



April 11, 2022

Via <https://www.regulations.gov/> and e-mail

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

Attention: CFPB Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (Docket No.: CFPB–2022–0003)

Dear Director Chopra:

AARP, on behalf of our 38 million members and all older Americans nationwide, appreciates the opportunity to submit comments in response to the Consumer Financial Protection Bureau’s (“Bureau”) request for comments related to fees that are not subject to competitive processes that ensure fair pricing. As the largest nonprofit, nonpartisan membership organization representing people age 50 and older, AARP is pleased to offer its views on protecting older Americans from the negative impact of “junk fees.”

In 2021, the banking industry reported net income of \$279.1 billion, up \$132.0 billion (89.7 percent) from 2020.¹ Overall, according to the FDIC, “the banking industry remains well positioned to support the country’s credit needs as the economy continues to recover from the pandemic, with record deposits, favorable credit quality, and strong capital levels.”² This does not account for burgeoning revenue from financial services providers throughout the non-bank and “fintech” lending and payment ecosystem. It is against this backdrop that AARP applauds the Bureau for examining “junk fees” across the consumer financial landscape and urges the Bureau to act decisively to reign in anti-consumer practices.

The Bureau Should Crack Down on Confusing and Excessive Fees that Plague Key Aspects of Consumer Banking and Lending Services.

From ATM fees to overdraft fees to maintenance fees, banks, credit unions, and other financial services providers have various methods of collecting revenue by way of consumer directed fees, including:

¹ Press Release: FDIC-Insured Institutions Reported Net Income of \$63.9 Billion in Fourth Quarter 2021. March 1, 2022. <https://www.fdic.gov/news/press-releases/2022/pr22022.html>

² Ibid.

- **Overdraft and NSF fees**

For too long, banks and credit unions have profited by charging excessive overdraft and non-sufficient fund (NSF) fees that can trap older Americans in a debt cycle or force them to leave the financial mainstream. Overdraft and NSF fees are among the most expensive and common fees charged by banks. The national median overdraft fee is \$30, according to Moebs Services' most recent survey of 3,309 depositories. According to the Bureau, in 2019 bank revenue from overdraft and NSF fees surpassed a combined \$19 billion. Consumers paid an estimated \$11.68 billion in overdraft-related fees in 2019, according to a report released in June by the Center for Responsible Lending.³

After decades of relying on overdraft and NSF fees as a significant source of revenue from consumer banking services, a handful of large banks recently reduced the size of their overdraft fees or eliminated them altogether. This is a welcome development.⁴ Yet as of January 2022, a dozen of the 16 largest retail banks still charged overdraft fees ranging from \$34 to \$37.50.⁵ While AARP appreciates that tangible progress is being made to curtail overdraft and NSF fees, much more work remains to be done, and we strongly urge the Bureau to take action to protect consumers from harmful overdraft practices.

- **Fees for year-end banking or spending summaries**

Banks and credit unions should provide customers with year-end banking and spending summaries free of charge. The information in such summaries can be useful to consumers and older Americans in putting together next year's budget and analyzing their spending habits for the year if question. Consumers often need these documents when they are preparing their taxes, as year-end statements typically itemize your expenses in various categories. This is a standard service that is free of charge at most banks and financial institutions, but not at all banks and institutions. The Bureau should take steps to ensure that such information is uniform and free to access across all depository institutions.

- **Fees for Account Inactivity**

There are a variety of reasons older American may not access their checking or savings account as often as other Americans. Since a slowdown in account activity does not impose a greater administrative cost on a financial institution, consumers should not be assessed "inactivity fees" for not spending as frequently as their banks or other financial institutions might prefer.

The Bureau Should Target Commercial Business Models that Rely Heavily on Fees, Especially Mandatory or Hidden Fees.

- **Credit Card Late Fees**

While AARP applauds the progress the Bureau has made in reducing the frequency of certain credit card fees, we urge the agency to redouble its effort to bring these abuses to an end.

³ CRL Report "Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis." June 2, 2022.

