Consumer Finance Monitor Podcast (Season 9, Episode 50): New Jersey Signals Aggressive Enforcement Against "Junk Fees": What Businesses Need to Know

Speakers: Alan Kaplinsky and Beverly Brown Ruggia

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services Group at the Ballard Spahr law firm. And I'm your host, Alan Kaplinsky, the founder, practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr, and I'll be moderating today's program.

For those of you who want even more information, don't forget about our blog, which also goes by the same name as our podcast show, namely Consumer Finance Monitor. We hosted the blog, we have hosted it since July 21, 2011, a date that not too many people will recognize, but it's actually the date the CFPB became operational. And we've hosted it consistently since that time. We also regularly host webinars on subjects of interest to those in the industry. So if you want to subscribe to our blog or get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, please let us know about it. You can leave us a review on whatever platform you're using today to access your podcast show.

So, let me provide some background about what we're going to be talking about today. We're going to be discussing a topic that's attracted significant attention at both the federal level and the state level over the last several years, the regulation of so-called junk fees. Specifically, we're going to be focusing on the recent issuance by the New Jersey Attorney General and the New Jersey Division of Consumer Affairs of a comprehensive enforcement statement signaling an aggressive enforcement posture toward junk fees under the New Jersey Consumer Fraud Act.

The enforcement statement was issued in conjunction with the Governor Mikie Sherrill's Executive Order No. 19, which directed state agencies to review and recommend measures to eliminate or reduce junk fees across a broad range of industries. Although the enforcement statement does not, in and of itself, create any new legal obligations, it provides important insight into how the New Jersey regulators intend to interpret and enforce existing law under the Consumer Fraud Act. And it serves as a warning to businesses that are operating within the state of New Jersey.

The existence of the enforcement statement would, in and of itself, be noteworthy. What makes this extremely important is the fact that Governor Mikie Sherrill has recently announced her intention to nominate Chris Peterson, one of the nation's best-known consumer protection scholars, and a former CFPB official, and has nominated him to be the director of the New Jersey Division of Consumer Affairs. He is now acting director. He will become director after a formal nomination and confirmation by the New Jersey Senate.

His appointment also reflects his impressive public service and academic credentials. He's been on the faculty at the University of Utah College of Law. And while on that faculty, he served as a senior advisor of the CFPB during the bureau's formative years, helping shape its enforcement strategy and policy initiatives. Later on, he played an important role at the Department of Defense in strengthening protections for military families through the Military Lending Act.

Finally, and this is something we said in a blog that I recently put on our Consumer Finance Monitor blog, although it's obviously too early to make a prediction about future federal appointments, Chris's experience as a former CFPB official, nationally recognized scholar and respected consumer protection expert, would undoubtedly make him a leading candidate to serve as director of the CFPB should a Democrat next occupy the White House.

And he comes to this position as, as I said, one of the leading consumer financial services lawyers in the country. He's a member of the American College of Consumer Financial Services Lawyers. And also, although he is very fair and very reasonable, I would expect that he will absolutely demand strict adherence to the Consumer Fraud Act, and in particular the guidance dealing with junk fees. So, I'm now going to introduce our guest for today.

I'm introducing Beverly Brown Ruggia. She is the financial justice program director for the New Jersey Citizen Action, or NJCA, a statewide grassroots nonprofit organization dedicated to social, economic and racial justice. Since 2011, Beverly has been NJCA's advocate and organizer, working to preserve and create affordable housing, to enforce and strengthen the Community Reinvestment Act, to combat housing discrimination.

She leads NJCA's advocacy for state and federal consumer finance protections, regulatory reforms, and policies that create financial practices... Sorry. Start all over. Not starting the whole thing all over Christina, but I'm going to start with the sentence. She leads NJCA's advocacy for state and federal consumer finance protections, regulatory reforms, and policies that create financial inclusion, and that prevent unfair, deceptive, and abusive practices in banking and in all forms of lending and debt collection.

