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Supervisory Highlights Junk Fees Update Special Edition

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Consumer Financial Protection Bureau

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1. Introduction

As part of its emphasis on fair competition, the Consumer Financial Protection Bureau (CFPB) has launched an initiative, consistent with its legal authority, to scrutinize junk fees charged by banks and financial companies. Junk fees are typically not subjected to the normal forces of competition, leading to excessive costs for services that a consumer may not even want. For example, certain banks and financial companies might hide these unavoidable or surprise charges or disclose them only at a later stage in the consumer's purchasing process, if at all.

The CFPB has observed that supervised institutions have started to compete more when it comes to fees. In recent years, multiple banks have announced they were eliminating overdraft fees or otherwise updating their policies to be more consumer friendly.[1] And many have announced that they are eliminating non-sufficient fund (NSF) fees on consumer deposit accounts.[2]

Supervision continues to focus significant resources on identifying and eliminating junk fees charged by supervised institutions. Significantly, financial institutions are refunding over $120 million to consumers for unanticipated overdraft fees and unfair NSF fees. This special edition of *Supervisory Highlights* updates the public on supervisory work completed since the CFPB published the March 2023 *Supervisory Highlights* Junk Fees Special Edition. In total, for the topics covered in this edition, Supervision's work has resulted in institutions refunding over $140 million to consumers.

The findings included in this report cover examinations in the areas of deposits, auto servicing, and remittances that generally were completed between February 2023 and August 2023.[3] The report also describes risks identified in connection with payment platforms that parents, guardians and students use to pay for school lunches. Additionally, consistent with the statutory requirement for Supervision to identify and consider "risks to consumers" throughout its supervisory program, Supervision has obtained data about certain deposit account fee practices and is sharing key data points that shed light on risks to consumers. To maintain the anonymity

[1] Banks' Overdraft/NSF fee revenues Evolve Along With Their Policies, (July 20, 2023), available at: https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies/. Some banks have announced significant changes while others have made smaller or no changes.

[2] *Id.*

[3] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and related findings may pertain to one or more institutions.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

2. Supervisory Observations

2.1 Deposits

In recent examinations of depository institutions and service providers, Supervision has reviewed certain fees related to deposit accounts to assess whether supervised entities have engaged in any unfair, deceptive, or abusive acts or practices (UDAAPs) prohibited by the Consumer Financial Protection Act of 2010 (CFPA).[4] Examiners have focused on NSF and overdraft fees in particular and have reviewed statement fees and surprise depositor fees as well. Examiners also have engaged in follow-up work regarding pandemic relief benefits.

2.1.1 Assessing multiple NSF fees for the same transaction

Supervision continued examinations of institutions to review for UDAAPs in connection with charging consumers NSF fees, especially with respect to "re-presentments."[5] A re-presentment occurs when, after declining a transaction because of insufficient funds and assessing an NSF fee for the transaction, the consumer's account-holding institution returns the transaction to the merchant's depository institution, and the merchant presents the same transaction to the consumer's account-holding institution for payment again. In some instances, when the consumer's account remains insufficient to pay for the transaction upon re-presentment, the consumer's account-holding institution again returns the transaction to the merchant and assesses another NSF fee for the transaction, without providing consumers a reasonable opportunity to prevent another fee after the first failed presentment attempt. Absent restrictions on the assessment of NSF fees by the consumer's account-holding institution, this cycle can occur multiple times, and consumers may be charged multiple fees for a single transaction.

Core processor practices

Core processors provide critical deposit, payment, and data processing services to many supervised institutions, and the system functionality that these entities develop drives many fee practices, including NSF fee practices. Supervision has examined core processors in their capacity as service providers to covered persons providing deposit services.

[4] 12 U.S.C. §§ 5531(c), 5536.

[5] Some depository institutions charge a NSF fee when a consumer pays for a transaction with a check or an ACH transfer and the transaction is presented for payment, but there is not a sufficient balance in the consumer's account to cover the transaction.

