

Portland City Auditor

Ombudsman



TO: Gabriel Solmer, Director, Portland Water Bureau
CC: Quisha Light, Customer Services Director, Portland Water Bureau
FROM: Andy Stevens, Deputy Ombudsman
DATE: April 12, 2024
SUBJECT: Ombudsman findings and recommendations on returned payment fees

Executive Summary

In December 2023, the Ombudsman's Office was contacted by a complainant who raised concerns about the equity and fairness of returned payment fees charged by the Portland Water Bureau, after the complainant incurred the fee due to circumstances beyond their control and was denied a refund.

We investigated this complaint and identified several issues of concern. Over a previous three-year period, the Water Bureau charged customers a higher returned payment fee than allowed under state law. Returned payment fees have inequitable impacts on certain socioeconomic groups, raising questions about alignment with the Water Bureau's equity goals. The fees may be ineffective in deterring future returned payments because they are likely to be caused by financial hardship or other circumstances beyond customer control. Additionally, the Bureau's total losses for returned payments are almost three times higher than the amount it recovers, which is an inefficient use of resources and loss for ratepayers.

To address these concerns, we recommend the Water Bureau notify customers who may have been impacted by the past overcharge that they are entitled to a refund and remove returned payment fees starting Fiscal Year (FY) 2024-25.

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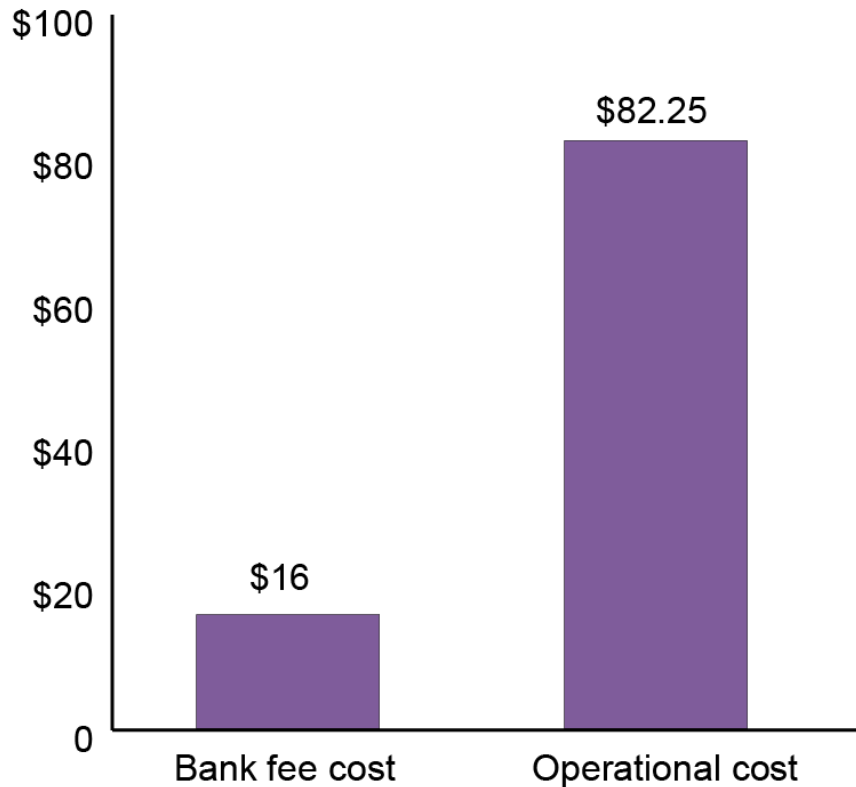
Background

According to the Portland City Charter (11.05), the City Council sets water rates for each fiscal year to provide funding to cover expenses and debt service relating to water bonds. City Code (3.24.030) authorizes the Customer Services Group of the Water Bureau to provide billing, collection, and account management functions; respond to ratepayer inquiries; and manage financial assistance programs.

Under the City ordinance authorizing rates and other charges for water and water-related services for FY 2023-24, the Water Bureau is authorized to charge \$35 to account holders for each returned payment. The fee is charged to customers immediately without a grace period and, according to bureau policy, cannot be waived. The Water Bureau website does not indicate how the \$35 returned payment fee is calculated. However, Portland Revenue Division's policy on returned check charges cites Oregon Revised Statutes (ORS) 30.701(5), which allows a payee to collect up to \$35 for returned payments.