She also is on the Board of Directors of the Consumer Federation of America, and she has been a guest lecturer at New York University Wagner School since 2023. She was very heavily involved in providing input into the preparation of the guidance document that we're going to be discussing today. So Beverly, a very warm welcome to you. Delighted to have you on our program.

Beverly Brown Ruggia:

Thank you for having me, Alan. It is a pleasure to be here with you today to talk about such an important topic.

Alan Kaplinsky:

Okay. And I know you know Chris Peterson very well 'cause you had told me that.

Beverly Brown Ruggia:

I do know Chris well, and I had the pleasure of working with him for many years through my advocacy as one of the many state advocates working to support and strengthen the Consumer Financial Protection Bureau.

So I knew Chris there. I also knew him when he was at Consumer Federation of America. And as you have pointed out, he is one of the nation's most knowledgeable, effective consumer protection advocates, and he is a scholar. He knows the law better than most of us, and we're really fortunate to have him join the Office of the Attorney General as currently acting director of the Department of Consumer Affairs.

Alan Kaplinsky:

Right. So Beverly, before we discuss the enforcement statement regarding junk fees, maybe... I mean, in my introduction I gave our listeners some idea of the things that you do and what NJCA gets involved in. But how did you become involved in the Consumer Financial Protection?

Beverly Brown Ruggia:

Citizen Action is a statewide organization, as you pointed out, and our work has to do with advancing racial, social, and economic justice. In the economics of the work that we do, we are very active in trying to make sure that all New Jerseyans have equal access to the tools they need to live well and thrive. And that means access to credit, access to banking and finance products and services.

And so in that work and also in our housing work, we were very active in promoting and supporting the establishment of the Consumer Financial Protection Bureau. As you recall, it opened its doors in the midst of the financial crisis, the Great Recession, and one of the things that the CFPB did upon opening its doors was lay down a number of rules and regulations related to the subprime lending activities on Wall Street, and so many of the activities that led to the recession. And so we were very much involved at that point in looking at how the people of New Jersey were most negatively impacted by some of the practices on Wall Street.

And so from then on, we have worked closely with consumer advocates across the country, as I said, in trying to strengthen and advance the work of the Consumer Financial Protection Bureau. And my work intersects very closely with all of those

kinds of policies related to making sure that New Jersey consumers are not treated unfairly, that they're not deceived, and they're not abused by banking and finance companies.

Alan Kaplinsky:

Well now, let's turn to the topic du jour, namely junk fees. Many businesses object to that term, arguing it's more of a political slogan than a real legal concept. How do you define a junk fee and why should consumers be concerned about them?

Beverly Brown Ruggia:

First of all, I've heard that argument from businesses. And it's interesting, because in fact, the use of the term helps actually make the case that there are necessary fees. By distinguishing between a junk fee and a necessary general fee, the term actually strengthens, again, their case that there are necessary fees.

I would say that junk fees are fees that are usually undisclosed in some way. They're mandatory fees that the consumer can't avoid, and they're usually charges that aren't necessarily reflective of any real cost to providing the product or the service. And the term junk fee helps us understand which fees are really not necessary, and in fact, in many cases, have become just an extra line of business for many companies.

Alan Kaplinsky:

Yeah. So, what kinds of fees concern you the most? And let's stay within the consumer finance area, because I know the jurisdiction of the Division of Consumer Affairs is a lot broader than consumer finance. It applies to all the kinds of things that consumers do, not only when they decide to get credit. But in the consumer finance area, can you provide our audience with some examples of what you might consider to be a junk fee?

Beverly Brown Ruggia:

Sure. In general, I would say I'm really concerned about fees on products and services that are forms of credit but are marketed as something else. I don't know if you're familiar with an industry called early wage advance industry. Those companies charge fees for, they say advancing wages that people have already earned, but the industry is aggressively moving across the country, attempting to carve out these products from state lending laws, so laws that we have in New Jersey, including an interest rate cap. These are forms of credit, and yet these industries say they're not. However, they are working very, very hard to carve themselves out. And when I talk about those fees, I mean, in my view, no one should have to pay for their pay. They've earned these wages and they shouldn't have to pay for them.

