

Taking Account of Fees and Tactics Impacting Americans' Wallets
Financial Institutions and Consumer Protection Subcommittee
Senate Banking Committee
July 26, 2023

Opening Statements

Chair Warnock (D-GA) said he looked forward to lowering costs for consumers across the country and ensuring that communities have equal access to financial resources. He said this hearing was about protecting consumers from junk fees and that they will examine the exploitative practices by various companies, including unnecessary and onerous fees on bank deposit accounts, the rental housing market, and small dollar lending. He continued that some fees are high and unclear and that many fees exist so companies can pad their bottom lines on the backs of hard-working Americans. He said the fees provide no economic value and that they are hurting consumers, especially those who are unbanked. Warnock applauded Zillow, Apartments.com, and Affordablehousing.com for committing to ensuring transparency around their rental listings. He went on to say that our troops often fall victim to shady financial practices and noted his amendment to the NDAA that would limit the ability of debt collectors to harass troops. Warnock said these fees hurt small businesses and families, which impedes job creation and limits economic opportunity. He said Congress has a role to play in ensuring that financial institutions support our communities and small businesses, adding that we must hold businesses accountable for when they juice profits off the backs of consumers through the use of opaque fees.

Ranking Member Tillis (R-NC) said it would be difficult to find a definition for the term ‘junk fee’ in statute because it does not exist. He agreed that regulators should act against dishonest and abusive charges and practices. He added that the term ‘junk fee’ is political in origin, as are the regulatory actions being taken here. He said it is interesting that these fees have been here long before being identified as a driver of inflation. Tillis said that in Biden’s own words, the scope of this initiative is vague, which gives individual regulators a lot of room to act under the banner of ‘junk fees.’ Tillis noted that the CFPB is one of these regulators and several concerning themes have emerged from them. He said the CFPB has offered many definitions for what constitutes a junk fee, which makes it difficult for good faith actors who are trying to comply. Second, Tillis said the CFPB has engaged in naming and shaming campaigns, pointing to actions taken on overdraft policies and how they publicized lists of institutions that were all abiding by the law, but not conforming to the policy preferences of the CFPB. Tillis continued that the CFPB continues to maneuver its policy actions to skirt around the APA, adding that it mislabels its actions to avoid the rigors of the APA. He went on to say that there is little to no evidence of the CFPB collaborating with other regulators on implications of their policy changes. He said this represents irresponsible regulation for political outcomes, not actions that promote safety and soundness in the banking system. Tillis said no one should find practices common at the CFPB as acceptable.

Witness Testimony

Ms. Michelle A. Henry, *Attorney General, Commonwealth of Pennsylvania*, said it is right to focus on junk fees because they are harmful to businesses and consumers. Henry stated that honest businesses lose out on competitors and consumers end up paying more than they expect for a product or service. She then discussed the lawsuit brought against Mariner Finance in multiple states, which alleges that Mariner charged customers junk fees for additional products they had no knowledge about or did not agree to pay for. Henry said they are asking the court to order Mariner to refund all junk fees and any interest, to stop charging junk fees, and pay the penalties. She said that she joined other attorney generals to urge the big banks to eliminate junk fees. Henry added that she sent letters to CFPB in support of their initiatives and commended them for taking action. She closed by saying that by ensuring prices are transparent, we protect business and consumers.

Ms. Lindsey Siegel, *Director of Housing Advocacy, Atlanta Legal Aid Society*, said Atlanta Legal Aid is familiar with the burdens that low-income renters face and that half of the individuals they serve contact them with a landlord-tenant legal issue. She said that rent has skyrocketed to more than \$300 dollars each time a lease is renewed. Siegel added that unaffordability is more pronounced for Black renters. She said that institutional and investor landlords are the main culprits of using junk fees so they can drive up profit, which harms consumers. Siegel added that there is an extreme imbalance between landlords and their tenants, in which the high demand for housing encourages landlords to take advantage of unfair and deceptive lease terms and practices. Siegel said with these junk fees increasing, we need protection and legal representation for tenants. She closed by saying that stronger federal regulation could help tenants combat these fees and define what is excessive.