Examiners concluded that, in the offering and providing of core service platforms, core processors engaged in an unfair act or practice by contributing to the assessment of unfair NSF fees on re-presented items. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[6] Consumers incurred substantial injury in the form of the relevant re-presentment NSF fees. Consumers were also at increased risk of incurring additional fees on subsequent transactions caused by the re-presentment NSF fees, which lowered consumers' account balances. Injurious fees were foreseeable in light of the system limitations, as the core processor platforms did not allow financial institutions to refrain from charging more than one NSF fee per item without discontinuing NSF fees altogether or manually waiving individual fees. These fees were not reasonably avoidable by consumers, where consumers did not have a meaningful opportunity to prevent another fee after the first failed representment attempt. The consumer injury at issue was not outweighed by countervailing benefits to consumers or competition.

To address these findings, the core processors enhanced the systems they provide to financial institutions to facilitate their implementation of policies to eliminate NSF re-presentment fees. Additionally, Supervision intends to review the practices of financial institutions seeking payment from the consumer's financial institution, often called Originating Depository Financial Institutions, to ensure that represented transactions are coded properly to enable systems to identify the relevant transactions efficiently as well as refrain from charging NSF fees on those transactions.

Supervised institutions' practices

In other examinations, Supervision found that financial institutions engaged in unfair acts or practices by charging consumers re-presentment NSF fees without affording the consumer a meaningful opportunity to prevent another fee after the first failed representment attempt.[7] The assessment of re-presentment NSF fees caused substantial monetary injury to consumers, totaling tens of millions of dollars that will be refunded to consumers because of examinations during this time period. These injuries were not reasonably avoidable by consumers, regardless of disclosures in account-opening documents, because consumers did not have a reasonable opportunity to prevent another fee after the first failed presentment attempt. And the injuries were not outweighed by countervailing benefits to consumers or competition.

[6] 12 U.S.C. § 5531(c), 5536.

[7] Supervision's work is consistent with the CFPB's public action against Bank of America, N.A. See CFPB Consent Order 2023-CFPB-0006, In the Matter of Bank of America, N.A. (July 11, 2023), available at: https://www.consumerfinance.gov/enforcement/actions/bank-of-america-n-a-fees/

Consistent with the CFPB's longtime position regarding responsible business conduct, institutions proactively developed plans to remediate consumers for assessed re-presentment NSF fees.[8] However, some financial institutions used incomplete reports that only captured certain re-presentment NSF fees charged to consumers. Examiners found that these reports captured consumer accounts that were charged NSF fees on checks only, or on both checks and ACH transactions. Yet they omitted consumer accounts that were assessed NSF fees solely on ACH transactions. After examiners identified this issue, institutions reviewed their remediation methodologies to ensure coverage of both ACH and check re-presentments.

In total, institutions are refunding over $22 million to consumers in response to Supervision directives since CFPB initiated this set of work in 2022. Additionally, the vast majority of institutions reported plans to stop charging NSF fees altogether.

2.1.2 Unfair unanticipated overdraft fees

Supervision continued to cite unfair acts or practices at institutions that charged consumers for unfair unanticipated overdraft fees, such as Authorize-Positive Settle-Negative (APSN) overdraft fees, during this time period. APSN overdraft fees occur when financial institutions assess overdraft fees for debit card or ATM transactions where the consumer had a sufficient available balance at the time the consumer authorized the transaction, but given the delay between authorization and settlement the consumer's account balance is insufficient at the time of settlement. This change in balance can occur for many reasons, such as intervening authorizations resulting in holds, settlement of other transactions, timing of presentment of the transaction for settlement, and other complex practices relating to transaction processing order. Supervision's recent matters have built on work described in Winter 2023 *Supervisory Highlights,* and the CFPB previously discussed this practice in Consumer Financial Protection Circular 2022-06, Unanticipated Overdraft Fee Assessment Practices.[9]

Across its examinations, Supervision has identified tens of millions of dollars in injury to thousands of consumers that occurred whether supervised institutions used the consumer's available or ledger balance for fee decisioning. Consumers could not reasonably avoid the substantial injury, irrespective of account opening disclosures. The consumer injury was not

