Insight

What Is a Junk Fee, Anyway?

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Executive Summary

- President Biden has made a crackdown on "junk fees" a central tenet in his administration's approach to financial services policy.
- Despite the implied threat to financial services this term carries, and the frequency with which it appears, the actual meaning of a junk fee is rarely defined and covers an ever-shifting landscape of disapproved practices.
- The use of the term junk fees therefore acts as a Trojan horse for policy based on politics – poorly thought-out initiatives based on poorly thought-out rationales with little regard to the results, intended or otherwise.

Introduction

Since President Biden's inauguration, hardly a month passes without the administration or its federal agencies announcing some new initiative in the name of cracking down on "junk fees." The eradication of junk fees is the principal policy goal in rulemakings, guidance, and comments from a wide range of actors from the White House and federal agencies. But how have these diverse groups covering diverse issue areas used the term, and what does this tell us about the central motivation behind the initiative?

Biden Administration Junk Fee Initiatives

Date	Initiative	Definition of Junk Fees
1/26/2022	The Consumer Financial Protection Bureau (CFPB) releases a request for information seeking public input on "junk fees."	The CFPB declined to specify. Examples of junk fees provided by the CFPB consider scenarios where companies "substantially overcharge" for a product or service and notes that this might result from a lack of competition in the markets. (Curious, then, that this isn't an issue for the antitrust division.)
6/22/2022	The CFPB issues an advance notice of proposed rulemaking seeking to reduce the amount banks can charge for late credit card payments.	While the CFPB did not in this instance use the term junk fee, Director Chopra noted that the CFPB's investigation into how fees are determined was "particularly timely since current rules might give companies the incentive to impose big hikes based on inflation." This notion of an "excessive" fee remains the key policy driver, but no further guidance is given as to what constitutes excessive or who gets to decide.
6/23/2022	The Federal Trade Commission (FTC) proposes a rule to ban "junk fees and bait-and-switch advertising tactics that can plague consumers throughout the car-buying experience."	The FTC declined to specify but uses the term "junk fees" only once in the rulemaking in conjunction with "unnecessary add-ons." Here the FTC not only questioned the fees charged when cars are sold, but also the necessity of the services being provided.
9/26/2022	President Biden addresses junk fees in remarks made to the White House Competition Council.	President Biden referred to junk fees as "unnecessary hidden fees," highlighting the view that junk fees are both extraneous and undisclosed.

10/26/2022	The CFPB issues guidance on the kind of fees banks can charge. President Biden later held a press conference with Director Chopra at the White House on the guidance.	The guidance notes that overdraft fees can be considered an "unfair" practice and therefore violate the Consumer Financial Protection Act, adding in particular overdraft fees on transactions "that a consumer would not reasonably anticipate are likely unfair." That this information was relayed in the form of guidance (which is not legally binding) that contains so many qualifiers ("can," "likely") uses language so imprecise as to be irresponsible. In the subsequent press conference, President Biden characterized junk fees as "surprise overdraft and deposit fees, credit card late fees, [and] hidden hotel booking fees," and Director Chopra described them as "fees for unexpected or unwanted services that have no value."
11/20/2022	Tim Wu, the Biden Administration's advisor on competition policy, comments on the "profusion" of junk fees in an interview with the *Financial Times*.	Wu noted there was a "sense there has been a profusion of junk fees across the economy, things that confuse people, coercive fees, deceptive practices," but declined to define either junk fees or provide data to back up this assertion. Wu added: "The overall idea is to try to clean up pricing in the United States." The implied central planning on fees and pricing structures is an astonishingly anti-competitive stance for a competition advisor.
2/2/2023	The president's Competition Council meets for the fourth time to consider how the federal government could promote competition in the U.S. economy. The CFPB announces a proposed rule to "rein in excessive credit card late fees." President Biden subsequently called for a crackdown on junk fees in his State of the Union address.	The CFPB declined to specify, but Director Chopra noted that banks have "exploited a regulatory loophole" allowing them to charge an "otherwise illegal junk fee." In so doing Director Chopra invented a marvelous new category of Schrodinger's cat legal liability for the entities he regulates. President Biden noted that Americans are "tired of being played for suckers."
3/8/2023	The White House releases a "Guide for States: Cracking Down on Junk Fees to Lower Costs for Consumers."	In perhaps one of the more explicit definitions provided on junk fees, the White House characterized junk fees as "unnecessary, unavoidable, or surprise charges that inflate prices while adding little to no value," a definition subsequently used verbatim in a CFPB supervisory highlights report.
10/11/2023	The CFPB releases guidance targeting fees charged by large banks for checking their account balances. The FTC proposes an unusually vague rule prohibiting businesses from charging junk fees.	Director Chopra noted that the intention of the guidance was to block "massive fees, or trap [consumers] in endless customer service loops, when people are just trying to get simple information," but provided no rational as to why the rule should only target banks holding $10 billion in assets. The CFPB also called these practices "illegal." FTC Chair Khan noted that "all too often, Americans are plagued with unexpected and unnecessary fees they can't escape."
10/31/2023	The Biden Administration announces the third attempt in three administrations to regulate the business of investment advice.	The accompanying fact sheet notes: "When the saver pays for advice that is not in their best interest, and it comes at a hidden cost to their lifetime savings, that's a junk fee." This is the most sweeping definition of a junk fee to date.
12/13/2023	The Federal Communications Commission (FCC) issues a proposed rulemaking that would scrutinize cable billing practices and increase competition.	The FCC declines to specify but provided as an example the practice of early-termination fees.
1/17/2024	The CFPB issues a proposed rulemaking significantly decreasing the amount banks can charge on overdraft fees.	The CFPB in its accompanying fact sheet notes a new source of junk fee "revenue" for banks: "fees on transactions declined right at the swipe, tap, or click." National Economic Council Director Brainard noted: "Banks may call this a service, but it amounts to squeezing the hardest-hit consumers to increase the bottom line," describing the process of charging consumers for goods and services.