When the bank that receives water payments returns the customer's payment, the bank charges the Water Bureau an average of \$16 per returned item. According to the Water Bureau, its operational costs are \$82.25 to address each returned payment.

Figure 1. The Water Bureau is charged \$16 by the bank per returned item and spends \$82.25 to recover each returned item



Source: Ombudsman’s Office analysis of Water Bureau financial data

Inadequate funds are a common reason for returned payments. Many financial institutions have begun to reduce or eliminate fees for inadequate funds to be competitive within their industry. In 2023, the average of these fees was about \$23. A returned payment fee of \$35 could be nearly 50 percent more than the amount Water Bureau customers might see for similar fees. Whereas a customer may shop around for banks that don’t charge these fees, Water Bureau customers do not have options for alternative providers of water.

Some returned payments may be caused by an issue that is beyond the customer’s control, as in the case of the complainant, whose bank merged with another bank. Similarly, many payment clearing systems use technology that batches payments rather than clearing them in real time. Especially for customers who live paycheck to paycheck, the impact is that balances could be positive when a payment is made and negative when settled. As a result, a Water Bureau customer who is already struggling to make ends meet could incur a \$35 financial penalty for making a timely and good-faith payment.

Issues of concern

Water Bureau overcharged customers in the past

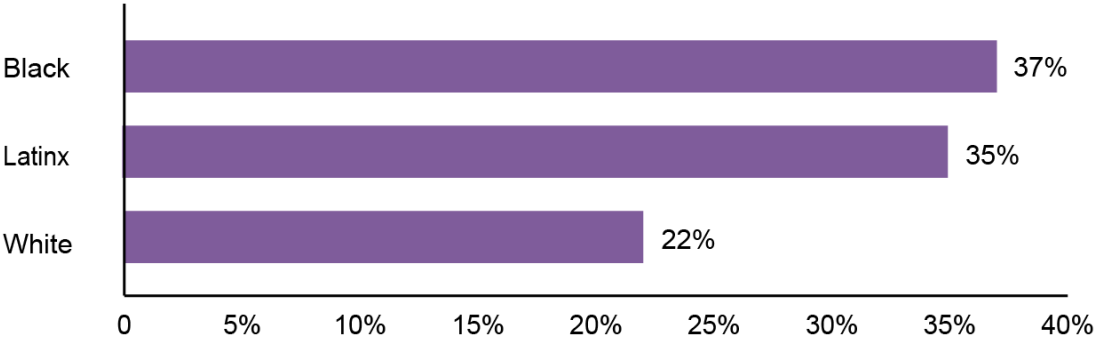
We found the Water Bureau increased the returned payment fee from \$25 to \$35 in July 2008. However, state law did not increase the amount a payee is allowed to collect from \$25 to \$35 until January 2012. This means that the Bureau appears to have been unlawfully overcharging customers for returned payment fees for three and a half years. In 2023, the Water Bureau had 1,145 returned payments. Using that rate, an estimate of past overcharges amounts to roughly \$40,075.

Returned payment fees have inequitable impacts

The Water Bureau’s 2021-2025 Equity Plan says the Bureau values anti-racism and affordability. The Bureau’s Guiding Equity Statement for its FY 2023-24 budget also says the Bureau will work to uproot systemic inequities and their impacts on Bureau employees and the people they serve.