[8] Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating, (March 6, 2020), available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-responsible-business-conduct/

[9] *Supervisory Highlights*: Junk Fees Special Edition, Issue 29, 3–6 (March 2023) available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-junk-fees-special-edition-issue-29-winter-2023/; Consumer Financial Protection Circular 2022-06, Unanticipated Overdraft Fee Assessment Practices, at 8–12 (Oct. 26, 2022) available at: https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/.

outweighed by countervailing benefits to consumers or competition. To remedy the violation, these institutions ceased charging APSN overdraft fees, and will conduct a lookback and issue remediation to injured consumers.

In total, financial institutions are refunding over $98 million to consumers since this work began in 2022. In recent examinations, and consistent with Supervision's earlier work, supervised institutions that had reported to examiners that they engaged in APSN overdraft fee practices now report that they will stop doing so.

2.1.3 Supervisory data requests on overdraft, NSF and other overdraft-related fees

As part of the CFPB's ongoing supervisory monitoring related to overdraft practices, Supervision obtained data from several institutions related to fees assessed over the course of 2022, including per item overdraft and NSF fees, sustained overdraft fees, and transfer fees (collectively, "overdraft-related fees").[10] Supervision also obtained account-level and transaction-level data from several institutions regarding overdraft fees assessed over a one-month period on non-recurring debit card and ATM transactions.[11] Some of the key observations gleaned from the data are discussed below. Please note that the discussion below does not present all of the CFPB's observations or data obtained and that the CFPB's analysis of data provided by institutions is ongoing.

Overdraft coverage and fee amounts per overdraft transaction

During the time periods reviewed, the relevant institutions charged per-item overdraft fees that ranged from $15 per item to $36 per item. The amount of overdraft coverage provided for consumer transactions on which these fees were charged often was disproportionately small. For example, in these data sets, the median amount of overdraft coverage extended on one-time debit card and ATM transactions ranged from $14 to $30. In fact, the percentage of transactions for which the amount of overdraft coverage provided was less than the relevant per-item overdraft fee ranged from 32% to 74% across institutions.

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[10] See 12 U.S.C. § 5515(b)(1).

[11] Neither the account-level nor the transaction-level data contain any directly-identifying personal information. Because the data used in this analysis are Confidential Supervisory Information, this discussion only presents results that are aggregated and does not identify specific institutions.

Incident and distribution of overdraft, NSF and other overdraft-related fees

Supervision obtained institution-level data segmented by certain account characteristics, including: opt-in status[12], *i.e.* accounts opted-in to overdraft services for one-time debit card and ATM transactions ("opted-in accounts") versus accounts not opted-in to such overdraft services ("not opted-in accounts"), and average account balance, *i.e.* accounts with an average balance at or less than $500 ("lower balance accounts") versus accounts with an average balance greater than $500 ("higher balance accounts"). Across all institutions monitored, most accountholders do not incur overdraft-related fees. This data set also showed that overdraft-related fees constituted the majority of the total deposit account fees that consumers incurred and an even greater proportion of the total fees assessed to lower balance accounts and opted-in accounts.

In 2022, in this data set, overdraft and NSF fees comprised 53% of all fees that the institutions charged to consumer checking accounts and nearly three-quarters of all fees charged to lower balance accounts and opted-in accounts. Not surprisingly then, while accountholders overall each paid approximately $65 per year in overdraft and NSF fees on average, opted-in accounts and lower balance accountholders paid over $165 and $220 in overdraft and NSF fees on average per year, respectively. A relatively small fraction of bank customers had a lower average balance but paid the majority of overdraft and NSF fees which is consistent with findings in prior research conducted by the CFPB. Indeed, across all institutions in aggregate, one-fifth of accounts were lower-balance accounts, but these accounts paid 68% of per-item overdraft fees assessed and 77% of the per-item NSF fees assessed. In fact, for at least one institution, over half of per-item overdraft fees assessed and over one-third of per-item NSF fees assessed were charged to lower balance, opted-in accounts even though only five percent of the institution's accounts fell into this category.

