

**Alert | Financial Regulatory & Compliance/
Banking & Financial Services**



October 2023

CFPB Issues Advisory Opinion on ‘Illegal Junk Fees’ By Large Financial Firms

Go-To Guide:

- The Consumer Financial Protection Bureau (CFPB) has issued an [Advisory Opinion](#) clarifying certain provisions of a 2010 federal law enacted by Congress that generally prohibits large banks and credit unions from imposing unreasonable obstacles on customers, such as charging excessive fees, for basic information about their own accounts.
- Section 1034(c) of the Consumer Financial Protection Act¹ mandates that large banks and credit unions (those holding assets in excess of \$10 billion) furnish complete and accurate account information upon a customer’s request.²
- The Advisory Opinion clarifies the CFPB’s position on the legal obligations of the customer service functions of large banks, calling on such banks to conduct a detailed assessment of customer fees for reasonable requests such as asking for original account agreements or inquiring about past transactions on their account.

¹ 12 U.S.C. 5534(c).

² 12 U.S.C. 5534(c)(1) (provision applies to “a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025”); see also *id.* sec. 5481(1), (6) (defining “affiliate” and “covered person”); *id.* sec. 5515(a)-(c) (CFPA section 1025 providing CFPB with supervisory and primary enforcement authority over insured depository institutions and insured credit unions with total assets of more than \$10 billion and over their affiliates). For convenience, this GT Alert generally refers to institutions subject to section 1034(c) as “large banks and credit unions.”

- The Advisory Opinion is part of a larger integrated Administration initiative by multiple federal agencies, including the Federal Trade Commission (FTC), Federal Communications Commission (FCC), Department of Housing and Urban Development (HUD), and Department of Transportation (DOT), who are collectively moving against these fees.

In its continued focus on so-called illegal “junk fees,” the CFPB issued an Advisory Opinion on the obligations of large banks and credit unions. The CFPB’s actions arise at a time when many large banks are moving away from a relationship-focused model to a tech-driven one that streamlines customer services, a shift the CFPB asserts has, at times, harmed customers.

The CFPB, in the Advisory Opinion, addresses three main issues:

1. **Defining Junk Fees:** The CFPB highlights various fees banks charge for essential customer services and emphasizes that customers should not be burdened with such costs.
2. **Clarifying Legal Requirements:** The CFPB explains how it will enforce the legal requirements concerning customer service and fees, ensuring that large banks do not impose unjust charges on essential services.
3. **Focus on Transparency:** The CFPB emphasizes the importance of clear, accurate, and timely communication and stresses that banks should not create barriers, either through excessive fees or other means, that prevent customers from accessing their account information.

These advisory opinions and guidance initiatives underscore the CFPB’s focus on consumer rights in accessing their account information without undue hindrances or excessive fees, highlighting the CFPB’s stance against the imposition of “junk fees” by large financial institutions, a move that could significantly impact the business operations of these institutions and redefine industry norms.

CFPB Director Chopra highlights the importance of ensuring that consumers can access their account details without navigating unnecessary obstacles or paying unjust fees, stating that “charging a competitive price for a legitimate service makes sense, but charging junk fees for basic customer responsiveness doesn’t.”

Concurrent with issuing its Advisory Opinion, the CFPB also unveiled a special edition of its **Supervisory Highlights** that details its efforts to police “illegal junk fees,” and outlines the results of recent oversight inspections of major financial institutions. The report reveals that the CFPB’s undertakings have resulted in the restitution of \$140 million to consumers by the companies highlighted in the report, noting that a significant portion of this amount, \$120 million, redresses overdraft fees and double charges on non-sufficient funds fees.

The CFPB’s guidance is part of a larger, integrated Administration initiative by multiple federal agencies. The FTC synchronously announced a **Proposed Rule** aimed at prohibiting “junk fees,” which is supported by the FCC, HUD, DOT, and CFPB. The Proposed Rule seeks to ban businesses from advertising prices that exclude mandatory or essential fees, and to restrict sellers from misrepresenting fees and require them to transparently disclose the purpose and amount of fees upfront.³

³ The FTC vote approving publication of the notice of proposed rulemaking was 3-0. Once the notice has been published in the Federal Register, stakeholders can submit comments electronically for 60 days online through the [website](#). Stakeholders also may submit comments in writing by following the instructions in the “Supplementary Information” section of the Federal Register notice.

Takeaways

Large banks, credit unions, and other stakeholders in the financial sector should closely examine this Advisory Opinion and CFPB's stance on fees broadly. In examining their practices, it is essential these institutions:

- **Re-evaluate Fee Structures:** Financial institutions should assess their fee structures, implementing regular internal reviews of fees – especially those related to essential customer services, which must comply with CFPB guidelines. Specifically, the Advisory Opinion states that section 1034(c) prohibits large banks from charging fees for services such as:
 - Responding to consumer inquiries regarding their deposit account balance;
 - Responding to consumer inquiries seeking the amount necessary to pay a loan balance;
 - Responding to a request for a specific type of supporting document, such as a check image or an original account agreement; and
 - For time spent on consumer inquiries seeking information and supporting documents regarding an account.
- **Prioritize Customer Service:** Institutions should continually examine their customer service models, emphasizing transparency by ensuring that all fees are clearly communicated to consumers in advance and offering detailed explanations of their purpose, fostering a strong customer relationship.
- **Stay Informed of Further Developments:** Institutions should keep abreast of ongoing developments and oversight related to these issues to ensure continued compliance.

Authors

This GT Alert was prepared by:

- Benjamin M. Saul | +1 202.331.3123 | saulbe@gtlaw.com
- Gil Rudolph | +1 602.445.8206 | rudolphg@gtlaw.com
- Timothy A. Butler | +1 678.553.2326 | Tim.Butler@gtlaw.com
- Tarrian L. Ellis | +1 202.533.2351 | Tarrian.Ellis@gtlaw.com
- W. H. Langley Perry | +1 202.533.2353 | perryh@gtlaw.com
- Matthew M. White | +1 678.553.2111 | Matthew.White@gtlaw.com
- Tessa L. Cierny | +1 678.553.2130 | Tessa.Cierny@gtlaw.com
- Zeba Pirani [~] | Law Clerk/JD | Atlanta

[~] Not admitted to the practice of law.

Albany. Amsterdam. Atlanta. Austin. Berlin.⁷ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.⁸ Las Vegas. London.⁹ Long Island. Los Angeles. Mexico City.¹⁰ Miami. Milan.¹¹ Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.¹² Shanghai. Silicon Valley. Singapore.¹³ Tallahassee. Tampa. Tel Aviv.¹⁴ Tokyo.¹⁵ United Arab Emirates.¹⁶ Warsaw.¹⁷ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ↯Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. «Khalid Al-Thebity Law Firm in affiliation with Greenberg Traurig, P.A. is applying to register a joint venture in Saudi Arabia. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. °Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¨Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ‹Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2023 Greenberg Traurig, LLP. All rights reserved.*