Mr. Brian Johnson, *Manager Director, Patomak Global Partners*, noted how combating junk fees has become a significant part of the rhetoric from the Biden Administration, and the CFPB has been the most enthusiastic financial regulator in answering this call. He said that the CFPB's actions should be judged on whether they adhere to law, and by this measure, the CFPB's recent actions are concerning. He agreed that consumers want the highest quality products and services at a low cost and that all-inclusive pricing strategies evolve over time to meet different consumer preferences. He continued that competing financial institutions adopt different pricing strategies and asserted that disclosure of fees is not the deciding factor in which a consumer obtains a product or service. Johnson added that consumers should not be charged for products and services they did not agree to. He went on to say that the most crucial goal for public policy in a market economy is to ensure consumer free choice. Johnson said that it is troubling that executive agencies have engaged in price-fixing schemes for things like debit card interchange and credit card fees. Johnson then pointed to how the term 'junk fee' is not defined in statute or regulation. He said that the CFPB issued a proposed rulemaking regarding credit card late fees

and that this rule would amend the CARD ACT to require any penalty fee to an overdue payment must be “reasonable and proportional” to the violation.

Member Questions

Sen. Cortez Masto (D-NV) said there is a problem with junk fees and that it is not inflation-related, nor does it have anything to do with the actions of the CFPB. She noted that evictions have increased in Nevada, pointing to the high fees being imposed on many of these people. She asked what can be done to counter the use of junk fees. Henry said that state and federal governments must work together on this. Siegel said the White House press release from last week is a good first step and that the actions from Zillow and other companies to ensure greater transparency will help tenants better understand what they can afford. She added that disclosure alone is not enough to protect people and that the federal government has a role to play. She said the CFPB could put forward best practices and investigate junk fees further; that they could bring enforcement actions against debt collectors that engage in shady debt collection practices; and noted that HUD could study the disproportionate impact of these practices on minority communities. Cortez Masto then asked if large property management companies are the main culprits of using these junk fees and for Siegel to discuss this. Siegel said tenants living in Atlanta have an extremely tough time finding a rental that is not owned by a corporate landlord, adding that they seem to be working in lockstep. She pointed to how many landlords are charging insurance fees, which tenants believe to be renters’ insurance, even though this insurance does not protect the tenants but the landlord.

Ranking Member Tillis (R-NC) said it is fair to say he cannot imagine any member of Congress not wanting Americans to know what they are paying for when they sign something, adding that we need transparency. Tillis said he is less concerned about whether a trash collection fee is necessary and asked whether a renter knows what they must pay every month at the time of signing a lease. He said the CFPB has an ill-defined regulatory approach and asked Johnson if he can talk about the effects of the method the CFPB is using and the negative implications it has. Johnson said to have any success from a regulation, you must identify a market failure, produce a tailored proposal that addresses the root of market failure, and undergo cost-benefit analysis to determine whether the solution will be worse than the problem to begin with. Tillis said an unintended consequence could be under banking people. Johnson agreed, saying there is a longstanding tradeoff between price and access. Tillis asked if the CFPB is a prudential regulator. Johnson said it has no safety and soundness mission and is a market conduct regulator like the SEC, who are appropriated by Congress. Tillis turned to the name and shame campaign from the CFPB to coerce banks who are following the prudential standards and asked if the CFPB has the authority or staff to make regulatory decisions. Johnson said no. Tillis asked about the CFPB’s tendency to name and shame businesses to avoid certain practices or adopt new ones and if this is effective regulation. Johnson said no and that using the implied threat of investigation to coerce businesses to change their practices for political purposes should be condemned. Tillis asked if the CFPB has considered the impact of their actions. Johnson said

they are moving forward with rulemaking even though they do not fully understand the impacts these decisions will have.

