Indiana Credit Union League
The association of Indiana credit unions

April 11, 2022

Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services [CFPB-2022-0003]

Dear Director Chopra:

The Indiana Credit Union League (ICUL) appreciates the opportunity to submit remarks on the Consumer Financial Protection Bureau's (CFPB's) request for information (RFI) regarding fees imposed by providers of consumer financial products or services. The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling 2.8 million consumers.

To begin, the ICUL and its member credit unions are deeply troubled by the tone and approach that the CFPB is taking in its review of fees assessed by providers of consumer financial products and services. To categorically characterize a wide range of normal, well-disclosed, and voluntary fees as "junk fees" is inflammatory, unfairly derogatory, and reveals a bias that indicates that the CFPB is not interested in a reasonable, equitable review of why fees are charged and how service providers use fees to provide products and services in the marketplace that consumers clearly choose to utilize. To assert that providers are assessing "excessive and exploitative" fees for the use of products and services and are "taking advantage of a captive relationship with the consumer to drive excess profits" is particularly disturbing to credit unions. Credit unions continue to be not-for-profit cooperative financial institutions that are democratically owned and controlled by their members. It is their mission to support members' dreams through financial services that put their best interests first, not the interests of a separate set of corporate stockholders. At credit unions, profits are shared with members through higher savings returns, lower loan rates, and fewer fees. Credit unions are financial services partners that put the financial well-being of the people they serve ahead of the bottom line. Income earned from fees assessed for some of the products and services that credit union members want and need is a critical piece of the revenue puzzle as credit unions operate in a hyper-competitive financial services marketplace. It is not possible today for a financial institution to operate on income derived only from interest on loans or other investment earnings. To illustrate, as of December 31, 2021, Indiana credit unions' net interest margin was 2.63%, which is to average assets, and their operating expenses to average assets was 3.25%. Fees for products and services are necessary, common, competitive, and well-disclosed.

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Fees are Fully Disclosed

In its RFI, the CFPB essentially claims that a long list of financial services fees for products or services and penalty fees are “surprise” fees. Whether a consumer experiences any fee as a “surprise” is subjective, but we object to the CFPB’s inference that these fees are hidden. The CFPB knows that most of the fees it enumerates in its RFI (“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, etc.”) are already governed by a variety of comprehensive federal regulations that require fees to be disclosed to consumers and how and when these disclosures have to take place. The Truth in Savings Act (and NCUA’s implementing regulation in 12 CFR 707) and the CFPB’s Regulation E (Electronic Funds Transfer) cover fees related to deposit accounts and electronic transactions, and the CFPB’s Regulation Z (Truth in Lending) and the Real Estate Settlement Procedures Act cover fees related to mortgages and other consumer loans. By and large, these robust federal regulations require disclosures about the terms, conditions, and fees related to financial products and services be provided to consumers clearly and conspicuously in writing in a form that a consumer can keep before an account is open or a service is provided. Credit unions comply with all of these requirements and provide their members with considerable information about any fees they may incur for the services they choose to use.

Pricing is Complex

The ICUL also is concerned with the CFPB’s implication that fees charged for products or services should not exceed the marginal cost of the products or services they cover. Just like they are in every corner of the economy, pricing decisions in financial services vary widely institution by institution and are dependent on a complex array of factors. The marginal/incremental cost of providing any specific financial service is only one component of the decision to set a price for providing that service just like it is for any retailer in the economy pricing its products or services. Profits derived from one service are often used to offset losses incurred from offering another service or by providing multiple delivery channels to service consumers. Also, operating costs and subsequent fee pricing is driven by economies of scale. That is, larger financial institutions have a better ability to spread the costs over wide area or affected consumers, which can lead to a disadvantage to smaller financial institutions. Additional regulatory burden adds to operating costs. Many services can be provided at no cost because of income generated from fees for other services. The way that any institution balances out these pricing decisions is, and should be, proprietary based on its market, financial structure, and the needs of its customers, in credit unions’ case their member-owners. In most instances, there is no legal requirement that any product or service’s cost closely reflect the marginal/incremental cost of providing it and pricing is determined in a competitive marketplace. Beyond that, though, some of the fees discussed in the RFI are intended to be punitive and to discourage certain activities. Late fees are meant to encourage on-time loan payments. NSF and returned item fees are meant to discourage consumers from writing bad checks. In these cases, fees are not meant to simply cover expenses. We strongly believe that the CFPB has not been given the authority to dictate pricing in the financial services marketplace and we are concerned that the direct inference in the RFI that fees should not exceed the marginal cost of providing a service moves dangerously in that direction.

Members/Consumers Benefit from Services

Credit unions exist to meet the financial services needs of their members and they have developed a vast array of products and services to meet members' needs and expectations in a deeply competitive marketplace. Providing these services comes at a cost and members understand this when they make the choice to use the services that benefit them. As not-for-profit cooperatives, credit unions are uniquely positioned to provide these needed services at as low a cost as possible. In Indiana, credit unions provided $295 million in aggregate financial benefit to their members last year by offering better overall rates and fees for services utilized, compared to if those members had to use for-profit providers. Credit union members have access to a variety of transaction account services for depositing, saving, and spending their money as well as to an array of loan options meeting mortgage, auto, business, school, and other personal financial needs. Today, many of these services are driven by technology that allows for mobile account access and deposits, rapid electronic money transfers, tremendous convenience in loan processing and fast loan approvals, and analytics tools that help with budgeting and financial decisions. Credit union members have access to and use more financial services tools than ever before and they recognize that using them often involves a reasonable cost sometimes implemented by well-disclosed fees. One service frequently used by credit union members and other consumers that has been the subject of much attention is overdraft protection (ODP)/courtesy pay services.