Alan Kaplinsky:

It's a timing issue, though, Beverly, right? In other words, a lot of people get paid every two weeks, and they get paid after the fact. In other words, they don't get paid in advance of the work. Say they work five days a week, let's say, and at the end of a week they need the money for whatever reason, medical bill, some emergency has cropped up. What's wrong with a company providing a service where people can get paid for a day's work, theoretically, at the end of a day, rather than having to wait for two weeks?

Beverly Brown Ruggia:

There is no problem with people getting an advance on their pay. The problem is when you have a third party, a company other than the employer stepping in the room, providing money to the person, theoretically with the pay that is coming as collateral, collecting that money back, and charging a fee. Now, if you want to charge a fee, then it should come under state lending law, because in fact, you have no liability. You do not owe that person anything. And so, if you are giving them money, they pay it back and they pay a fee, they are lending you money.

Alan Kaplinsky:

A lot of times, I mean, I think there's a lot of variation among these EWA programs, and some of the vendors that provide the service actually get paid something by the employer. They don't get anything directly from the consumer.

Beverly Brown Ruggia:

That's a different model. What I'm talking about is a fee to consumers, directly to consumers, which is what we're talking about today, right? When a consumer has to pay a fee for something. And in this particular case, this is a third party that's providing money to the person, the person has to pay it back, and there's a fee charge. Now, if the person enters into that agreement, that's fine. The point, though, is these industries are actively going around the country and getting themselves carved out of lending law, which means once that happens, they can charge anything. There's no restriction as to what they can charge.

So, the problem isn't in what the service does. If a person wants to get an advance on their pay, they should be able to do that. However, once there's a fee involved, we need to have oversight of what that fee is. And again, they argue, "This is not a loan," but the third party doesn't have any obligation to this consumer. So, if the employer provides it, the employer is actually the entity that owes the person money, and therefore, it's not a loan. They're giving them an advance on what they already owe them, correct?

But I think the bottom line point here, though, is that you have industries that talk about providing products and services, lending products and services as though they are not loans, and then they want no oversight as to how much they can charge. In New Jersey, we have usury cap. We have a cap. You can't charge more than a certain percentage. Now, right now in that industry, if you go around, you'll see right now the fees seem very low.

Another problem we advocates have, which isn't really the topic today, but is that what happens is people use these services over and over again, and that becomes a problem for the consumer in a different way. But when we're talking about fees, we need to make sure that all of these products and services are properly governed. And in this case, we need to make sure that if somebody's getting a loan, it's towards pay that they have earned, they've earned it, no question. But in this case, we need to make sure that those fees are properly governed, and that's the problem there.

Alan Kaplinsky:

Okay. What about are there other things aside from EWA, earned wage access, sort of a niche product? It's something, a creation, a technological creation that's really only been in existence for a few years. But what about just, let's say, credit cards? Well, in that the consumers aren't aware of... I mean, one of the things you just said was if there's disclosure of a fee... And I'm assuming also it's not an interest issue. In other words, not a usury issue that we're really focusing on. If somebody overdraws their checking account and they've signed the document saying, "If I overdraw the fee, it's going to be X dollars," why is that a junk fee?

Beverly Brown Ruggia:

Because there's deception in terms of what it actually is. So, when you talk about overdraft protection, we're saying, "Oh, don't worry. You spent $5 more than you intended to, and so we're going to charge you a fee." Now, one of the things is unconscionable in terms of the Consumer Fraud Act, which will be applied as the state looks at what is a junk fee and what is not. So first of all, the Consumer Financial Protection Bureau determined that most of these overdraft fees have not been justified in terms of what they actually cost the banks to provide, right? So if you, again, tip over $5 more than you have in your bank account and you get a $30 charge, that's not commensurate with what it costs the bank to provide that.

