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PROTECTING CONSUMERS SINCE 1975

April 11, 2022

Via Electronic Submission

Comment Intake – Fee Assessment
 Consumer Financial Protection Bureau
 1700 G Street NW
 Washington, DC 20554

RE: Docket No. CFPB-2022-0003 - Fees Imposed by Providers of Consumer Financial Products or Services

Dear Director Chopra:

The South Carolina Department of Consumer Affairs (“SCDCA”/“Department”) is pleased to offer comments in response to the Consumer Financial Protection Bureau’s (“CFPB”/“Bureau”) request for information regarding junk fees—exploitative, back-end, hidden, or excessive fees—imposed by some providers of consumer financial products or services.

SCDCA is South Carolina’s consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of over 120 state and federal laws. A large part of our authority stems from Title 37 of the South Carolina Code of Laws, the Consumer Protection Code (the “Code”). The Code, among other purposes, is meant to further consumer understanding of the terms of credit transactions, foster competition among suppliers of consumer credit, and permit and encourage the development of fair and economically sound credit practices.¹ Further, it requires the Department to undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services.²

SCDCA supports the Bureau’s efforts to collect information from the public and interested stakeholders on junk fees. We offer the comments below based upon our experience

¹ S.C. Code Ann. § 37-1-102(c)-(e)(2019).

² S.C. Code Ann. § 37-6-117(f) (2019).



regulating non-depository financial institutions and collecting and handling consumer complaints.³

Discussion

The Bureau is seeking information on how junk fees have impacted peoples' lives. The Department shares the Bureau's concern of the increasing "fee economy." The Department is intimately aware of junk fees. The South Carolina Consumer Protection Code deals with, among other things, whether and how certain charges may be assessed and earned. As such, businesses often request SCDCA opine on the topic of fees.⁴

In 2016, DCA issued an interpretation finding payment processing fees a cost of doing business.⁵ The Department concluded a business could take such costs into account when setting their interest rate; but if they chose not to absorb the cost, it would be deemed a finance charge. A similar interpretation was issued in 2017 regarding costs to process a lien or title through the South Carolina Department of Motor Vehicles' ("SCDMV") electronic system. The Department concluded the specific SCDMV-required fee is a permissible additional charge and may be passed on to the consumer in a credit transaction; however, fees assessed by a third party the

³ SCDCA's Consumer Services Division processes and mediates written consumer complaints, seeking to find equitable solutions for the consumer and the business, including refunds, adjustments and credits to consumer accounts.

⁴ *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 1.202(7)-7602* (as amended 11/3/78) ("origination fee" in addition to maximum finance charge is an excess charge); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 2.110-8701* (1987) (in consumer credit sales of motor vehicles, bona fide charges for optional extended service contracts may properly be considered part of the amount financed); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.109-8010* (1980) ("origination fee" or "discount points" subject to refund on prepayment); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.201-8402* (1984) (clarification on permissible charges for revolving consumer loan accounts under the Consumer Protection Code); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-7613* (1976) (appraisal fee is part of the finance charge and is not a permissible "additional charge"); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-8303* (1983) (the Consumer Protection Code does not authorize a "release fee"); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.202-8901* (1989) (A supervised licensed lender may not charge an annual fee in a revolving consumer loan transaction unless the loan agreement constitutes a lender credit card or similar arrangement. To so qualify, the card, the letter of credit or other credit confirmation should be identifiable as a credit card or similar arrangement.); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.210-8109* (1981) (appraisal fee is part of the finance charge subject to rebate upon prepayment in full); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.305-8601* (1986) (failure to file a maximum rate schedule leads to an 18% maximum annual percentage rate); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-7510* (1975) (limitations on attorney's fees chargeable to defaulting debtor); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-8003* (1983) (limitation on reasonable attorney's fees to 15% of unpaid debt after default does not apply to restricted loans); *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.404-8101* (1981) (Consumer Protection Code does not authorize insurance premium service companies to charge attorneys' fees). The preceding administrative interpretations are available for viewing at <https://consumer.sc.gov/business-resources/laws/administrative-interpretations>.

⁵ See *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 3.109,503-1603* (2016) (Supervised Lenders' websites to collect payments on existing loans must be licensed; Lender may not impose a fee to accept payments). [https://consumer.sc.gov/sites/consumer/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%203/3.109%2C503-1603 Supervised Loans Location Payment%20via%20Web.pdf](https://consumer.sc.gov/sites/consumer/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/Chapter%203/3.109%2C503-1603%20Supervised%20Loans%20Location%20Payment%20via%20Web.pdf).



dealer chooses to use to assist with the filing or fees for implementing their own in-house interface could not be. The Department also issued an interpretation in May 2016 on motor vehicle dealer advertising.⁶ The Department concluded that motor vehicle dealers must sell a vehicle for the advertised price, regardless of whether a consumer mentions the price representation in the advertisement, unless a limited exception applies.

During the COVID-19 pandemic, the Department saw an increase in fees charged to consumers because of the pandemic's disruptive effect on the economy. Most recently, the Department has identified several concerns regarding motor vehicle dealers adding extra fees to the advertised price of vehicles, inflating official fees in the sales contracts, and using MSRP for used cars.⁷ Specifically, dealers were drawing a consumer into their business based on an advertised price and subsequently informing the consumer that an additional fee would be added. The fee is often based on supply and demand (i.e., market adjustment fee) or for a required dealer add-on (refurbishment fee, security system, inspection fee). The Department also learned certain dealers inflated official fees when listing them on the consumer contract, adding "processing fees" to the total.

Failing to disclose all required fees—outside of standard official fees—hinders the consumer's ability to shop around for a product/service. One business may seem more attractive to a consumer on its face due to an advertisement, when truly it is not an apples-to-apples comparison if one business advertises an all-in price while the other hides its fees until the consumer is ready to sign on the dotted line. Depending on when the consumer is notified of the additional fees/costs, the consumer may be in a position that seemingly prevents them from terminating the negotiations/ interactions and starting over with a new business. The lack of transparency also obstructs competition as businesses would be unaware of the bottom line set by their competitors.

From release fees to transaction fees to participations fees to courier fees, history has shown a desire of industries participating in the consumer credit marketplace to assess fees outside of an advertised price or cost. Generally, the Department believes any fees or charges should be disclosed explicitly and uniformly and such disclosure should be presented in a manner to create an informed buyer.

⁶ *S.C. Dep't of Consumer Affairs, Admin. Interpretation No. 2.308-1602* (2016) available at: <https://consumer.sc.gov/sites/consumer/files/Documents/Business%20Resources%20Laws/Administrative%20Interpretations/2.308-1602%20Dealer%20Advertised%20Price.pdf>.

⁷ *See Memo Re: Misleading and Deceptive Motor Vehicle Dealer Practices* (2/18/2022) available at <https://consumer.sc.gov/sites/consumer/files/Documents/Business%20Resources%20Laws/Business%20Education/MVDealerMisleading-DeceptivePracticesMemo.pdf>.



Conclusion

We hope the CFPB finds the information provided beneficial as you decide a path forward for this issue. We commend the Bureau for the work and effort put into this process and appreciate the opportunity to comment. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Best,

A handwritten signature in blue ink that reads "Carri Grube Lybarker". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Carri Grube Lybarker, Esq.