Data on the frequency of overdraft transactions and fees showed that the number of overdraft transactions and fees varies substantially with opt-in status. Accounts that overdraft most frequently (12 or more overdraft fees per year) were nearly five times as prevalent among opted-in accounts compared to not opted-in accounts.

[12] Institutions are prohibited from charging a fee for paying non-recurring debit card and ATM transactions into overdraft unless a consumer affirmatively opts-in to overdraft coverage for these transactions. *See* 12 CFR 1005.17(b)(1). Institutions are not expressly prohibited from charging an NSF fee on such transactions, however, the Federal Reserve Board signaled that such fees may violate the FTC Act. See 74 FR 59033, 59041 (Nov. 17, 2009). This opt-in requirement does not extend to other transaction types (e.g., ACH and check transactions) and thus non-opted in accounts may be assessed overdraft fees for such transactions.

Account closure and charge-offs attributable to overdraft transactions and overdraft-related fees

Supervision also obtained data on account closure attributable to unpaid negative balances and overdraft transactions and the amount of charged-off negative balances attributable to overdraft transactions (excluding fees). With respect to account closure, Supervision found that, across all institutions, most accounts were closed involuntarily and half of such accounts were closed due to an unpaid negative balance attributable to overdraft transactions and overdraft-related fees.

In aggregate, losses to institutions in the form of charge-offs were evenly split between opted in accounts and not opted in accounts. Although overdraft transactions initiated by lower balance accounts were more likely to be charged-off, the average amount charged-off per lower balance account was roughly equal to the amount charged-off per higher balance account and was actually lower at some institutions. Notably, overdraft-related fees themselves generally constituted one-third of the total amount of negative balances charged-off. In fact, overdraft-related fees constituted as much as two-thirds of the total amount of all overdraft charge-offs by at least one institution.

2.1.4 Unfair statement fees

When supervised institutions send account statements to customers that provide information about their deposit accounts during the month, they generally deliver these statements to consumers in paper form, through the U.S. mail, unless consumers elect to receive the statements in verified and secure electronic form, whether by email or through the institution's website or its mobile application.

In recent examinations, Supervision observed that institutions charged fees for the printing and delivery of paper statements, including additional fees when they mailed a statement that was returned undelivered. Supervision found that, in certain instances, institutions did not print or attempt to deliver paper statements but continued to assess paper statement fees and returned mail fees each month.

Supervision found that institutions engaged in an unfair act or practice by assessing paper statement fees and returned mail fees for paper statements they did not attempt to print and deliver. Assessing such delivery-related statement fees for undelivered statements caused substantial injury to consumers. Indeed, in one instance, a senior citizen discovered that her account was almost entirely depleted because an account statement had been returned undelivered five years prior and the institution had been assessing statement fees each month since. Consumers could not reasonably avoid this injury because they had no reason to anticipate that such fees would be assessed. The injury was also not outweighed by countervailing benefits to consumers or competition because assessing delivery-related fees for undelivered statements provides no benefit to consumers and does not actually compensate institutions for any costs incurred.

In response to these findings, the institutions stopped assessing paper statements and returned mail fees for paper statements they did not attempt to deliver and will refund the millions of dollars in such fees that were charged to hundreds of thousands of consumers.

2.1.5 Surprise depositor fees

Surprise depositor fees, also known as returned deposit item fees, are fees assessed to consumers when an institution returns as unprocessed a check that the consumer attempted to deposit into his or her checking account. An institution might return a check for several reasons, including insufficient funds in the originator's account, a stop payment order, or problems with the information on the check.