<https://www.responsiblelending.org/es/research-publication/banks-must-stop-gouging-consumers-during-covid-19-crisis>

⁴ For example, in January of this year Bank of America, the nation's second-biggest bank (ranked by total assets) recently announced that it would eliminate all NSF fees and plans to reduce its overdraft fee from \$35 to \$10 beginning in May. (Press Release: "Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees." <https://www.prnewswire.com/news-releases/bank-of-america-announces-sweeping-changes-to-overdraft-services-in-2022-including-eliminating-non-sufficient-funds-fees-and-reducing-overdraft-fees-301458229.html>)

⁵ "Banks Starting to Cut Hated Overdraft Fees." AARP. January 13, 2022. <https://www.aarp.org/money/investing/info-2022/banks-cut-overdraft-fees.html>

Credit card late fees are penalties charged to accountholders in addition to interest when a cardholder does not make the minimum payment by the due date. These fees are a prime example of the type of “back-end fees that obscure the true cost” of products and services that the Bureau has correctly labelled “junk fees” in its recent RFI. The cost to consumers from “late fees” is remarkably high. The Bureau recently estimated that in 2019 alone lenders generated approximately \$12 billion in revenue for credit card issuers. Moreover, such credit card late fees are pernicious because data shows that credit card late fees disproportionately burden consumers in low-income and majority-Black neighborhoods. In fact, in 2019, the Bureau estimated that credit card accounts held by cardholders living in the United States’ poorest neighborhoods paid twice as much on average in total late fees as those in the richest areas. The Bureau recently stated that it expects some “large issuer to hike fees further” in the years ahead. Therefore, AARP encourages the Bureau to restrict these fees and ensure they are not disproportionately harming lower income communities.

- **Assisted Living Fees**

The cost of moving into many assisted living facilities remains unclear to potential residents and families. The facilities will usually agree that their fees include a safe and secure place to live and usually a meal plan. However, the details of assisted living provider agreements may not always be required to be presented in writing, leading some residents to move into a facility without a full understanding of the true cost. This can happen easily because many of the supportive services residents plan to rely upon are sometimes offered a la carte as add-ons, and the number of supportive services and the cost for these may be relatively unknown to the potential resident and their families. Even the provider’s staff may not fully grasp the cost until the resident moves in and begins relying on the facility for care.

These fees can quickly inflate the true cost of these facilities to a much higher than their initial estimate. Personal care services (i.e., help with bathing and dressing), keeping track of and administering medications, and providing transportation for medical appointments often come with an additional charge. As such, one of the consequences of misleading fees for older Americans is that assisted living providers can obfuscate the fact that in-home care may be a more economical option for older people who want to remain in their own homes but need extra help.⁶

The CFPB’s Consumer Complaint Portal Is an Excellent Window into the “Fee Economy”. Expanding Awareness of the Consumer Complaint Portal, and the Utility of the Data Collected, Will Help Identify Junk Fees Impacting Older Americans.

Eleven years after its creation, the Consumer Complaint Portal and Database serves as a powerful tool for individuals to file complaints about a financial product or service, to see that their voices are heard, and in some cases to obtain relief. Its publicly available data makes it an important tool for stakeholders including policy makers, regulators, and financial companies seeking to improve their product design. Among complaints published by the Bureau since its inception, over 130,000 have come from consumers who self-identified as being age 62 or older – the Bureau’s statutory definition of older adults.

As the Bureau notes in its request for information, consumers can only realize the benefits of competition if companies transparently advertise the true price of their products or services, and the full price is subject to the competitive process.⁷ The wealth of information captured directly from older Americans and other consumers via the Portal is an invaluable window into anticompetitive and anti-consumer practices across the financial

⁶ <https://www.aarp.org/money/budgeting-saving/info-2015/hidden-cost-items-photo.html#slide12>

⁷ Federal Register / Vol. 87, No. 22 / Wednesday, February 2, 2022 / Notices. P. 5801

services industry, including with respect to “junk fees.” We believe the information in this database also provides a good starting point and roadmap for the Bureau’s effort to understand America’s “fee economy” and to take steps to curtail abusive, excessive, and harmful practices.

