices

- Banking and Financial Services
- Regulatory and Compliance

Attorneys

- Joseph D. Simon
- Kevin Patterson
- Elizabeth A. Murphy
- Gabriela Morales