America's Credit Unions

January 8, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Mail Stop H–144 (Annex J)
Washington, DC 20580

RE: Unfair or Deceptive Fees NPRM (R207011)

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Federal Trade Commission's (FTC or Commission) proposed trade regulation rule, which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide. America's Credit Unions and its member credit unions appreciate the opportunity to provide input on the proposed rule and urge the FTC to avoid subjecting not-for-profit, well-regulated state-chartered credit unions to a rule intended to address bad actors in the marketplace. Credit unions are member-focused cooperatives that are already transparent and reasonable in their use of fees. Requiring these community-based institutions to comply with this rule would be duplicative, burdensome, and ultimately, costly for their member-owners.

General Comments

The FTC, as noted in the proposed rule, generally does not hold jurisdiction over banks and federal credit unions under Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)). This exemption recognizes the highly regulated nature of these financial institutions. Federal credit unions, in particular, are subject to stringent oversight by federal entities like the National Credit Union Administration (NCUA). The NCUA's comprehensive regulatory framework ensures that federal credit unions adhere to strict standards of operation, transparency, and consumer protection, effectively duplicating the consumer protection role that the FTC plays in other sectors. Dual regulation would be unnecessary and potentially burdensome, hence the FTC's limited role in overseeing banks and federal credit unions.

Despite this, the FTC's proposed rule indicates that its authority does extend to other entities within the financial services sector, including state-chartered credit unions, which are regulated by state authorities. The FTC should focus its regulatory efforts on those segments of the financial services industry that, unlike state-chartered credit unions, have historically lacked transparency, demonstrated their propensity to charging unfair or deceptive fees to consumers, and not been adequately regulated or supervised at either the federal or state levels. For example, payday lenders and certain fintech companies are not subject to examination, as state-chartered credit unions are, and do not have a comparable track record of reasonable fee structures and transparency

State-chartered credit unions are subject to a comprehensive framework of regulation, examination, and supervision that encompasses both state and federal regulations. At the state level, state-chartered credit unions are chartered and primarily overseen by state regulatory authorities. These state regulators are responsible for conducting regular examinations to ensure that state-chartered credit unions comply with state-specific laws and regulations. This includes oversight of operational practices, financial stability, and consumer protection measures relevant to the credit union's functioning within the state's economic and legal context. Simultaneously, state-chartered credit unions must adhere to federal regulations, including key consumer protection laws such as the Truth in Lending Act (TILA) and the Truth in Savings Act (TISA). State regulators, in their examination role, extend their oversight to include ensuring compliance with these federal laws.

Together, state regulatory authorities and the Consumer Financial Protection Bureau (CFPB), which supervises those state-chartered credit unions over $10 billion in assets, already ensure that state-chartered credit unions adhere to rigorous standards. Examples like the New York Department of Financial Services' (NYDFS) actions against unfair lending practices and overdraft fees illustrate the already significant, and at times onerous, regulatory framework under which traditional financial institutions operate.[1] Additionally, the CFPB's nationwide oversight complements state-level regulations, creating a comprehensive regulatory environment. This dual-layer of supervision ensures state-chartered credit unions operate within legal boundaries, protecting consumers and maintaining financial stability. In contrast to this robust regulatory framework, entities such as fintechs or payday lenders often operate with little oversight by federal or state regulators, and may pose a greater risk to consumer welfare, justifying a more concentrated oversight effort by the FTC. As these nonbank entities offering credit to consumers fall within the FTC's jurisdiction, we urge the Commission to exercise its authority to more closely regulate such entities to ensure consumers are protected.

Credit Unions Focus on Members

Credit unions, distinct from the for-profit businesses discussed in the proposed rule, are member-owned financial cooperatives that prioritize the financial wellbeing of their members over profit maximization. This fundamental difference in their operating model shapes their approach to financial services. Unlike entities that are driven by the need to generate profits for

[1] NYDFS "DFS Announces Settlement with Rhinebeck Bank to Resolve Fair Lending Violations Concerning Auto Loans" (October 6, 2022) *available at* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202210061; JDSupra "What to Expect from the New York Department of Financial Services in 2023" (February 2, 2023) *available at* https://www.jdsupra.com/legalnews/what-to-expect-from-the-new-york-3295089.

shareholders, credit unions are motivated by the goal of serving their members, who are also their owners, and their communities. This structure means that any profits generated are typically reinvested into the credit union, leading to lower fees, better interest rates, higher dividends, and a focus on customer service.

A fundamental motivator of credit unions is their commitment to offering affordable financial products. This commitment is not just a business strategy, but a reflection of their core mission to serve the financial needs of their members. Credit unions often provide a range of financial products and services, including savings accounts, loans, and credit cards, at more favorable rates compared to other financial service providers. They frequently offer lower interest rates on loans and higher dividends on savings accounts, making financial management more accessible and beneficial for their members. Additionally, credit unions frequently offer financial education and counseling services to help members make informed financial decisions, reflecting their dedication to the overall financial health of their community.

Credit unions also implement various initiatives to ensure the financial wellbeing of their members. These initiatives might include special loan programs for those with less-than-perfect credit, financial literacy and budgeting workshops, and more personalized customer service. Some credit unions also provide benefits like no-fee checking accounts and lower overdraft fees, which are particularly valuable for members with limited financial resources. Moreover, many credit unions participate in community development projects, supporting local businesses and charitable causes, further cementing their role as a community-focused financial institution.