Since 2018, the largest share of older adult complaints have concerned credit reporting, with about one-quarter of all complaints in this category, which includes a wide range of personal consumer reports that may be used for banking, employment, insurance, or other commercial purposes, as well as companies that offer credit repair services.⁸ Meanwhile, credit or prepaid card complaints have grown as a share of older adult complaints in recent years, forming the second largest category for 2020 (23 percent) and the third largest category in the first six months of 2021 (19 percent). Older adults’ complaints about debt collection have declined somewhat in recent years as a relative share of all complaints, from 17 percent in 2018 to 12 percent in 2020 and early 2021. Complaints about banking products such as checking or savings accounts have ranged from 9 percent to 13 percent between 2018 and early 2021, placing them in fifth place for the first three years and narrowly overtaking debt collection for fourth place in the first half of 2021.⁹ A smaller share of complaints deal with other product areas, such as money transfers, payday and title loans, student loans, and vehicle loans.¹⁰ Emerging trends appear in the data as well, including a small but growing number of complaints about scams and fraud within virtual currency, and money service businesses.

- **Awareness of the Complaint Portal Among Older Americans and Advocates**

The Bureau should undertake enhanced outreach to community organizations, researchers, and advocates, about the complaint portal. The Bureau should similarly continue to take steps to make the data more accessible to the public, and specifically to older Americans. Such an effort has the potential to increase both the number of complaints received and their value to policymakers.

- **Collection of Demographic Data**

The true number of complaints coming from older adults is unclear since respondents are not required to give their age.¹¹ In addition to this data gap resulting from optional age disclosure, demographic data from Bureau complaints contain other gaps, including data by race and ethnicity.¹² Given the limitations of demographic data collection from the complaint portal, the Bureau should encourage complaint filers to provide age and other demographic information. Such information is critical for use in identifying whether people are being treated differently in the financial marketplace as a result of their age, race, or ethnicity. This would enable the Bureau’s Office for Older Americans to analyze important data for the population they serve. Since 74 percent

⁸ Valenti, Joe. Financial Pain Points for Older Consumers: A Look at the CFPB Complaint Database. Washington, DC: AARP Public Policy Institute, September 2021. <https://doi.org/10.26419/ppi.00147.001>

⁹ Some of these trends may reflect pandemic-related relief as well as limits on debt collection activity in certain jurisdictions, particularly while courthouses remained closed or operating at below pre-pandemic capacity.

¹⁰ Ibid, Valenti.

¹¹ 12 USC §5493 (g)(1). People filing complaints with the CFPB have the option to give their age and self-identify as an older adult, a service member, or both; this is the only available age-based distinction in these data. In this paper, “Older Adult” complaints refer to any record in the complaint database where the “Tags” field contains either “Older Adult” or “Older Adult, Servicemember.” According to the CFPB, 26 percent of complaints in 2020 included the complainant’s age (whether over or under 62), of which only those 62 or older were reported publicly. Consumer Financial Protection Bureau, “2020 Consumer Response Annual Report,” March 2021. https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf

¹² Although data is not directly available, a 2021 study by the Bureau found that, in general, more diverse counties—specifically, where more than 60 percent of the population was Hispanic or non-White—filed more complaints overall, and that this trend was evident across many major financial products. See Consumer Financial Protection Bureau, “Complaint Bulletin: County-Level Demographic Overview of Consumer Complaints,” April 2021, https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_county-level-demographic-overview-consumer-complaints_2021-04.pdf

of complaints did not contain age data in 2020, this is clearly an area in need of attention. Data for other demographic dimensions should also be collected and used for investigation.

The Bureau Should Take Steps to Expand Access to Basic Banking Services and Reduce the Exposure of Older Americans to Junk Fees.