The other thing is it's really a form of credit. If the bank is covering an amount of money that I don't have and they are paying it out to the vendor, that's fine. If you want to sign up for that, that's fine, but the fee ought to be commensurate with what it actually costs the bank to provide you with that credit, because it is a form of credit. They're covering, they're paying somebody money that you don't have. When you're talking about banking and finance, it's looking at what these products actually are and how they should be governed.

When we talk about junk fees, we aren't just talking about whether there's transparency in terms of whether the consumer knows they're going to be charged or not. We're also talking about fairness, and we're also talking about making sure that the consumer understands why they're being charged these fees. So when you have a junk fee, it's often a fee that's unreasonable. So, in looking at overdraft fees, you could be paying $30 for a $5 overdraft. It's not really commensurate with the cost of providing that service or that coverage.

The other thing I was saying is that it is also unfair and it's deceptive not to define that coverage as credit. And that can be considered a bigger question, but when you look at the fees, are they fair? Are they reasonable? Are they commensurate with whatever it costs the business to provide that product or service? And that's an example in banking and finance where the fees are unreasonable.

Alan Kaplinsky:

So yeah, it seems to me that that's not really a junk fee, but it may be a fee that's unlawful for another reason, namely that it's unconscionable or abuse.

Beverly Brown Ruggia:

And if you look at the executive statement, they talk about unconscionability. So there's deceptive, unconscionable, and abusive. And so those are fees that will be looked at in those terms.

Alan Kaplinsky:

I wonder how you would feel about a topic that the CFPB, at least under Rohit Chopra, spent a lot of time on, that is trying to reduce late fees on credit cards to $8, I think it was. He often referred to late fees as junk fees, and I always took issue with that because it's not a junk fee. First of all, it's fully disclosed under the Truth in Lending Act. There's total transparency. And consumer knows if they don't pay on time, they're going to pay a late fee, and regardless of what the amount of the late fee is. If the late fee is disproportionate to the cost, then maybe it's unlawful for another reason, but I don't consider that a junk fee.

I mean, my own view, and we'll agree to disagree, I'm afraid, and that is that in the credit area, consumer finance area, because of the disclosures that are required under the Truth in Lending Act and state law, that there are very few instances, I think, where something really is a junk fee. It's more prevalent in other businesses, hotels who don't tell you about some charge they're going to add to your bill for whatever, $25 a day for enjoying the amenities of the hotel, things like that. But anyway, let's move on because we got a lot to cover.

Beverly Brown Ruggia:

Well, I just want to make one comment, and I think it's really important.

Alan Kaplinsky:

Sure.

Beverly Brown Ruggia:

And that is that although you may disagree, junk fee is not solely defined by whether it's disclosed or not. And the amount of the fee matters. Now I will tell you, for instance, on a department store credit card, I saw a situation where somebody bought a $60 pair of shoes. They left town, unfortunately were a little bit late, and the next fee for that late payment, even though they sent it in late, was $40. They've now paid $40 on a $60 pair of shoes. The timing of the check going in was such that the next bill came, and again, timing was all off. They paid $80 in late fees for a pair of $60 shoes. Now, you might not consider that a problem, but it is looked upon as unfair.

Now, credit card companies have the right to collect on debt. So if the person leaves that debt for months and months and months, they're ultimately going to be able to take that person to task. But when the timing of your payment is off, such as you've now paid $60 for the shoes and $80 in fees, I think we need to look at that, about whether that's really fair or not. And

when I say fair, the CFPB was mandated to look at unfair, deceptive, and abusive practices. Now, from a consumer perspective, that's fairly abusive, and it's not really fair. I don't think we can limit the definition of junk fees to whether or not they were disclosed.

Now, the other thing is that a lot of consumers are not really knowledgeable about how that accumulates. That's not necessarily the business's fault. However, in that environment, it is even more important that the customer understands what they're getting themselves into. So you fall off your payment checks going in, or payment online, however it is, by a few days and you're paying $80 on late fees for a $60 pair of shoes. We need to look at that. And I think that is what the Consumer Financial Protection Bureau was looking at. That is a credit card that suddenly spins out into exorbitant fees when the person's two days late, maybe even just one month late, but still that is not in the marketplace.