Analysis

While the Biden Administration and its agencies have declined to define the concept of a junk fee with any degree of precision, consistent themes emerge in the examples provided or how the term is used.

First, and perhaps most important, usage of the term junk fee implies that the practice is *illegal* or *illicit*. Language used includes *unfair* (with reference to the Consumer Financial Protection Act), *coercive*, *deceptive*, *otherwise illegal* and, astonishingly, *illegal*. This is, of course, untrue – in every case mentioned above, the practice relates to a legal revenue stream supervised by the federal regulators themselves. To imply that businesses operating within the remits authorized to them by the agencies and Congress is somehow inappropriate is a dishonest mischaracterization of the regulatory environment in which businesses operate. As one example, the regulatory structure in which late credit card fees operate is run by the CFPB itself, which sets maximums. To rail at companies operating within the bounds the agency itself set is blatantly incoherent policy. As a result, the primary function of the term junk fee is to provide implied illegality because actual illegality does not exist. If the administration had legal grounds to stand on, it would not rely on non-binding guidance issued with qualifiers such as "might" or "may be" illegal. Another stand-in term for illegality the federal agencies have used is *anti-competitive*; again, without actually invoking federal antitrust regulators.

To the Biden Administration, a junk fee is any fee charged by businesses that is, in its opinion, *excessive* (and no, excessive is not defined either). The value (and cost) of doing business in the United States is set by the free market – value and cost are defined by the appetite of the consumer. Instead, the CFPB would arrogate this power to itself to determine the value of value – the kind of central planning that is antithetical to free markets conceptually.

Closely tied to excessive is the charge that junk fees are *unnecessary*, or at the very least refer to unnecessary services or *add-ons*. Why allow the American consumer to determine what services they do or do not need when the federal government can simply do it for you? In seeking to rewrite the business of investment advice, the Biden Administration would go one step further by protecting the educated consumer of investment advice from any advice that is not in their best interest.

Finally, the federal agencies seem to suggest that junk fees are in some way *undisclosed*, using language such as "surprise" or "hidden." Extensive disclosure requirements cover the provision of goods and services in the United States. Banks are already required to be transparent in the fees that they charge in the terms and conditions that consumers sign. Here undisclosed is simply being used as a synonym for "unwelcome."

Conclusions

The Biden Administration's continued assault on "junk fees" says the quiet part out loud. Populism is not an effective way to regulate markets, and going after socially disfavored targets for providing goods and services within the bounds set by federal regulators does everyone involved a disservice, not least consumers themselves. The provision of credit is a service for which banks and other actors deserve to be paid – if not, why provide consumers the service at all?