The financial security of older adults varies tremendously from those who have access to bank or credit union accounts, mobile banking, and credit cards to those who may lack bank accounts entirely. When people lack access to banks, they often end up using alternative financial services (non-banks) that offer check cashing services, money orders, payday loans, auto title loans, and other products. Consumers pay higher costs for these services. In the case of payday and auto title loans, consumers typically pay triple-digit annual percentage rate (APRs) and frequently find themselves trapped in a spiral of high-cost debt. Ironically, people with the lowest incomes, who cannot afford to pay higher prices, are the ones who end up paying the most for financial services.¹³

Bank accounts are a basic, but critical, financial product. Without an account, consumers may ultimately end up paying twice for the most basic of tasks: first to convert paper checks to cash and again to purchase money orders or pay bills in person.¹⁴ The fees charged for these services can add up to hundreds or even thousands of dollars a year, not to mention the demands on users' time and travel.¹⁵ Simply put, people without bank accounts face added costs, risks, and obstacles in an environment where electronic payments take precedence over cash. Meanwhile, alternative sources of credit run the risk of trapping vulnerable borrowers deeper in debt. And yet, despite this knowledge, so much more remains to be done. In 2019, the most recent year for which comprehensive FDIC data is available, an estimated 5.4 percent of U.S. households (approximately 7.1 million) were “unbanked,” meaning that no one in the household had a checking or savings account at a bank or credit union.¹⁶ This figure is estimated to include as many as 3.5 million households headed by someone age 50 or older. When combining this unbanked population with households that have accounts but still use some alternative services such as check cashers or payday lenders, these numbers rise to nearly 33 million households, a figure that has been estimated to include as many as 14.7 million households 50 and older. Accordingly, the Bureau and financial institutions should explore steps to better ensure that basic financial products are widely available, affordably priced, and demonstrably safe for all consumers. Banking access provides an opportunity to keep money safe, access it when needed, and to put some money aside for an emergency or for other long-term goals such as saving for a down payment on a house, for college, or for retirement.

- **Emphasize Financial Inclusion**

Financial inclusion means providing access to high-quality financial products to all people, regardless of age, race, ethnicity, gender, sexual orientation, geography, family status, ability level, or income.

¹³ Testimony of Lori A. Trawinski, PH.D., CFP®, CCDP/AP on Behalf of AARP at U.S. Senate Special Committee on Aging on “Unbanked and Credit invisible: Building Financial Inclusion for America’s Underserved Populations” March 17, 2022 Washington, DC. Accessible at https://www.aging.senate.gov/imo/media/doc/Testimony_Trawinski%2003.17.22.pdf

¹⁴ “It’s Expensive to Be Poor,” The Economist, September 3, 2015. <https://www.economist.com/united-states/2015/09/03/itsexpensive-to-be-poor>

¹⁵ Check-cashing fees are generally capped by state law and often depend on the type of check. The overall transaction cost of being unbanked varies based on the specifics of a customer's financial situation and habits but can add up to hundreds or even thousands of dollars annually in fees.

¹⁶ 2019 FDIC Survey of Household Use of Banking and Financial Services. <https://www.fdic.gov/analysis/household-survey/index.html>

These financial products should meet an individual's needs in a range of areas, including banking transactions, payments, savings, credit (including credit cards, mortgages, auto loans, etc.), and insurance. Financial inclusion also requires protections for all consumers, particularly people with diminished capacity and other vulnerable consumers, who are often targets for financial exploitation and abuse. Increasing use of technology to conduct financial transactions allows access for more people, but the speed with which these transactions occur makes consumer protections more critical than ever.

- **Maximize Access to Bank Branches**

Even as electronic access grows, branches continue to remain vital as resources for customers who may still rely largely on cash or use services that are unavailable remotely. Bank branches' role is clear in providing financial access to everyone, especially older adults. Yet, the number of branches across the United States declined by 5.1 percent between 2017 and 2020,¹⁷ a new analysis of regulatory data finds, with some communities – both urban and rural – experiencing far deeper declines.¹⁸ As COVID-19 began spreading, some branches closed temporarily, while others only offered services by appointment or through a drive-up window.¹⁹

- **Ensure consumers the option of basic, low cost, low fee products**

Finally, all banks and credit unions should be required to offer a basic, low-cost, no overdraft fee product. The FDIC has already drafted requirements for these types of accounts. The American Bankers Association has called on all banks to offer them.²⁰ The Bureau should seek to require this basic floor of protection.