Alan Kaplinsky:

Well, there's a whole range of practices, Beverly, that I would agree with you could be unfair, deceptive, abusive, but I don't agree that every fee that you think is unfair or abusive, we ought to label it a junk fee.

Beverly Brown Ruggia:

Well, I think that is where the law comes in. So, when we look at what's going on in New Jersey-

Alan Kaplinsky:

Well, yeah, let's move into that, the New Jersey enforcement statement. Okay? It relies on the New Jersey Consumer Fraud Act, the UDAP statute. It didn't create, it's not a new regulation. It's just a statement of how they're going to enforce the law. Why did New Jersey decide, if you know, that an enforcement statement was the appropriate vehicle to use here?

Beverly Brown Ruggia:

I cannot speak for the governor or the attorney general. However, what I can say is that it addresses the problem that you just brought up. When you are very specific about what law you intend to use to enforce an EO such as the EO that Governor Sherrill has issued, you have a very clear set of criteria. And in this statement, it very specifically draws on the Consumer Fraud Act, including deceptive, unconscionable, and abusive acts. So, when you talk about the various practices that sometimes you think are unfair or apply to junk fees and don't, this provides a rule, this provides criteria, and this puts businesses on notice that this is how the attorney general will apply, will implement the governor's EO.

The AOG, sorry, the attorney general will use this specific law to determine what is a junk fee and what is not. So, I think that clarifies your previous question or your previous concerns about what is a junk fee and what isn't a junk fee. I believe that what I've described falls within the purview of this regulation specifically. So, it is precisely to provide that clarity that you might be looking for, as you have just said, there's some things you see as junk fees and some things you don't, and that's where the law helps. The law is clear.

Alan Kaplinsky:

One of the things that gets mentioned all the time about something being considered a junk fee is this concept of all-in pricing. In other words, what all the regulators don't like is for somebody, for you to market a product or service for a particular price, and then when you bill the customer for that, other things get tacked onto it, like service fees. People don't really understand what that means.

I mean, for example, I buy tickets to see shows a lot and they'll be charged for the ticket. And that, very often, until the Federal Trade Commission came out with its junk fee regulation, it wouldn't tell you about a $25 service fee that was being tacked on. I get that completely, but I don't see that happening, this concept of... 'Cause you've said, I mean, the examples that you've given don't really fit within this all-in pricing idea, which I get, which I understand. Do you agree?

Beverly Brown Ruggia:

Let me try to explain why I don't necessarily agree. So, when... All-in pricing is really about, well, it's fairness, but it's also about allowing the consumer to compare pricing efficiently. So if I'm shopping around for something, I need to be able to know that when I go into Store A, my total cost is going to be $50. And when I go into Store B, my total cost is $53. And that's leveling the playing field in the marketplace, making sure that consumers can compare prices accurately and efficiently.

Alan Kaplinsky:

And it's also fair to competitor. I mean, it's a question of fairness for companies, that they may be quoting an all-in price, but their competitor down the street is quoting a lower price, but it doesn't include some other fee tacked onto it.

Beverly Brown Ruggia:

That's exactly correct. It is fairness for the consumer and it is fairness for the businesses. Across the marketplace, all-in pricing means that consumers are comparing accurately and efficiently. And so, if I go into Store A and I'm drawn in because it says my cost is going to be 35.25, and the other store, as you just pointed out, makes sure that I know that by the end of the day, I'm going to pay $40.

Store A says, "Come on in here. I got a $35 product for you." And as we're talking and I'm moving for this, through this, suddenly I start seeing, "Well, wait, what's this fee and that fee?" Now, ultimately, I may understand that, but it's a very confusing process. And also, I've been drawn into that store on, frankly, false pretenses. And then I'm not going to B because now I'm five miles away from B and I think I'm going to get this for 35.