When credit unions do charge fees, it is important to understand that these fees are primarily structured to cover the costs associated with offering the financial product, rather than to generate profit. This approach is in line with their overall philosophy of serving their members' best interests. Fees might be necessary to maintain the operational viability of the credit union and to ensure the continued provision of high-quality financial services. However, these fees are generally lower than those charged by for-profit banks, as credit unions are not driven by the need to deliver profits to shareholders. This member-first focus is reflected in the level of trust that credit union members have in their credit union. A 2022 study found that 39 percent of credit union members cited trust as the primary reason for their satisfaction with their credit union.[2] This stands in contrast to only 22 percent of customers at non-credit union financial institutions who felt the same.[3] Credit unions represent a more community-focused, member-centric approach to financial services. Through affordable financial products, educational initiatives, and a fee structure designed to cover costs rather than generate profits, credit unions demonstrate a commitment to supporting their members and contributing to the financial health of the communities they serve.

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[2] PYMNTS, "How Credit Unions Can Boost Customer Satisfaction" (May 4, 2022), *available at* https://www.pymnts.com/credit-unions/2022/how-credit-unions-can-boost-customer-satisfaction.
[3] *Id.*

Credit Unions Do Not Engage in Unfair and Deceptive Fee Practices

Credit unions, in contrast to the practices described in the proposed rule, adhere to a set of principles and regulations that ensure transparency, fairness, and ethical conduct in their operations. This stands in stark contrast to the deceptive practices described in the rule, such as bait-and-switch tactics, misrepresentation of costs, and partitioned pricing. Credit unions are known for their commitment to providing clear and honest information to their members. Credit unions are upfront about their fees, rates, and terms of service. This transparency is rooted in the credit union philosophy of serving the best interests of their members, who are also their owners. Moreover, credit unions often offer financial education to their members to help them make informed decisions, rather than engaging in deceptive practices that mislead consumers about the true cost of products or services.

Simply put, so-called "junk fees" or "surprise fees" do not exist in the financial services industry. Federal law requires traditional financial institutions such as credit unions to clearly and conspicuously disclose fee schedules, limit the imposition of certain fees, and comply with pricing controls on the amounts of fees. Even if credit unions were motivated by profits, which they are not, existing federal laws and regulations would prevent them from engaging in the negative practices outlined in the proposed rule. For example, the TISA requires credit unions to disclose the terms and conditions of deposit accounts clearly and conspicuously, ensuring that members are fully informed about fees and interest rates.[4] Similarly, TILA mandates clear disclosure of credit terms, protecting borrowers from hidden costs and unexpected charges.[5] These regulations ensure that credit unions operate with a high level of integrity and transparency and prohibit them from engaging in the misleading pricing structures critiqued in the proposed rule. Furthermore, the cooperative structure of credit unions inherently discourages deceptive pricing strategies. As member-owned institutions, credit unions are accountable to their members, not external shareholders. This structure aligns the interests of the credit union with those of its members, promoting fair and reasonable pricing. In contrast to businesses that employ deceptive pricing to maximize profits, credit unions aim to provide value and service to their members, often resulting in lower and more transparent fees.

Impact to Credit Union Members

The Commission's potential move to restrict regulated financial institutions from charging reasonable, well disclosed fees could have far-reaching consequences for consumers, especially members of credit unions. Although the Commission lacks jurisdiction over federal credit unions for purposes of regulating unfair methods of competition and unfair or deceptive acts or practices, the proposed rule may still impact state-chartered credit unions.[6] One of the primary impacts of this action would be on the cost structure and affordability of services offered by state-chartered credit unions. Credit unions, known for their member-centric policies and lower fees compared to traditional banks, might be forced to reevaluate their fee structures. This could lead

[4] 58-FR-50445.
[5] 76-FR-79772.
[6] 15 U.S.C § 45.

to increased costs for basic services, such as account maintenance and transaction processing, which have traditionally been low or even free for credit union members.

Additionally, such a move could create potential for a reduction in the range and quality of services offered by state-chartered credit unions. The revenue generated from these fees often goes back into providing members with enhanced services, such as higher interest rates on savings accounts and lower interest rates on loans. By categorizing reasonable fees as "junk fees," the FTC might inadvertently push state-chartered credit unions to cut back on these beneficial offerings. This could be particularly detrimental to members who rely on credit unions for affordable financial services, like low-income individuals or those with limited access to traditional banking.

Finally, America's Credit Union is concerned that the proposed rule unfairly and inappropriately paints responsible, well-regulated financial institutions with the same broad brush as hotels, live-event ticket sellers, and food and grocery delivery apps. This could undermine the public's perception of credit unions as reliable entities with which to entrust their money. If reasonable fees are portrayed as "junk fees," it could undermine the trust and relationship between credit unions and their members. Credit unions are built on a foundation of member trust and mutual benefit, and mischaracterizing their fee structures could erode this essential trust. While the intent behind restricting unreasonable fees is commendable, a hasty or overly broad approach by the FTC could have unintended negative consequences for credit union members. It could lead to increased costs, reduced services, a less competitive market, and potential trust issues between credit unions and their members.

Conclusion

America's Credit Unions appreciates the opportunity to comment on the proposed rule on unfair or deceptive fees. If you have any questions, please do not hesitate to contact me at 703-842-2268 or jakin@americascreditunions.org.

Sincerely,

James C. Akin
Senior Regulatory Affairs Counsel