Legal and Compliance Report—March 2022[1]
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CFPB Takes Aim at "Junk Fees"

The Consumer Financial Protection Bureau ("CFPB") recently launched an initiative against so-called "junk fees" that consumers pay their financial institutions, including mortgage lenders. The CFPB endeavors to expose these "junk fees"—described by the CFPB as exploitative, back-end, hidden, or excessive fees—and subject them to competition in an effort to ensure fair pricing. In a recent Press Release, CFPB Director Chopra noted, "Many financial institutions obscure the true price of their services by luring customers with enticing offers and then charging excessive junk fees. . . . By promoting competition and ridding the market of illegal practices, we hope to save Americans billions."

The Press Release also announced a Request for Information ("RFI"), soliciting feedback from the public about people's experiences with fees associated with their financial institutions, including:

- Fees for things people believed were covered by the baseline price of a product or service;
- Unexpected fees for a product or service;
- Fees that seemed too high for the purported service; and
- Fees where it was unclear why they were charged

Mortgages were specifically targeted in the RFI as having "thousands of dollars in application fees and closing costs" and "inflated and padded fees rolled into the mortgage at closing." The CFPB identified the following examples of potential junk fees in mortgage transactions:

- title insurance,
- monthly inspection fees,
- new title fees, legal fees,
- appraisals and valuations,
- broker price opinions,
- force-placed insurance,
- foreclosure fees, and
- pay-by-phone/internet fees,

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Following the RFI, the CFPB published a blog post titled "*The Hidden Cost of Junk Fees*." Notably, mortgages were mentioned yet again under the subheading "Closing costs and home buying fees." Along with title insurance, the CFPB added document preparation fees to the list of "common junk fees" in mortgage transactions.

Although the CFPB's actions in this area have been limited to press releases and blog posts to date, it's clear that fee income of all kinds will remain under regulatory scrutiny for the foreseeable future. Prudent lenders should consider what the loss of fee income from several of the fees identified in the RFI could mean for your institution. The extent to which mortgage lenders will be forced to make changes to their business models will largely depend on the public response to the RFI, and feedback provided by the industry to elected officials.

Comments and responses to the RFI must be submitted by March 31, 2022.