At the end of the day, I really need this product. And so what have I done? I have chosen something that ultimately costs me more, not because I did a real good comparison, but because I was drawn in by a lower price. And all-in pricing means that you know what you're getting from the minute you walk into the store, or the minute you open that website, you know exactly what it's going to cost you. And Store A and Store B are fairly competing, because I know exactly what I'm going to spend in each of those businesses. And so it's really about fairness in the marketplace for consumers and for businesses.

Alan Kaplinsky:

So, another thing that the enforcement statement talks about, Beverly, are mandatory fees versus optional charges. As I understand it, if it's an optional charge, that's not what they're worried about. What they're really worried about are mandatory charges that can't be avoided, that end up getting tacked on to whatever the price is of the actual thing that the consumer is trying to buy.

Beverly Brown Ruggia:

You said something important. You said, "Fees that can't be avoided." That's not a problem. Those aren't junk fees. What's a problem is if they're not told to the consumer, right? Businesses, and you mentioned something about, "There's a new tariff, there's a new this, there's a new that." That's going to be across the board in the industry, right? So in fairness, every business can include those costs. Those are unavoidable costs to the business. That's perfectly fair. It's cost me twice as much to ship that thing from wherever it's coming to my store. That's a cost, right? That's how pricing is done. You make your prices based on what it costs you to provide that product or service. That's not unfair.

Alan Kaplinsky:

Yeah, right. So I mean, we all agree taxes, sales taxes, shipping charges, any government-imposed fee...

Beverly Brown Ruggia:

And it's fair across the marketplace. Every business is going to have those same fees, right? So if in the industry the price goes up 5% because of those things, it's going to go up across the board. That's not the problem here, right? So, what we're talking about, when you talk about optional fees, now, optional could be the business could decide to absorb some of those other

costs just to keep their business going, and they don't charge as much as the cost. So, optional doesn't necessarily mean that it was mandatory to the business, but optional means that the customer doesn't have to take that extra part of the service or additional thing to the product. They can say, "No."

One of the problems you have there is when it's opt-out, where businesses include all of the optional pricing and you have to actively opt out of that pricing in order not to be charged. That is considered somewhat deceptive and somewhat abusive because you may miss that. You may not see, "Oh, it says there's an extra fee if you buy it on Thursday as opposed to Friday." You may not see that, right? So it's important that things are opt-in when they're optional. And it's important that the businesses are not adding on fees that are not necessary to produce the product or provide the service unless they're willing to say, "The total cost is more and I'm charging you this." That's the way it is.

I want to say something. Businesses can charge whatever they want. Ultimately, you decide on the price of your product, but it needs to be something that the consumer knows they're going to be charged, right? They need to know what that price is. So all-in is adding up to knowing exactly what the business is going to charge. If you want to charge 20% more than the guy down the street, that's up to you. But the consumer needs to know what they're being charged in each business, and they need to know it upfront before they commit to purchasing and before the purchasing process begins. It needs to be upfront and transparent.

Alan Kaplinsky:

Right. So, we talked a little bit earlier about in the banking or consumer finance area, fees that you would consider to be junk fees. And we talked about earned wage access and overdraft fees. I mean, late fees, I'm not sure whether you feel that they are a junk fee or not. They've been labeled it by someone... Well, Rohit Chopra used to call them junk fees, but I think that didn't really fit what he was trying to do.

Beverly Brown Ruggia:

I think, again, the definition of late fees has also to do with whether it is a reasonable fee, right? A late fee, in and of itself, is not necessarily a junk fee, but if it's an exorbitant amount of money and it's something... Also, what I'll tell you, is when people get trapped in a cycle of late fees that they're unable to correct, that is also a deceptive practice.

Alan Kaplinsky:

Well, let's take another example. Now, I know in New Jersey, payday lending isn't allowed. It's never been allowed. Pennsylvania, New Jersey, New York, there's no statute authorizing payday lending. And the payday lending that goes on is probably being done online, not through bricks-and-mortar offices. And I'm wondering, and I know you don't like payday lending, at least I've read part of your CV, and we're not going to debate that, but it's really, do you think there are junk fees involved in a payday loan?

