DAKOTA
CREDIT UNION
ASSOCIATION

March 31, 2022

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

Submitted electronically
to regulations.gov

RE: CFPB–2022– 0003; Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services

Dear Sir or Madam,

The Dakota Credit Union Association (DakCU), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the Consumer Financial Protection Bureau (CFPB) regarding its Request for Information (RFI) concerning fees imposed by providers of consumer financial products or services.

As explained by the CFPB, "This request for information seeks information from the public on how junk fees—exploitative, back-end, hidden, or excessive fees—have impacted peoples' lives." *87 FR 5802, February 2, 2022*. DakCU is disappointed by the approach the CFPB has chosen to take in its research on this topic. Using inflammatory statements in press releases, social media and even within this RFI is misleading the public and the CFPB is not showing an unbiased approach to researching and understanding the topic first. In fact, it appears that the CFPB has chosen to instead prejudge an entire industry and has already painted the landscape that it wants the public to see, misrepresenting the actual facts.

As the CFPB is well aware, which is not discussed in the RFI, the financial industry is heavily regulated and is already required to disclose fees, which the CFPB labels as "junk", in advance of account opening or a product, such as a loan, being obtained by an individual.

The CFPB attempts to justify the purpose for this RFI, by stating, "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." *87 FR 5801, February 2, 2022*. Again, this is literally the purpose of existing regulations that financial institutions are already subject to.

Credit unions, as well as other financial institutions, are required to comply with the Truth in Savings Act. With respect to credit unions, 12 CFR 707.1 provides the purpose of the Truth in Savings Act, "is to enable credit union members and potential members to make informed decisions about accounts at credit unions. This part requires credit unions to provide disclosures so that members and potential members **can make meaningful comparisons** among credit unions and depository institutions." [emphasis added]

Instead of misleading the public that fee information isn't being disclosed or provided, perhaps the CFPB should provide educational "shopping" tips, such as having consumers read the disclosure they are provided before entering into an agreement for an account, loan or other service. The information is being provided – for some consumers, it is not being read.

With regard to regulatory requirements credit unions are required to follow, 12 CFR 707.3(a) mandates that Truth in Savings disclosures be made, "clearly and conspicuously, in writing, and in a form the member or potential member may keep." Furthermore, 12 CFR 707.4(a)(1)(i) requires, "A credit union must provide account disclosures to a member or potential member **before an account is opened or a service is provided**, whichever is earlier." [Emphasis added]

For the consumer that is shopping for services, credit unions are required to "provide account disclosures to a member or potential member upon request. If a member or potential member who is not present at the credit union makes a request, the credit union must mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form or electronically if the member or potential member agrees." *12 CFR 707.4(a)(2)(i)*

CFPB claims that "Many Americans have experienced inflated or surprise fees that, however nominally voluntary, are not meaningfully avoidable or negotiable in the moment. These fees in consumer finance can take many forms: Penalty fees such as late fees, overdraft fees, non-sufficient funds (NSF) fees, convenience fees for processing payments, minimum balance fees, return item fees, stop payment fees, check image fees, fees for paper statements, fees to replace a card, fees for out-of-network ATMs, foreign transaction fees, ACH transfer fees, wire transfer fees, account closure fees, inactivity fees, fees to investigate fraudulent activity, ancillary fees in the mortgage closing process, and more." *87 FR 5802, February 2, 2022.* Again, these fees are

disclosed in advance, and with some measure of personal responsibility on the part of the consumer, could be avoided.

With regard to deposit accounts, Truth in Savings Act requires that credit unions disclose, among other things, fees. 12 CFR 707.4(b)(4) provides "account disclosures shall include the following, as applicable:… Fees. The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed." Furthermore, official commentary 707.4(b)(4)-1 to this part explains, "Types of fees. Fees related to the routine use of an account must be disclosed. The following are types of fees that must be disclosed in connection with an account: i. Maintenance fees, such as monthly service fees. ii. Fees related to share deposits or withdrawals. iii. Fees for special services, such as stop payment fees, fees for balance inquiries or verification of share and deposits, fees associated with checks returned unpaid, fees for regularly sending to members share drafts that otherwise would be held by the credit union, and overdraft line of credit access fees (if charged against the share account). iv. Fees to open or to close an account. v. Fees imposed upon dormant or inactive accounts." Official commentary 707.4(b)(4) – 3 further requires, "Credit unions are cautioned that merely providing fee information in an account disclosure may not be sufficient to gain the legal right to impose the fee involved under applicable law. Credit unions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement."

