**February 2025**

**ICBA Regulatory Update: Bank/Deposit Account Fees**

Topic/Issue: Deposit Account Fees

Agencies: CFPB, FDIC, OCC, FRB

Status:

* CFPB
  + Overdraft Lending Final Rule – December 2024
    - Applies to banks over $10billion in assets.
    - Caps overdraft fees at $5.
    - Subjects overdraft products to TILA requirements.
    - Senators Hill and Scott introduced Congressional Review Act (CRA) resolutions to overturn the rule. – February 2025.
  + Overdraft Lending: Very Large Financial Institutions Proposed Rule -Jan 2024
  + Advisory Opinion - Oct 2023
    - Requires large banks to provide certain information to customers free of charge, such as account balances and transaction history.
    - CFPB does not intend to seek monetary relief for violations that occurred prior to February 1, 2024.
* FRB Compliance Spotlight - Supervisory Observations on Representment Fees; representment fees violate Section 5 of the FTC Act - September 2023
* OCC Guidance on Overdraft Protection Programs; representment fees violate the FTC Act and disclosures do not matter - April 2023
* FDIC
* FIL-40-22; representment fees may violate Section 5 of the FTC Act - August 2022
* ***Update issued in June 2023 – Agency will not require a lookback absent a likelihood of harm.***
* On July 20, 2023, the Minnesota Bankers Association and Lake Central Bank filed a lawsuit in the Federal District Court in Minnesota alleging that the FIL required Notice and Comment and that it was an arbitrary and capricious action by the agency.
* The FDIC filed a motion to dismiss in September 2023. On April 8, 2024, the claim was dismissed without prejudice citing the Plaintiffs lacked standing and the FIL is not a final rule and therefore no legal consequences flow from it.

ICBA Position:

* We broadly oppose price controls and caps imposed by any regulatory agency, which only distorts market discipline and demand for delivery of products and services.
* Community banks are bound by law to disclose fees in a manner dictated by statute and regulations; to now call those disclosures, “illegal” or “surprising” is troubling.
* ICBA strongly urge policymakers to cautiously consider the consequences of any future restrictive fee related legislation and regulations, which would have a negative ripple effect on customers who rely on these services.
* ICBA opposes any retroactive and punitive action on lawfully disclosed fee practices, especially where those practices were never subject to examiner or regulatory scrutiny.
* We remain committed to pushing back and utilizing all resources available against the harmful rulemaking and rhetoric that mischaracterizes contractually negotiated and disclosed fees as “junk fees” in any form. In doing so, we will call for appropriate oversight, hearings, and other measures to hold the bureau accountable to comply with its mandate and governing rules.

Key Talking Points:

* Overdrafts & NSF Fees
* ICBA has cited survey data from consumers that indicates an intentional decision for consumers’ use of overdraft services and demonstrates an aversion to regulatory restrictions that would curtail overdraft programs.
* We will continue to push back and will respond to the rulemaking. We will also continue to engage the agencies on the practical uses of overdraft services and continue underscoring that customers leverage these services as part of their normal financial planning activities.
* Represented Item Fee
* ICBA and leadership bankers met with key senior personnel at the FDIC, OCC, and FRB. Our meetings focused on the lack of readiness of core service providers, the structural and operational obstacles associated with accurately identifying and stopping fees from being assessed, the abruptness of the policy change on a practice that has existed for years, and the policy implications the position will have on consumers.
* We urged each agency to:
* Refrain from levying any retroactive action.
* Allow reasonable time for community banks to update disclosures and practices to allow them the opportunity to adhere to the guidance.
* Allow banks the time needed to work with core service providers (or in house) to develop a system to identify and reject represented items.
* Issue no findings, including UDAP violations, while banks update their disclosures and practices.
* Refrain from issuing corrective actions or any other regulatory findings for at least one year.
* Provide supervised institutions with the specific language the agencies deem is missing from disclosures.
* Allow notice mechanisms that banks use to keep customers aware of their account status to automatically eliminate the threat of a UDAP violation.