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CFPB Advisory Opinion: Impeding Consumer Requests for Bank Account Information Comes at a Cost

The Consumer Financial Protection Bureau (CFPB or “Bureau”) announced its plans to raise the stakes for judging financial institutions’ responses to consumer requests for information. The CFPB’s [Advisory Opinion](#), Consumer Information Requests to Large Banks and Credit Unions, is the Bureau’s first statement regarding section 1034(c) of the Consumer Financial Protection Act (CFPA). Section 1034(c) requires large banks and credit unions to comply in a “timely manner” with consumer requests for information concerning the financial product or service obtained and the supporting written documentation for the consumer’s account. Could your financial institution be unreasonably impeding information requests by charging fees, for instance? Understanding which practices the CFPB considers impediments will help to ensure your bank is not penalized for non-compliance.

CFPA Section 1034(c)

Section 1034(c) requires large banks and credit unions to provide account information and supporting documentation in their control and possession. The Advisory Opinion reiterates the concepts of control and possession in that it is information known by the employees or found in paper or electronic files. Possession could extend to information held by an affiliate or third-party service provider.

Compliance with section 1034(c) became effective July 21, 2011.

Consumer Request for Information

Consumer information requests could possibly include a large assortment of information about a consumer’s account at a financial institution. The Advisory Opinion references information

that appears on periodic statements or an online portal, interest rates on a loan or deposit account, transactions on a revolving account, including bill payment and other recurring transactions, as well as terms and conditions of deposit accounts and loan agreements or the release of a lien. Large banks and credit unions do not have to provide information in any particular manner, or use particular means, but are required to provide account information and supporting documentation to the extent it is in their control or possession.

Large banks and credit unions are not required, however, to provide information that falls within an exception of 1034(c), namely to (1) confidential commercial information; (2) information for the purpose of preventing fraud or money laundering or detecting other unlawful or potentially unlawful conduct; (3) information required to be kept confidential; and, (4) any nonpublic information, including confidential supervisory information.

Unreasonable Impediments to Information Requests

The CFPB's Advisory Opinion states, "A large bank or credit union would not comply with section 1034(c) if it imposed conditions or requirements on consumers' information requests that unreasonably impeded consumers' ability to request and receive account information."

What would impede an information request? The CFPB considers requiring a consumer to pay a fee or charge to request account information is likely to unreasonably impede consumers' ability to exercise the right to information requests and thus to potentially violate 1034(c): "Some consumers cannot afford to pay even a small fee to obtain information about their accounts." As the Advisory Opinion concludes, "Thus, a large bank or credit union's practice of charging fees to respond to an information request would generally unreasonably impede consumers' exercise of their rights under section 1034(c)."

The Advisory Opinion provides an inexhaustive list of impermissible fees likely to unreasonably impede consumers access to account

information. This includes charging fees “(1) to respond to consumer inquiries regarding their deposit account balances; (2) to respond to consumer inquiries seeking the amount necessary to pay a loan balance; (3) to respond to a request for a specific type of supporting document, such as a check image or an original account agreement; and (4) for time spent on consumer inquiries seeking information and supporting documents regarding an account.”

Fees that may be permissible include charging “a consumer who repeatedly requested and received the same information regarding their account (e.g., repeatedly asked for a copy of the same document). In that context, the large bank or credit union would have already met its obligation under section 1034(c) by complying with the consumer’s earlier requests.”

Evaluating Account Fees

A justice of the U.S. Supreme Court once famously opined that Congress does not hide elephants in mouseholes. The Advisory Opinion’s dictates may raise questions concerning whether Section 1034(c)’s language is a fair springboard for the CFPB to impose additional obligations in furtherance of the Bureau’s campaign against supposed “junk fees.” Similarly, the interplay of contract law, where accountholders agreed upon a fee schedule concerning records and research, and the interplay with civil litigation practice and procedure may become interesting issues on our horizon.

The Advisory Opinion suggests that the CFPB will not seek penalties arising from non-compliance before February 1, 2024. Financial institutions may wish to begin inventorying their fee schedule(s) and look at the business case for charging or adjusting fees in light of the Advisory Opinion. Regardless of the fee’s name, there could soon be penalties if it falls within the scope of impediments the CFPB views as unnecessarily burdensome to consumers seeking access to their account information. For more information, contact the author or any attorney with Frost Brown Todd’s [Consumer Financial Services and Consumer Protection](#) team.

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