And I would say at the beginning, you may think that the fees are exorbitant and... The interest rate, I should say, 'cause those are loans. Nobody's trying to hide it. It's a loan. Truth in Lending Act applies. And usually, the credit's being extended to people that have less than ideal credit, so the risk of loss is much higher. But there aren't other fees, generally. It's just the interest. And people I know can get into a cycle of debt and they can get way over their head, and there are certain restrictions on what they are able to do under certain state laws, but it's a very simple product. It couldn't be anything less complex.

You look at a mortgage loan on the other hand, that's very complicated. My goodness, you go to a settlement on a mortgage loan, particularly if you're buying a home and you're faced with a stack of papers that's several inches thick that you've got to read and review and sign. And there are all kinds of fees for a notary public and copying charges and all kinds of things. But with payday lending, it's pretty simple. You may not like the product, but you don't see a junk fee there, do you?

Beverly Brown Ruggia:

It's a different conversation. From the state perspective, payday lending is usurious. The industry is usurious, and we have a cap which prevents those companies from setting up shop in our state. I think that what is deceptive is that these companies have been found to know that the customers are unable to pay back the loans. And you may remember there was a case in

which a company's training manual explained to their lending staff that the expectation is that they would give this person a loan, the person would fail, they would give them another loan, and then that cycle. There's an image, which I'm happy to send to you, where the intention was to get somebody locked into repeat loans.

So from a federal perspective, not a state perspective, the Consumer Financial Protection Bureau was not given the authority to ban payday lending. It was given the authority to provide some guidance and guidelines. And one of the things that they called for was the companies needed to make sure that there was an ability to repay. So, payday loans aren't just... They are based on what someone is supposed to make. That makes them different from earned wage access, right? It's what someone's supposed to make.

And underwriting is not a bad thing. I think people think that consumer advocates don't like underwriting. That's not true. What we want people to do is enter into safe products and services, enter into buying safe products and services that they can manage. What we don't want to see is companies create business models where people get into products and service agreements that they cannot fulfill, right?

So, the guidance there was meant to make sure that anybody who takes out a payday loan is able to repay it. And that seems to me to be common sense. From our perspective, it's consumer protection, is not that different from the subprime lending that went on that led to the recession, right? In that lenders were giving out loans to people who were not able to pay them back.

Now, you could argue, "Well, they know what they're doing. They're signing something." But when a business model is designed, as was the case, certainly in the case of one company, knowing that the borrower's going to fail, and their goal is to get them to do repeat borrowing with high interest rates, the average was 400%. I don't know how anyone can justify that anywhere in the world. To me, that's like down the street, you go to a loan shark and you might get better terms. I'm not sure.

But the point is that what we want is a safe marketplace, we want a fair marketplace, and we want a marketplace that's good for both business and consumers. And having people fail to pay back their loans is not good for anyone. Let me tell you, it's not good for landlords 'cause that person's not going to be able to pay their rent. It's not good for other businesses 'cause they aren't going to be able to buy anything else. And it's certainly disastrous for families who are struggling to begin with.

So, when we look at what is fair and what is reasonable, we're not just talking about in the case of fees, what is transparent, et cetera. We're talking about what is reasonable and what makes the marketplace safe, and what makes it fair for everybody on the business side and on the consumer side. I can't tell you how many people, when I say that our usury cap in New Jersey is 30%, they say, "That's outrageous." And yet, we have not even been able to get a 36% cap nationally for consumer loans. So it's interesting. It's very interesting.

People will say, "Oh, well, people need credit." It's not credit. 400% interest rate is not any form of credit. It is a direct pathway to financial ruin. You got the odd few people who can pay it back, but who knows what they borrowed from their family? Who knows what they sold? Who knows what they had to do to get there? And I think that's what we're talking about in terms of payday lending. Can you tell me, please explain to me how a 400% loan is a reasonable loan?

Alan Kaplinsky:

Well, yeah, I don't want to get into the debate about payday lending. That would be another program altogether, probably.

Beverly Brown Ruggia:

Different topic. Different topic. I get it.