Chair Warnock (D-GA) discussed the lawsuit against Marnier, saying that Henry has been vigilant going after these bad actors, and asked how often these types of cases cross state lines and if having federal standards against hidden fees make these cases easier to bring. Henry said always and added that it is critical to team up with states, attorney generals, and include the CFPB. She said the CFPB with all 50 states filed an enforcement action against Nationstar Mortgage for deceptive practices, and as a result they were able to obtain a settlement of \$73 Million, which brought aid to over 40,000 borrowers. Warnock asked if consumers know what junk fees are. Henry said consumers are hit with them and get misled into thinking they found a good price whether it's for a hotel or vacation, and then at the end of it they pay much more because of fees they were not aware of. Warnock asked if more federal agencies had authority to address these fees, how would that affect her office's capacity. She said it would help tremendously.

Sen. Smith (D-MN) focused on exploitative practices being seen around land contracts. She said these are leading to buyers facing unexpected fees (audio cut out). Henry said transparency around fees is crucial and Smith agreed. Smith said many of these contracts are designed to fail and that people are losing their equity, which is problematic (audio problems again). She said the ways these contracts are being used to take advantage of people needs to be addressed.

Sen. Warren (D-MA) noted how the CFPB ordered Bank of America to pay \$100 Million to its customers for illegally charging fees, withholding credit card rewards, and opening fake bank accounts. She said fake accounts, illegal fees, and fraudulent credit card practices from big banks are something that has happened before, but nothing changes in the long run. She said Bank of America, Wells Fargo, JP Morgan Chase, and many other big banks have been caught engaging in one of these practices by the CFPB at least once. She noted how overdraft fees squeeze tens of billions from consumers' pockets every year and asked Henry if these fees are good for consumers, like the banks claim. Henry said they are not and that they hit LMI families and families of color harder. She added that the cost of the bank to cover unfunded transactions is often lower than the fee that is charged. Warren said banks know that the fees are junk and noted how Bank of America recently said it would lower overdraft fees and overdraft-related revenue. She said that despite this, they still took \$400 Million in overdraft fees from families last year. She asked Henry if the big banks should eliminate overdraft fees. Henry said yes. Warren then asked if the giant banks can be trusted to act in the best interest of consumers without stronger rules and vigorous enforcement. Henry said if history is any lesson, then we know they cannot be trusted to act in the best interest of consumers on their own. She added that we need robust consumer protection rules and enforcement to ensure this happens. Warren said she does not have a problem with banks making a profit, but not like this. She said the big banks have

repeatedly shown they will abuse their power, adding that the CFPB has shown it will hold big banks accountable.

Ranking Member Tillis (R-NC) said to Henry and Siegel that what they are witnessing here is not that Members are saying we should not have transparency for consumers, but that we need to give regulators more authority and are figuring out how to do that. Tillis said he does not think the regulators that have demonstrated pushing the boundaries of their authority should get more authority. Tillis added that the problem with transferring power from Congress to another branch is that it changes every four years, pointing to how a regulatory change can happen and can be repealed if a new administration came in. Tillis asked Johnson to speak about the efforts of the CFPB to avoid judicial review. Johnson said the APA requires agencies to go through a public notice and comment process, which takes time. He said for some agencies, there is motivation to skirt this process because of the time it takes. He added that we have seen the CFPB issue guidance when Tillis interrupted and asked if this is viewed as guidance or as a de facto rule. Johnson said it is viewed as a rule and that this is the game that is played. Tillis asked by not going through the full process, does it prevent us from identifying some of the intended outcomes consumers may face. Johnson said yes and added that Congress has mandated that the CFPB must go through a cost-benefit analysis under the Dodd-Frank Act.

Sen. Warren (D-MA) asked if the CFPB is the only agency that issues guidance. Johnson said it is not.

Sen. Tillis (R-NC) jumped in and said it is not just about the CFPB.

Sen. Warren (D-MA) said guidance is a part of how regulators explain to the industry the agency's view of emerging practices.

Chair Warnock (D-GA) said he invites Republicans to make suggestions on how Congress can help protect consumers, adding that more robust consumer protections are needed. He said there is a difference between offering a service that will lend a hand and one that will kick you down. He continued that he is thankful for the CFPB and FTC's actions to combat predatory junk fees, adding that there is clearly more work to be done.