In October 2022, the CFPB issued a compliance bulletin stating that it is likely an unfair act or practice for an institution to have a blanket policy of charging return deposit item fees anytime that a check is returned unpaid, irrespective of the circumstances or patterns of behavior on the account.[13] The CFPB stated that these fees cause substantial monetary injury for each returned item, which consumers likely cannot reasonably avoid because they lack information about and control over whether a check will clear.[14] And it may be difficult to show that this injury from blanket return deposit item policies is outweighed by countervailing benefits to consumers or to competition.[15]

In recent examinations, Supervision has evaluated the returned deposit item fee practices at a number of institutions. Most of the examined institutions have advised the CFPB that they have eliminated returned deposit item fees entirely. Others have stated that they are in the process of doing so. As previewed in the October 2022 bulletin, Supervision has not sought to obtain monetary relief for return deposit item fees assessed prior to November 1, 2023. But Supervision will continue to monitor the relevant practices for compliance with the law and may direct remediation from institutions that continue charging unfair returned deposit item fees.[16]

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[13] Consumer Financial Protection Bulletin 2022-06, Unfair Returned Deposited Item Fee Assessment Practices (Oct. 26, 2022), available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices/.

[14] *Id.* at 3-4.

[15] *Id.* at 5-6.

[16] *Id.* at 3 n.1.

2.1.6 Treatment of pandemic relief benefits

As described in past editions of *Supervisory Highlights*, Supervision conducted examination work to evaluate how financial institutions handled pandemic relief benefits deposited into consumer accounts.[17] Specifically, the CFPB performed a broad assessment centered on whether consumers may have lost access to pandemic relief benefits, namely Economic Impact Payments and unemployment insurance benefits, as a result of financial institutions' garnishment or setoff practices.[18] Further follow-up reviews identified many supervised institutions that risked committing an unfair act or practice in violation of the CFPA in connection with their treatment of pandemic relief benefits which resulted in consumers being charged improper fees.[19]

In response to these findings, the institutions (1) refunded protected Economic Impact Payments improperly taken from consumers to set off fees or amounts owed to the institution; (2) refunded garnishment-related fees assessed to consumers for improper garnishment of Economic Impact Payments; and (3) reviewed, updated, and implemented policies and procedures to ensure the institution complies with applicable state and territorial protections regarding its setoff and garnishment practices.

To date, Supervision has identified over $1 million in consumer injury in response to these examination findings, with institutions providing redress to over 6,000 consumers. Thus far, supervised institutions have provided redress of approximately $685,000 to consumers for improper setoff of Economic Impact Payments and approximately $315,000 for improper garnishment-related fees. Most supervised institutions have reported making substantial changes to their policies and procedures to prevent this type of consumer injury in the future.

2.2 Auto Servicing

Examiners also reviewed fee practices in connection with auto loans. Through this work, Supervision continues to identify unfair acts or practices related to auto servicers' handling of refunds of add-on products after loans terminate early. Specifically, some servicers failed to ensure consumers received refunds, while others did so but miscalculated the refund amounts.

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[17] *Supervisory Highlights*, Issue 28 (Fall 2022), available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/. *Supervisory Highlights,* Issue 23 (Winter 2021), available at: cfpb_supervisory-highlights_issue-23_2021-01.pdf (consumerfinance.gov).

[18] *Supervisory Highlights*, Issue 23 (Winter 2021), available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-covid-19-prioritized-assessments-special-edition-issue-23/

[19] *Supervisory Highlights*, Issue 28 (Fall 2022), available at https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/.

When consumers purchase an automobile, auto dealers and finance companies offer optional, add-on products that consumers can purchase. Auto dealers and finance companies often charge consumers for the entire cost of any add-on products at origination, adding the cost of the add-on product as a lump sum to the total amount financed. As a result, consumers typically make payments on these products throughout the loan term, even if the product expires earlier.

2.2.1 Overcharging for add-on products after early loan termination

Examiners have continued to review servicer practices related to add-on product charges where loans terminated early through payoff or repossession.[20] When loans terminate early, certain products no longer offer any possible benefit to consumers; whether a product offers a benefit depends on the type of product and reason for early termination. For example, many vehicle service contracts continue to provide possible benefits to consumers after early payoff but not after repossession, while a credit product (such as Guaranteed Asset Protection (GAP) or credit-life insurance) will not offer any possible benefits after either early payoff or repossession.