Alan Kaplinsky:

But I do know that the risk of loss on these payday loans is quite high. The charge-offs are high. The lenders, if somebody doesn't pay them, most of them don't go to court and they don't sue the consumer 'cause the dollar amounts aren't worth it.

But let me ask you, 'cause we're getting toward the end of our program. Buy now, pay later, is there an issue there with junk fees or is it a different issue? Or is there no issue? Would you consider that a good product for consumers? They're able to repay in four installments, less than four installments, same, that they don't pay any fee on top of anything, unless they're late, then there would be a late fee.

But if you've got an option, you can pay for an item $100 in cash today, or we can spread it out over and put it into you pay a certain amount down and you'll have three other installments that you'll have to make. And at the end of the day, if you pay on time, you'll pay $100. And sounds like a good deal to me. Right? Do you?

Beverly Brown Ruggia:

Again, you get into the fairness piece. And there's this element of deception here. A lot of people get excited, "Oh, I can just pay this." And again, we talked about it with the credit card fee, late fee, right? They don't realize that suddenly that triggers a series of fees that are ultimately going to be extremely costly. And again, is it really right to charge somebody that bought something for $100 and you're going to charge them a $40 late fee? What is really commensurate for what is happening? I think we don't really talk enough about the fact that we are in a society where people just can't make ends meet. And so, they are in situations where this marketing of these kinds of credit products is they're highly vulnerable to that marketing. And when they enter into that market of credit, there needs to be some guidelines for how they're treated, and they need to be able to know that, "Okay, I'm late once. I've got to pay an additional $10, additional whatever."

But when you start spiraling out into fees that are $40, which now make the total amount you owe higher, and then you get another fee, that is a kind of cycle that speaks to our debt economy. And there are companies making billions and billions and billions of dollars solely on those types of fees. And it's really important that if we're going to talk about affordability and we're going to talk about competitiveness in the marketplace, and we're going to talk about fairness in the marketplace, it's really critical that we get a handle on what fees are appropriate, what fees are fair, and how the consumer is informed about what they're ultimately going to have to pay. They need to know the full extent of their liability when they enter into even a little shop. It isn't just entering into a mortgage.

I always say to people I think it is rare that you can go from your house in the morning, go out to play, go out to school, go out to the doctor, go out to work, and come home without having entered into some kind of financial transaction agreement with somebody that's a form of credit, or you may be subject to fees or you may be subject to interest. And it's important that the financialization of our economy be recognized for what it is. And in some cases, businesses are using that to establish new lines of business. And in many cases, they're treating the consumer unfairly. It isn't about getting rid of fees. That is the whole point.

And then going back to what we said at the beginning, the term junk fees distinguishes between general appropriate required fees that we know there's going to be fees, but when those fees add up to harming consumers and making them worse off than when they went into that agreement or that transaction is something we need to be mindful of. And we need to make sure that businesses are providing correct information, clear information, full information, and are treating people fairly. And that's really what it's about. It's fairness and making sure people are treated well in the marketplace.

Alan Kaplinsky:

Okay. Well, we've come to the end of our program today, and really want to thank you, Beverly, for being on our program. And I hope you didn't mind some of the challenging questions-

Beverly Brown Ruggia:

Not at all, not at all.

Alan Kaplinsky:

... that I posed to you. I do it in complete good faith. I'm not trying to harass anybody, but if I disagree, I do like to let people see the other perspective, and I do have a different perspective. I view junk fees as being a particular kind of fee that is unlawful, but for a particular reason, and that is where the ball is being hidden. It's not transparent. I don't believe that every unlawful fee is a junk fee. That's where I think you and I may differ.

But in any event, thank you again for being on the show. And I want to also thank our listeners for taking the time to listen to our show today. And for our listeners, if you enjoyed today's program, please visit our blog at consumerfinancemonitor.com,

where you'll find daily updates on developments in the consumer finance area, along with information about our webinars, our blog posts, and our future podcast episodes. And again, I hope everybody enjoys the balance of their day. Thank you.

Beverly Brown Ruggia:

Thank you so much.