Expanded Access to Affordable Credit Will Reduce the Exposure of Older Americans to Junk Fees.

Affordable credit provides an opportunity to help a person smooth their income vs. consumption needs throughout their life, by helping them purchase items that they cannot pay for outright, such as a college education, a house, or a car. Unfortunately, dramatic disparities exist in credit markets. While credit makes it possible for households to pay for goods and services upfront and can smoothen expenses over time, the price and quantity of credit can vary tremendously.²¹

People who lack a credit score or who have a low credit score are affected not only when they try to obtain credit, but also when seeking employment, rental housing, or buying auto and homeowner's insurance, obtaining a cell phone, and accessing utilities without a deposit. The use of credit scores for non-credit purposes is controversial because credit scores are designed to assess creditworthiness, not risk of default in other contexts. There are large disparities in credit scores by race and ethnicity and by geographic area of the consumer.

When people lack access to the mainstream banking system and credit, they end up paying more in fees to conduct transactions and borrow money.

¹⁷ "U.S. lost 5% of bank branches between 2017 and 2020." American Banker. (December 1, 2020)

<https://www.americanbanker.com/news/u-s-lost-5-of-bank-branches-between-2017-and-2020>

¹⁸ Federal Reserve Board of Governors. "Perspectives from Main Street: Bank Branch Access in Rural Communities," November 2019. www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities

¹⁹ Laura Alex, "More Banks Shut Down Access as Covid Spreads," American Banker. March 19, 2020.

www.americanbanker.com/news/more-banks-shut-down-branch-access-as-covid-19-spreads

²⁰ American Bankers Association. Press Release. "ABA Urges America's Banks to Offer Bank On-Certified Accounts." October 19, 2020. <https://www.aba.com/about-us/press-room/press-releases/aba-urges-americas-banks-to-offer-bank-on-certified-accounts>

²¹ For example, although a typical credit card will have an annual interest rate of 15 to 25 percent, alternative credit products such as payday loans, car title loans, and high-cost installment loans may have annual interest rates that exceed 300 percent, 20 or more times as high.

- **Accuracy of Information Reported to Credit Reporting Agencies**

Similar to previous years, the top issue reported to the Consumer Complaint Portal in 2020, with thousands of complaints filed, dealt with credit reporting. Many individuals specifically complained about incorrect information on their credit reports. These complaints may have been filed against a credit reporting agency or directly against the lender or company submitting information to the credit bureaus. Some estimates suggest that as many as one in five credit reports contains an error that could be disputed. AARP encourages the Bureau to improve the accuracy of information reported to credit reporting agencies and to examine trends related to inaccurate reporting and consumer remedies and redress.

Enacting Substantive Protections with Respect to Certain Reverse Mortgages for Older Americans.

Reverse mortgages allow older borrowers to convert a portion of their home equity into cash without the immediate need to make loan payments until they leave their home permanently. Currently, most reverse mortgages are FHA-insured Home Equity Conversion Mortgages (HECMs), overseen by the U.S. Department of Housing and Urban Development (HUD). Reverse mortgages are complex financial loans and are not easily understood even by the most sophisticated borrowers, and they are not suitable for all homeowners age 62 and older. HECM borrowers may face excessive and unexpected fees if the mortgage servicer pays property taxes and homeowners insurance before the due date triggering rearrangements and possibly default. HECM loans in default may be subject to recurring inspections, sometimes multiple inspections in a single day, adding to the borrower's loan balance. This practice has been the subject of a class-action lawsuit.²² In addition to inspection fees, borrowers may be charged thousands of dollars in attorney's fees for the default that was caused by the servicer.

We appreciate the Bureau's commitment to ensuring that consumers are protected from junk fees and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Sarah Mysiewicz of our Government Affairs office at SMysiewicz@aarp.org or 202-434-3756.

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

²² <https://www.courthousenews.com/homeowners-sue-over-drive-by-property-inspections/>