<u>ODP/Courtesy Pay Programs</u>
For many years, credit unions and other institutions have offered members/consumers a service that provides peace of mind when members are making transactions on their account that transactions will be honored even if there are instances when there may not be enough funds in the account to cover the transaction. ODP programs help members when they inadvertently overdraw an account or when they are in a short-term cash shortfall. ODP programs allow a transaction to clear even if the account balance goes negative and provides a member a defined time-period for bringing the account back into a positive balance. A fee is typically assessed for each of these types of transactions. In recent years, ODP transactions have resulted in fee income for credit unions and other institutions that offer them, and in most cases these revenues have helped offset the cost of providing the service as well as many of the other costs associated with offering checking/transaction accounts to members/consumers more broadly. While there has been much discussion about ODP programs, how they work, and what their impact is, there are several important things to consider:

- *Using ODP programs is voluntary*. Regulations require that consumers affirmatively opt-in before using ODP services for one time-debit transactions or ATM withdrawals.
- *ODP fees are fully disclosed*. Regulations require that institutions disclose "the dollar amount of any fees to be assessed, including any daily or other fees, and, if the amount of the fee is determined on the basis of any variables (such as the amount of the overdraft or the number of times the consumer has overdrawn the account), the maximum fee that may be imposed; and the maximum number of fees that may be assessed per day, or, if applicable, that there is no such limit."
- *Most consumers do not use ODP programs*. National research indicates that only about 20 percent of account holders used ODP in the last year and of those only two percent used them frequently (three times or more). Several Indiana credit unions that provided the ICUL with ODP data show similar experience with their ODP programs.
- *Credit union members who choose to use ODP services consider it their best option compared to alternatives and understand the user fee associated with it.* One credit union that provided

information to the ICUL noted that 86 percent of its members utilizing ODP are active users of mobile or online banking tools and are likely aware when overdrafts are likely to occur. Another credit union noted that its members "use our program as a financial tool to ensure their purchases are covered and their average time to cover their overdrafts is two days or less."

- *ODP is not used primarily by lower income consumers*. While lower income consumers and those with less access to credit utilize ODP, data shared with the ICUL from several credit unions indicate that credit union members of all income groups utilize ODP services and that those who use them the most often have considerably higher incomes than those using them only sparingly. One credit union reported that of the 2 percent of accounts utilizing ODP services the most, they deposited nearly $14,000 per year more in their accounts on average than accounts using ODP less frequently. Another noted that those who use ODP services at the credit union two times per month or more have an average monthly income of $9,000 to $10,000 while another credit union saw significantly higher ODP usage (among ODP users) in households with $50,000 or more in annual income.
- *Limiting ODP programs could have a negative impact on disadvantaged and underserved consumers.* This could happen in two different ways. First, it is clear that some ODP program users, likely those with lower incomes, use ODP programs to navigate short-term cash shortages. If ODP programs are significantly curtailed, these consumers may be left only with the option of going to payday lenders or other providers of extremely high-cost alternatives. The second way that this could happen is that credit unions often use income derived from ODP services to provide additional deposit account services to the broader membership at no or lower cost, including free checking accounts without minimum balance requirements. We are concerned that seriously limiting ODP programs will result in less revenues for credit unions to invest in even more outreach to the disadvantaged and underserved.

Credit unions offering ODP services to their members are conscious of the risks they can sometimes pose and closely monitor ODP usage. Credit unions frequently focus efforts on financial literacy and counseling and regularly encourage their members to use lower cost options (like lines of credit or transfers from savings) and to develop better savings and spending habits. Credit unions frequently cease ODP services to members who are not using the services appropriately. One credit union noted that "our position is and always has been that it is not our intent to make using funds you (the member) don't have more affordable, it is to put you in a position to not overdraft your account. Our goal is to eliminate all overdraft fee income for the credit union, not by eliminating the charge but eliminating the need to overdraft. If you are charged a fee, it is by your choice."

Conclusion

Today's financial services marketplace is more competitive than it has ever been and the costs of providing financial products and services are considerable. Financial services providers need a range of income-earning options to meet the operational expenses of human resources, technology infrastructure, complex legal and regulatory compliance, and all of the other tools necessary to meet the needs and expectations of consumers. Fee income is a vital and reasonable component of the revenue stream that is a regulatory necessity to maintain and grow the credit union's net worth, which is vital in assuring the financial stability of a financial institution. Credit unions and others are already subject to long-standing and comprehensive disclosure requirements for deposit and loan products designed to ensure that fees are not hidden or a surprise to consumers. Armed with the information that the laws and regulations already require be provided to them, credit union members and other consumers make decisions every day to utilize the products and services they want and need. Of course, there can be times given the multitude of financial services providers when a consumer is taken advantage of or when someone's fees are excessive, but those instances are not the norm in the overwhelming majority of cases and the CFPB already has regulatory enforcement authority to deal with these cases.

We hope that the CFPB will step back from its "junk fee" and "excessive and exploitative fee" rhetoric and carefully review the information it receives about the critical role fee income plays in credit unions' ability to serve their members and provide the products and services they expect and deserve. We appreciate the opportunity to provide comments on this important issue. If you have any questions about our comments or would like to discuss the issues further, please do not hesitate to contact me at (317) 594-5320.

Sincerely,

John McKenzie

John McKenzie
President, Indiana Credit Union League