



June 24, 2022

## CFPB SEEKS BROAD COMMENT ON NEW CREDIT CARD LATE FEE RULEMAKING

The Consumer Financial Protection Bureau (“CFPB”) issued an Advance Notice of Proposed Rulemaking (“ANPR”) on credit card late payment fees, returned payment fees and the fee safe harbor under Truth in Lending Act, the CARD Act and Regulation Z. The notice asks for comment from credit card issuers, consumer groups and the public, regarding credit card late fees, late payments and card issuers’ revenue and expenses.

The request for comment is part of the CFPB’s larger “Junk Fee Initiative.” The CFPB trumpets the request for information as “the first step toward addressing credit card company penalty policies costing consumers \$12 billion each year, starting by looking at excessive late fees.” CFPB Director Rohit Chopra has testified before Congress that the CPB intends to revisit and update the Regulation Z provisions governing credit card fees. The CFPB also cited the earlier report on credit card late fees, which found that many issuers rely on Regulation Z’s safe harbor for maximum fee amounts. See our ALERTS dated [Jan. 25, 2022](#) and [Jan. 26, 2022](#). Though the request does not discuss the annual change in the safe harbor for inflation, Director Chopra stated in the press release that, “this effort is particularly timely since current rules might give companies the incentive to impose big hikes based on inflation”

The CFPB is asking for comment on the following topics, among others:

- (1) Factors used by card issuers to set existing levels of late payment fees, including proportionality to costs incurred from late payments and the deterrence effect of the fee;
- (2) Costs associated with credit card late payments, including costs of notifying customers of delinquencies, costs of funding delinquent accounts and non-payment losses;
- (3) Methods and length of time for card issuers to contact cardholders about late payments beyond periodic statements;
- (4) The number of late payments a card issuer typically experiences as a total and relative to the number of accounts;
- (5) The number of late fees a card issuer typically assesses in a year, as a total and relative to the number of accounts;
- (6) The number of uncollected and uncollectible late fees, late fees

discharged in bankruptcy and late fees card issuers were legally required to waive

- (7) Research or information on the deterrence effect of late fees and the Regulation Z safe harbor amount;
- (8) Other penalties than late fees imposed for late payment and other less costly deterrence methods;
- (9) Cardholder behavior and classifications of cardholders for late payments;
- (10) Auto pay offerings, the rate of auto pay enrollment and auto pay benefits;
- (11) Notifications of due dates other than periodic statements;
- (12) Courtesy periods and fee waivers;
- (13) Staggered late fees;
- (14) The use and views of the Regulation Z safe harbor;
- (15) The use of cost analysis instead of the Regulation Z safe harbor; and
- (16) Itemized expenses and revenues from interest, fees, interchange and other sources;

The request for information did not address credit card regulation under state law, which often expressly set the amount of a permissible late fee by statute.

Comments will be accepted until July 22, 2022. We can assist with drafting responses and comments.

✧ *Mike Tomkies and Ben Hurford*

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Darrell L. Dreher  
[ddreher@dtlaw.com](mailto:ddreher@dtlaw.com)

Elizabeth L. Anstaett  
[eanstaett@dtlaw.com](mailto:eanstaett@dtlaw.com)

Nathan D. Copeland  
[ncopeland@dtlaw.com](mailto:ncopeland@dtlaw.com)

Susan L. Ostrander  
[sostrander@dtlaw.com](mailto:sostrander@dtlaw.com)

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

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Michael C. Tomkies  
[mtomkies@dtlaw.com](mailto:mtomkies@dtlaw.com)

Benjamin J. Hurford  
[bhurford@dtlaw.com](mailto:bhurford@dtlaw.com)

Mercedes C. Ramsey  
[mramsey@dtlaw.com](mailto:mramsey@dtlaw.com)

Judith M. Scheiderer  
[jscheiderer@dtlaw.com](mailto:jscheiderer@dtlaw.com)

Robin R. De Leo  
[robin@deher-la.com](mailto:robin@deher-la.com)