Additionally, if the fee that was originally disclosed changes, credit unions are required to provide a change in terms notice in advance to the impacted member. "A credit union shall give advance notice to affected members of any change in a term required to be disclosed under § 707.4(b), if the change may reduce the annual percentage yield or adversely affect the member. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change." *12 CFR 707.5(a)(1).*

Similar disclosure requirements exist under Regulation E, which implements the Electronic Fund Transfer Act. 12 CFR 1005.7 requires the advance disclosure of fees. Specifically, "A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account." 12 CFR 1005.7(a). As noted, among the items required to disclosed in advance, are "Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers." *12 CFR 1005.7(b)(5)*. In addition to ATM fees. "A notice that a fee may be imposed by an automated teller machine operator as defined in § 1005.16(a), when the

consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction." 12 CFR 1005.7(b)(11)

With regard to overdraft services connected with ATM and one-time debit card transactions, the CFPB, through its Regulation E requirements, already requires additional disclosures and the consumer to affirmatively opt-in before a fee can be imposed. 12 CFR 1005.17(b)(1) mandates that "a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution: (i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service; (ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions; (iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and (iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent."

Credit unions know that their members generally like and want overdraft protection programs to be available for their use. Overdraft protection programs often save members from embarrassment and/or additional merchant costs. Furthermore, credit unions make an effort to inform their members how overdraft programs work and alternatives that are available, thus allowing the member to make the decision as to how they want to manage their own finances.

The CFPB claims that, "prepaid cards represent a way for many unbanked consumers and individuals with limited resources to have access to basic financial services—yet many accounts carry fee structures that make it challenging for consumers to pick the right product based on their needs. Consumers frequently select a product based on a monthly rate only to find out that the ''add-on'' fees for regular activities such as transaction fees, cash reload fees, balance-inquiry fees, inactivity fees, monthly service fees, and card cancellation fees, among others, overshadow the quoted monthly charge." *87 FR 5802, February 2, 2022*.

In 2016, the CFPB issued its final rule to provide "comprehensive consumer protections for prepaid accounts." *81 FR 83934, November 16, 2016*. This rule created a number of new requirements that financial institutions are required to follow, including extensive disclosures for consumers before the consumer acquires a prepaid account. The rule required a short form disclosure and a long form disclosure. As described by the CFPB in its final rule, "The short form disclosure sets forth the prepaid account's most important fees and certain other information to

facilitate consumer understanding of the account's key terms and comparison shopping among prepaid account programs. The long form disclosure, on the other hand, provides a comprehensive list of all of the fees associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program. The final rule also adopts specific content, form, and formatting requirements for both the short form and the long form disclosures." *Id*.

Again, the consumer is provided all the fee information associated with the prepaid product – in a format that is specified by the CFPB.

The CFPB's castigation of "junk fees" extends to lending products as well. Fortunately, the Truth in Lending Act, as implemented by the Regulation Z, which has been amended several times by the CFPB provides numerous disclosures by which consumers can compare lending products and shop for the best deal, if they were so inclined. As stated in 12 CFR 1026.1(b), one of the stated purposes of Regulation Z, "is to promote the informed use of consumer credit by requiring disclosures about its terms and cost, to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs."

Credit unions are already subject to numerous regulatory requirements that direct when and how a fee or charge is to be disclosed. DakCU would oppose any regulatory change that could have the potential of limiting any products or services, including overdraft programs, that credit unions offer their members.

Credit union fees are reasonable, especially since they are set by a board of directors that are credit union members themselves and are elected by the membership. Unfortunately, the biggest challenge credit unions face in keeping their members informed of product and service fees, is that the information/disclosures often becomes lost in the huge volume of other disclosures that are also required to be provided at account opening and on statements.

As discussed above, consumers have been given notices, disclosures, tabular graphs on periodic statements, and even have been required to give an affirmative response to incur a fee in the situation of an overdraft resulting from an ATM or one-time debit card transaction, and consumers are still choosing to incur a fee. In some cases people pay a fee to cover an "oops" type of situation, such as a deposit that should have been there that wasn't, a check that was taken for the wrong amount, a debit that cleared earlier than expected, or a miscommunication between joint account

owners. In some cases, paying a fee so that a check can clear was part of the individual's planning or perhaps that is how that individual has chosen to manage their finances. Possibly, the individual has decided that it would be better to pay a fee to their credit union so that their check for their debt, such as a credit card bill or mortgage payment, will arrive on time and not incur additional charges, such as late fees or have their APR increase.

Credit unions are owned by their members and run by a board of directors that are elected from the credit union's membership. Fees are agreed upon and set by these representatives of the membership. Beyond not incurring a particular fee in the first place, if the membership did not want to pay a particular fee or the amount of the fee, change can be made through the democratic process that exists at every credit union. Credit unions and their elected board of directors are in the best position to determine what is best for its membership, including what fees should be set at for the various products and services offered.

The CFPB approach to this topic does nothing more than villainize an industry for the actions of a few bad actors, whose actions were corrected with enforcement actions.

Credit unions exist only to serve their members and the community.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

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