Examiners found auto servicers engaged in unfair acts or practices because consumers suffered substantial injury when servicers failed to ensure they received refunds for add-on products following early loan termination; consumers were essentially required to pay for services they could no longer use, as the relevant products (including vehicle service contracts, GAP, or credit-life insurance) terminated either when the loan contract was terminated or provided no possible benefits after the consumer lost use of the vehicle. Consumers could not reasonably avoid the injury because they had no control over the servicers' refund processing actions. When servicers present consumers with payoff amounts, deficiency balances, or refunds, consumers may have no reason to know that the amounts include unearned add-on product costs. And reasonable consumers might not apply for refunds themselves because they may be unaware that the contract provided that they could do so. Examiners concluded that the injury was not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers are remediating impacted consumers more than $20 million and implementing processes to ensure consumers receive refunds for add-on products that no longer offer any possible benefit to consumers.

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[20] The CFPB previously discussed similar issues with add-on product refunds after repossession and early payoff in *Supervisory Highlights*, Issue 26, Spring 2022, available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-26-spring-2022/; Consumer Financial Protection Bureau (consumerfinance.gov) and *Supervisory Highlights*, Issue 28, Fall 2023, available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/

2.2.2 Miscalculating refunds for add-on products after early loan termination

Examiners also have continued to identify problems with the calculation of unearned fee amounts after loan termination.[21] Examiners found that servicers engaged in unfair acts or practices when they used miscalculated add-on product refund amounts after loans terminated early. These servicers had a policy to obtain add-on product refunds and relied on service providers to calculate the refund amounts. The service providers miscalculated the refunds due, either because they used the wrong amount for the price of the add-on product or because they deducted fees (such as cancellation fees) that were not authorized under the add-on product contract; the servicers then used these miscalculated refund amounts.

Examiners found that servicers engaged in an unfair act or practice when they used miscalculated add-on product refund amounts after loans terminated early. Using miscalculated refund amounts caused, or was likely to cause, substantial injury because servicers either communicated inaccurately higher deficiency balances or provided smaller refunds than warranted after early loan termination. Consumers could not reasonably avoid the injury because they were not involved in the servicers' calculation process, and it is reasonable for consumers to assume that the calculations are accurate. And the injury was not outweighed by countervailing benefits to consumers or competition.

In response to these findings, servicers are remediating impacted consumers and improving monitoring of service providers.

2.3 Remittances

Examiners also review activities of remittance transfer providers to ensure that fees are disclosed and charged consistent with Subpart B of Regulation E (the Remittance Rule). These examinations found that certain providers have violated regulations by failing to appropriately disclose fees or failing to refund fees, in certain circumstances, because of an error.

The Remittance Rule requires that remittance transfer providers disclose any transfer fees imposed by the provider.[22] Recent examinations have found that remittance providers have

[21] The CFPB previously discussed similar issues with add-on product refund calculations in *Supervisory Highlights*, Issue 18, Winter 2019, available at: https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2019/

[22] 12 CFR § 1005.31(b)(1)(ii). As stated in Comment 31(b)(1)-1(ii), fees include "any fees imposed by an agent of the provider at the time of the transfer."

failed to disclose fees imposed by their agents at the time of the transfer, in violation of 12 CFR 1005.31(b)(1)(ii). This reduced the total wire amount the recipients received as compared to the amount that had been disclosed. Additionally, in the case of an error for failure to make funds available to a designated recipient by the date of availability, the Remittance Rule states that if a remittance transfer provider determines an error occurred, the provider shall refund to the sender any fees imposed, and to the extent not prohibited by law, taxes collected on the remittance transfer.[23] Examiners found that certain providers failed to correct errors by refunding to the sender fees imposed on the remittance transfer, within the specified time frame, where the recipients did not receive the transfers by the promised date, in violation of 12 CFR 1005.33(c)(2)(ii)(B). In response to these findings, supervised institutions implemented corrective action to prevent future violations and provided remediation to consumers charged fees in violation of regulatory requirements.