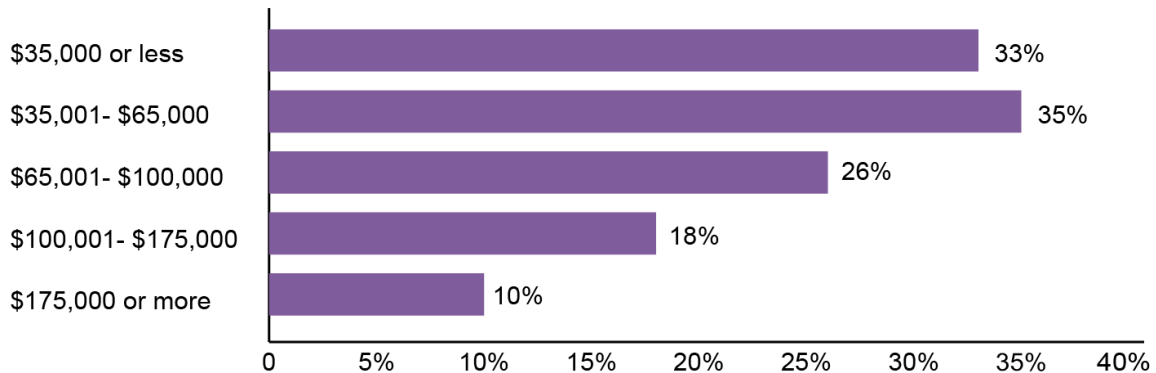
The disproportionate impact of fees for inadequate funds on certain socioeconomic groups may be out of step with the Water Bureau’s equity values. Research from the Consumer Financial Protection Bureau (CFPB) has found that lower-income and Black and Latinx individuals are disproportionately more likely to incur fees for inadequate funds than higher-income and White individuals. Additionally, people who have less education, have children, are younger, single and are women also incur fees for inadequate funds at higher rates.

Figure 2. Black and Latinx individuals were more likely to be charged a fee for inadequate funds in the past year



Source: Ombudsman’s Office analysis of Consumer Financial Protection Bureau data published in December 2023. The CFPB reports other race and ethnicity groups at 21%.

Figure 3. Lower-income individuals were more likely to be charged a fee for inadequate funds in the past year



Source: Ombudsman’s Office analysis of Consumer Financial Protection Bureau data published in December 2023

Returned payment fees may be ineffective deterrents for future returned payments

The Water Bureau says that returned payment fees serve to deter customers from making water payments that will bounce back in the future. But returned payment fees may not be effective as a deterrent for future returned payments if the reason people continue to incur them is financial hardship. In 2023, the CFPB found that 26 percent of households were charged a fee for inadequate funds in the past year, with 8 percent having one to three fees and 18 percent having four or more. Eighty-one percent of households who frequently incur the fees (four or more) report difficulty paying at least one bill in the past year compared to 56 percent of households who occasionally incur the fees (one to three) and 25 percent for households who do not incur the fees.

In contrast to returned payment fees, other penalties such as carrying charges and late payment fees are applied seven and fourteen days respectively, after a payment is due and such fees are less costly to customers. A quarterly water bill of \$350 would amount to a \$3.50 carrying charge and late payments begin at a flat \$5 fee. Research shows that many consumers resolve returned payments quickly. If the Bureau were to only rely on other penalties, customers who remedy returned payment issues within seven days would be able to avoid a fee altogether.

Returned payment fees cost ratepayers

According to data provided by the Water Bureau, its total loss, including bank fees and operational costs to recover returned items, is almost three times the amount it recovers

from the fees, which means the Bureau is losing more than it gains from this practice. In 2023, the Water Bureau lost \$112,496,176.25 in bank fees (\$16 per returned item) and operational costs (\$82.25 per returned payment) and recovered \$40,075 (\$35 charge to customers per returned payment). This amounts to more than \$72,000 in losses that are indirectly passed on to all ratepayers—roughly 40 cents per meter per year.

Figure 4. The Water Bureau loses almost three times the amount it recovers on returned item fees, a loss that is spread to all ratepayers



Source: Ombudsman’s Office analysis of Water Bureau financial data

Conclusion

While returned payments impose some financial loss and operational costs to the Water Bureau, we consider that these are outweighed by concerns of inequity and the inefficiency of the current billing practice. Other penalties such as carrying charges and late payment fees would still mitigate financial risk of missed payments. Relying on other penalties instead, would likely reduce the amount of loss to the Water Bureau in operational costs and the amount of loss to all ratepayers, while being a less costly alternative for customers who have returned payments and are much more likely to be facing socioeconomic inequities than those who do not incur returned payments.

Recommendations

To align its billing practices with its equity goals, increase their effectiveness and reduce their total financial loss, we recommend the Water Bureau:

1. Notify customers who may have been overcharged by \$10 per returned payment between July 2008 and December 2011 that they are entitled to a refund.
2. Remove returned payment fees starting FY 2024-25 and instead rely on late payment fees for financial risk mitigation.