



January 25, 2022

## CFPB TO EXAMINE CREDIT CARD RATES, FEES

In a January 2021 blog post, the Consumer Financial Protection Bureau (CFPB) announced that it would begin examining credit card rates and fees to ensure there is “robust and fair competition” in the credit card market. To accomplish this goal, the CFPB will focus on three areas in particular:

### 1. Industry-wide practices

The CFPB argues that the credit card market, while large, has a small number of major players whose parallel shifts in business can make it more difficult for issuers to offer competitive pricing to consumers. As an example, the Bureau points to the industry practice of withholding account performance information that issuers may previously have reported to the credit bureaus, making it difficult for other issuers to offer competitive pricing to consumers. The CFPB intends to examine such practices with an eye toward their effect on fair competition.

### 2. Comparing, switching and refinancing credit cards

The CFPB believes that the current system of shopping for the lowest rate is difficult for consumers because issuers advertise such wide ranges of rates that consumers must apply for a credit card to learn what rate they are actually eligible to receive. In the CFPB’s view, this application process commonly results in a hard credit check, which lowers the consumer’s credit score, making it harder for consumers to shop for the best rate. Consequently, the CFPB intends to rely on “long-dormant” authority under the Dodd-Frank Act to propose rules that give consumers greater access to their financial records. The CFPB issued an advance notice of proposed rulemaking in 2020 soliciting comments to assist the Bureau in developing regulations; however, no further rulemaking has been issued.

### 3. Credit card fees

According to the CFPB, credit card companies charge fees that “herd” around common amounts indicating that competition is not driving down the price. Therefore, the CFBP announced its intention to cut down the cost of such fees.

The CFPB’s regulatory bias is once again on display. For example, the common use of “soft” pulls to mitigate application risk is not acknowledged. Regardless, the blog post puts issuers on notice

to begin assembling data to defend their current practices, or to review and potentially change them. We frequently assist clients with a wide range of credit card and other payments program issues by reviewing documentation and practices for potential regulatory risks and other potential challenges. We will, of course, continue to monitor the CFPB’s investigation of credit card rates, fees and other related issues and update clients accordingly. If you have any questions, please let us know. ☐

✧ *Mike Tomkies and Mercedes Ramsey*

**LOOKING FOR A STATE LAW CREDIT CARD COMPLIANCE RESOURCE?** We publish an easy-to-use online reference that summarizes state consumer lending and other consumer protection laws. Our CREDIT CARD DIGEST is organized topically, covers laws applicable to credit card programs of federally and state-chartered financial institutions from an out-of-state issuer perspective and includes an analysis of statute applicability. Card issuers, marketers, servicers and merchants should find this an invaluable resource for program development and regulatory compliance. **Contact us for details.**

Darrell L. Dreher  
ddreher@dtlaw.com

Elizabeth L. Anstaett  
eansaett@dtlaw.com

Nathan D. Copeland  
ncopeland@dtlaw.com

Susan L. Ostrander  
sostrander@dtlaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

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Michael C. Tomkies  
mtomkies@dtlaw.com

Benjamin J. Hurford  
bhurford@dtlaw.com

Mercedes C. Ramsey  
mramsey@dtlaw.com

Judith M. Scheiderer  
jscheiderer@dtlaw.com

Robin R. De Leo  
robin@deher-la.com