[23] 12 CFR § 1005.33(c)(2)(ii)(B).

3. Consumer Risks – Payment Processing

3.1 Payment platforms for student meal accounts

Some kindergarten through 12th grade school systems contract with companies that run online platforms that allow parents or guardians to manage their students' meal accounts. In most cases, families using these online platforms pay a per-transaction fee to add funds to their meal accounts. Any school district that participates in federal school meal programs and contracts with fee-based online platforms must also provide free options for adding money to student meal accounts. As a result, families can avoid the transaction fee by adding funds using one of these alternative methods, such as making payments directly to the school or district.

The CFPB learned of covered persons that maintained these online payment platforms where consumers may have paid fees that they would not have paid if they had known of the existence of free options for adding meal funds to the student's account. Because consumers did not know their options, they incurred transaction fees that they could have avoided. As the fees were assessed on a per-transaction basis, the fees likely disproportionately affected lower-income families that must add smaller amounts more often, thereby incurring more transaction fees than higher-income users that can deposit larger amounts less frequently.

The CFPB notified the covered persons that these practices may not comply with consumer financial protection laws.

4. Supervisory Program Developments

4.1 Recent CFPB supervision program developments

Set forth below is a recap of the most salient supervision program developments that implicate junk fees. More information including circulars, bulletins, and advisory opinions about the CFPB's junk fee initiative can be found at: https://www.consumerfinance.gov/rules-policy/junk-fees/.

4.1.1 CFPB issued a circular on unanticipated overdraft fee assessment practices

On October 26, 2022, the CFPB issued guidance indicating that overdraft fees may constitute an unfair act or practice under the CFPA, even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E.[24] As detailed in the circular, when supervised institutions charge surprise overdraft fees, sometimes as much as $36, they may be breaking the law. The circular provides some examples of potentially unlawful surprise overdraft fees, including charging fees on purchases made with a positive balance. These overdraft fees occur when an institution displays that a customer has sufficient available funds to complete a debit card purchase at the time of the transaction, but the consumer is later charged an overdraft fee. Often, the institution relies on complex back-office practices to justify charging the fee. For instance, after the institution allows one debit card transaction when there is sufficient money in the account, it nonetheless charges a fee on that transaction later because of intervening transactions.

[24] Consumer Financial Protection Circular 2022-06, Unanticipated Overdraft Fee Assessment, available at: https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.

4.1.2 CFPB issued a bulletin on unfair returned deposited item fee assessment practices

As described above, on October 26, 2022, the CFPB issued a bulletin[25] stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

4.1.3 CFPB issued an advisory opinion on debt collectors' collection of pay-to-pay fees

On June 29, 2022, the CFPB issued an advisory opinion[26] affirming that federal law often prohibits debt collectors from charging "pay-to-pay" fees. These charges, commonly described by debt collectors as "convenience fees," are imposed on consumers who want to make a payment in a particular way, such as online or by phone.

[25] Bulletin 2022-06: Unfair Returned Deposited Item Fee Assessment Practices, available at: https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.

[26] Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees, available at: https://www.consumerfinance.gov/compliance/advisory-opinion-program/

5. Remedial Actions

The CFPB's supervisory activities resulted in or supported the following public enforcement actions.

5.1 USASF Servicing

On August 2, 2023, the CFPB filed a lawsuit in federal court against auto loan servicer USASF Servicing, alleging USASF engaged in a host of illegal practices that harmed individuals with auto loans.[27] These alleged practices include wrongfully disabling borrowers' vehicles, wrongfully activating late payment warning tones, improperly repossessing vehicles, double-billing borrowers for insurance premiums, misallocating consumer payments, and failing to return millions of dollars in unearned GAP premiums to consumers. The CFPB is seeking redress for consumers, civil money penalties, and to stop any future violations.

[27] Consumer Financial Protection Bureau v. USASF Servicing, LLC. The complaint is available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-usasf-servicing-for-illegally-disabling-vehicles-and-for-improper-double-billing-practices/